JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
29 January 1998

Case T-62/96

Willy de Corte
v
Commission of the European Communities

(Officials – Partial permanent invalidity – Accident – Link of cause to effect)

Application for: annulment of the Commission's decision of 16 June 1995 refusing to assume responsibility under the provisions of the Staff Regulations on insurance against the risks of accident for the consequences of an infarction suffered by the applicant and, in so far as necessary, of the decision of 25 January 1996 expressly rejecting the applicant's complaint.

Decision: Application dismissed.

Abstract of the Judgment

The applicant, an official of the Commission of the European Communities aged 43 years at the material time, took part in a football match on 16 April 1988. He received a blow to the chest during a collision with another player, collapsed and was forced to retire from the match. On the same day he attended a hospital accident and emergency department. A number of psychosomatic disorders were diagnosed and the applicant was discharged. Two days later, on 18 April, the applicant was admitted to hospital. Clinical examinations then revealed that he had suffered a myocardial infarction during the football match.

On 20 April 1988 the applicant completed an accident report which stated that 'following quite a violent contact [he] felt pains in the chest (16.4.88, at 3.15 p.m.)'. The report, which was sent to the Commission, was accompanied by a medical certificate dated 21 April 1988 declaring that the applicant had been admitted to hospital.

By letter of 13 June 1988 the 'Accidents and Occupational Diseases' office of the Directorate-General for Personnel and Administration (DG IX) of the Commission informed the applicant that his accident was 'covered' under Article 73 of the Staff Regulations of Officials of the European Communities (Staff Regulations) and the rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (Rules).

On 23 June 1988 the Commission received a note from the applicant enclosing two reports of admission to hospital dated 2 and 26 May 1988, signed by, *inter alios*, Dr Abramowicz, the doctor treating the applicant. The report of 2 May concluded that the applicant had suffered a myocardial infarction. It also stated that the beginning of the condition seemed ('probably') to date from the end of March 1988, when the applicant first felt pain in his upper limbs while playing football. The

report of 26 May established the existence of a thrombosis of the right coronary artery and akinesia representing the correlations of the myocardial infarction in April 1988.

The Commission then appointed Dr Simons to draw up a report. That doctor consulted a cardiologist, who confirmed the infarction and the thrombosis and pointed out that the applicant presented risk factors, namely heavy smoking prior to the accident and lipid anomalies in the cholesterol and triglyceride levels.

On 10 October 1990 Dr Abramowicz wrote to Dr Simons on his own initiative and, after confirming the reports of 2 and 26 May 1988, expressed the view that it was 'possible that the acute heart attack was precipitated by the violent physical contact between Mr De Corte and one of the other players. The rate of invalidity corresponding to the sequelae of the accident may be evaluated at around 20%'.

In a report drawn up on 20 September 1991 Dr Simons, after referring to the applicant's prior heart condition, stated that he was 'legally' incompetent to determine 'whether or not the occurrence during the football match on which the official relied [should] be considered an accident'.

By letter of 10 January 1992 the Commission informed the applicant that it refused to regard the infarction as a sequela of the accident on 16 April 1988. Since no medical document was enclosed with that letter the applicant, by note of 31 January 1992, objected to that refusal.

Following an exchange of correspondence between the parties concerning the rules of procedure applicable, the Commission withdrew its letter of 10 January and initiated the procedure provided for in Article 21 of the Rules. Accordingly, by letter of 23 July 1992 the Commission sent the applicant a draft decision dated 22 July concerning the accident in question, the terms of which corresponded to that of the letter of 10 January 1992.

By letter of 10 August 1992 Dr Abramowicz again contacted Dr Simons and repeated his opinion that the myocardial infarction might have been precipitated by the collision between the applicant and one of the other players.

By note of 30 September 1992 the applicant successfully requested that a Medical Committee be consulted, as provided for in Article 23 of the Rules. The Committee was composed of three doctors: Dr Abramowicz, appointed by the applicant; Dr Dalem, appointed by the administration; and Dr Rogowsky, appointed by common agreement between Dr Abramowicz and Dr Dalem.

In its report of 27 April 1993, as regards any connection between the 'shock' or 'stress' sustained during the football match on 16 April 1988 and the development of the applicant's infarction, the Committee considered:

'We do not think that the cause of that infarction was traumatic (a blow to the chest). Subsequent coronary investigations revealed preexisting coronary disease. It is possible that the intense effort and stress of the game may, by releasing catecholamine, have caused a significant coronary spasm which led to the infarction. It must be pointed out that the subject displayed a number of risk factors: high cholesterol ..., high triglyceride ..., heavy smoking. The concept of "accident" is a legal concept and we find it difficult to establish whether or not the repeated efforts made during the match on 16 April 1988 correspond to the concept of "accident". For the record, the Committee considers that the sequelae of posterior

infarction presented by Mr De Corte justify an invalidity rate of 15%, which became permanent on 1 January 1989, should the concept of accident be "accepted" by the lawyers.'

The report was signed by the three doctors. Below his signature Dr Abramowicz added the following handwritten note:

'Although this report contains a number of factual errors, I am none the less able to sign it as concurring in it, since the CCE has already accepted that the disease is accidental in nature and the Medical Committee's conclusion that an invalidity rate of 15% should be granted is favourable to my patient.'

In the light of Dr Abramowicz's handwritten observations, the Medical Committee reconvened on 19 October 1993. The applicant was opposed to this second meeting and Dr Abramowicz did not take part. The report drawn up following this meeting was signed only by Dr Rogowsky and Dr Dalem, who refused to endorse Dr Abramowicz's comments and stated that a heart scan carried out on 18 May 1988 revealed a stenosis of the right coronary artery representing a prior condition which was not taken into consideration in the first report. Taking this pathological predisposition into account, the doctors considered that the rate of 15% represented the applicant's present situation, from which 3% should be deducted on account of that prior condition.

By letter of 28 October 1994 Dr Abramowicz informed the Commission that the findings of Dr Rogowsky and Dr Dalem in their report of 19 October 1993 were acceptable to the applicant.

The Commission communicated to the applicant a decision dated 16 June 1995 in which it refused to recognise the infarction of 16 April 1988 as an accident within the meaning of Article 73 of the Staff Regulations and the Rules.

By memorandum registered on 14 September 1995 the applicant lodged a complaint against that decision. That complaint was expressly rejected by decision of the Commission of 25 January 1996.

Law

The plea in law alleging a breach of the decision adopted with respect to the applicant on 13 June 1988

Under Article 19 of the Rules, decisions recognising the accidental cause of an occurrence are to be taken by the administration, in accordance with the procedure laid down in Article 21, on the basis of the findings of the doctor(s) appointed by the institution. Under Article 21 the administration, before taking a decision pursuant to Article 19, is to notify the official of the draft decision and of the finding of the doctors appointed by the institution. In the absence of any evidence that that procedure had already been initiated by the Commission and, in particular, that a draft decision recognising the accidental cause of his infarction, together with the associated medical findings, had been notified to the applicant, the administration was not yet bound by the findings concerning the cause and consequences of that infarction (paragraph 49).

See: 265/83 *Suss* v *Commission* [1984] ECR 4029, paras 18 to 20

In that context, the applicant cannot rely on a breach of the principle of legitimate expectations, since the Commission gave him no precise assurances which might have led him to entertain reasonable expectations that the infarction which he had suffered would be recognised as accidental (paragraph 55).

See: T-207/95 *Ibarra Gil* v *Commission* [1997] ECR-SC II-31, para. 25

The pleas alleging a breach of Article 2 of the Rules and a manifest error of assessment

Article 2(1) of the Rules contains a general and abstract definition of the concept of accident, according to which '[a]n accident means any occurrence or external factor of a sudden, violent or abnormal nature adversely affecting an official's bodily or mental health' (paragraphs 68 and 72).

In its report of 27 April 1993 the Medical Committee found that the applicant's myocardial infarction did not have a traumatic cause. By those general words the Medical Committee denied that the collision between the applicant and one of the other footballers had any causative effect. The Medical Committee further found that the applicant suffered a preexisting coronary disease and pointed out that he presented a number of risk factors (paragraph 75).

The Medical Committee thus provided clear, adequate and consistent explanations of the absence of causality between the blow to the applicant's chest and the myocardial infarction which adversely affected his bodily health within the meaning of Article 2(1) of the Rules (paragraph 76).

The only medical evaluation, properly so-called, in the report of 27 April 1993 concerns the possibility of a causal link between the infarction and the intense efforts repeatedly made during the football match and the stress of the game. On the other hand, whether or not those efforts and that stress may be classified as an accident within the meaning of Article 2(1) of the Rules is solely a matter for the administration, subject to review by the Community judicature. Should that question be answered in the negative, therefore, the medical evaluation of causality would be rendered devoid of purpose (paragraph 78).

However, the efforts made and the stress experienced by the applicant during the football match in question – apart from the collision with one of the other players, and any causal relationship between this and the infarction is expressly precluded by the Medical Committee – are not in any way 'external' to the applicant's organism. They are the result of the applicant's voluntary participation in a sporting event during which he was affected by physical movements which were perfectly typical and normal. Nor, owing to their repetitive nature, can those movements as such be regarded as either sudden or violent. It follows that the efforts and stress referred to above, supposing that they may have triggered the applicant's infarction, do not constitute an accidental cause. Consequently, the conditions for the application of Article 2(1) of the Rules are not met in the present case (paragraph 79).

The Medical Committee was not required to take account of the individual point of view which Dr Abramowicz expressed during the formal procedure followed under the Rules (paragraph 80).

See: *Suss* v *Commission*, cited above, para. 13

The Staff Regulations, by providing for a Medical Committee consisting of three members, imply that in the event of disagreement it may decide by a majority. It follows that the Committee may decide by a majority to terminate its work and that its report is not vitiated by a formal defect because one of its members has refused to sign it (paragraph 81).

See: 277/84 *Jänsch* v *Commission* [1987] ECR 4923, para. 14; T-31/89 *Sabbatucci* v *Parliament* [1990] ECR II-265

The Commission was therefore right to refuse, on legal grounds and in the light of the findings of the Medical Committee, to recognise that the infarction which the applicant suffered had an accidental cause (paragraph 84).

Operative part:

The application is dismissed.