JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
18 February 1993 *

In Case T-1/92,

Santo Tallarico, an official of the European Parliament, residing in Mamer (Luxembourg), represented by Alain Lorang, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 51 Rue Albert Ier,

applicant,

v

European Parliament, represented by Jorge Campinos, Jurisconsult, and Didier Petersheim, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the report of the Medical Committee of 23 April 1991 and, in so far as is necessary, the decision of the appointing authority on the applicant's complaint, and also for the annulment of two decisions of the appointing authority of 27 May 1991,

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

composed of: C. W. Bellamy, President, H. Kirschner and A. Saggio, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearings on 6 October 1992 and 14 January 1993,

gives the following

* Language of the case: French.

Judgment

Facts

1 Santo Tallarico is an official of the European Parliament. As a result of contracting poliomyelitis in early childhood, he suffers from a degree of permanent partial invalidity ('PPI') which is not connected with that at issue in these proceedings.

2 On 6 August 1985 Mr Tallarico was injured in a road accident, as a result of which he was hospitalized until 8 August 1985. The accident caused various bruises and haematomas, distortion of the spine and a fracture of the metacarpal bones of the left hand.

3 On 11 January 1988 a Medical Committee appointed at the applicant's request under Articles 21 and 23 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease (hereinafter 'the Accident Rules'), drawn up pursuant to Article 73 of the Staff Regulations of the European Communities "delivered its report. The Committee, consisting of Dr Daro, Dr Bleser and Dr Lamy, found that the sequelae of the accident of 6 August 1985 had consolidated by 5 January 1987 with a PPI of 3%, taking account of disfigurement.

4 On 16 May 1988 Mr Tallarico had a second accident, a fall, following which he was examined by Dr De Wilde and Dr Olinger, who found that the applicant had pains in his left ankle and left knee as a result of a sprain and haematomas.

5 On 20 February 1989 the Parliament circulated a staff notice concerning, *inter alia*, the appointment of medical experts by the appointing authority. The notice stated that as from 1 February 1989 medical experts would be appointed by the appointing authority alone and approved by the insurers, and not the other way round.

6 On 18 August and 13 September 1989 two new medical certificates drawn up by Dr Morelli and Professor Hess respectively were issued to Mr Tallarico, each of which found a 15% degree of invalidity attributable to the sequelae of the accident of 6 August 1985.

7 Following a request made by Mr Tallarico on 16 October 1989 for the file on the accident of 6 August 1985 to be re-opened and for a consolidation report on the second accident of 16 May 1988 to be drawn up, Dr De Meersman submitted to the Parliament, pursuant to Article 19 of the Accident Rules, a medical report dated 17 January 1990, which appears not to have been received by Parliament's administrative departments until 13 March 1990.

8 That report summarizes Mr Tallarico's medical history and the circumstances of the two accidents in question together with the certificates of Professor Hess and Dr Morelli. It goes on to summarize the disorders complained of by Mr Tallarico and the results of his clinical examination and to analyse various radiographs, some of which are dated 1 September 1989 and one 5 February 1990. Finally, the report compares the present state of the sequelae of the accident of 6 August 1985 with that described in the Medical Committee's report of 11 January 1988, to conclude as follows:

'Neither the clinical examination nor the recent radiographs show any aggravation of the injuries described in the Medical Committee's report of 11 January 1988, which considered that consolidation had taken place by 5 January 1987, with a PPI of 3 per cent (3%).

(...)

Neither the clinical examination nor the radiological examination reveal any sequelae attributable to the accident of 16 May 1988.'

9 On 26 March 1990 Mr Tallarico was given two draft decisions based on the findings of that report pursuant to Articles 19 and 21 of the Accident Rules. On

15 May 1990 he requested the opinion of the Medical Committee pursuant to the second indent of Article 19.

10 On 19 June 1990 Dr Vandresse made a radiograph of the applicant's left wrist and sent a report on this examination to Dr Di Paolantonio, Parliament's medical officer in Brussels. On 18 December 1990 Dr Vandresse made a radiograph of the applicant's left knee. He likewise sent a report on this examination to Dr Di Paolantonio.

11 The report of the second Medical Committee set up pursuant to Article 23 of the Accident Rules and consisting of Dr De Meersman, appointed by the defendant, Professor Hess, appointed by the applicant, and Professor Van der Ghinst, appointed by agreement between the other two doctors, is dated 23 April 1991.

12 In its report the Medical Committee found unanimously that:

'... there is no aggravation of the sequelae described in the Medical Committee's report of 10 January 1988 [sic] .

The complaints concerning the right knee and the nape of the neck are not attributable to the accident.

No sequelae of the accident of 16 May 1988 are present.

Accident of 6 August 1985: the costs after consolidation on 5 January 1987 are not attributable to this accident.

There are no costs attributable to the sequelae affecting the left hand, since no such sequelae are present.'

13 The report observes, in support of those findings, that the Medical Committee questioned and examined Mr Tallarico, allowing him to put his own case, and considered various reports and medical certificates as follows:

'The accident of 6 August 1985:

The consolidation report drawn up by Dr Lamy on 5 January 1987. The Medical Committee's report of 11 January 1988, signed by Dr Bleser, Dr Lamy and Dr Daro, finding that consolidation had taken place by 5 January 1987, with no need for further treatment, and that there was a degree of invalidity estimated at 3%. Dr J. De Meersman's report of 17 January 1990 finding that there had been no aggravation of the sequelae of the said accident since the Medical Committee's report.

The accident of 16 May 1988:

Dr J. De Meersman's report of 17 January 1990 finding that no sequelae were present.'

It also emerges from the report that the Medical Committee carried out a clinical examination of the applicant and studied certain radiographs.

14 On 27 May 1991, on the basis of this report and pursuant to Article 19 of the Accident Rules, the appointing authority took two decisions, the first of which found that there was no aggravation of the applicant's state of health attributable to the accident of 6 August 1985 and that the expenses subsequent to consolidation on 5 January 1987 were not attributable to it (Decision No 005922), and the second that the applicant had recovered from his accident of 16 May 1988 without suffering any sequelae (Decision No 005921).

15 On 8 July 1991 Mr Tallarico lodged a complaint against the two decisions of 27 May. In particular, he claimed that the Medical Committee of 23 April 1991 had 'deliberated on the basis of a seriously incomplete file' on the ground that three medical documents, namely Dr Di Paolantonio's memorandum to Dr Vandresse of

18 December 1990 and the two reports of the radiological examination carried out by Dr Vandresse, dated 19 June 1990 and 18 December 1990, together with the relevant X-ray photographs (see paragraph 10 above), had not been submitted to the Medical Committee. It was the institution's responsibility to arrange this.

16 In addition, Mr Tallarico argued that Dr De Meersman's report of 17 January 1990 should be 'declared legally null and void' as it had been drawn up only 24 hours after a request dated 16 January 1990 made by Dr De Meersman himself for radiographs of Mr Tallarico's spine, knees and left ankle. This meant that the report in question was not credible, since it had been drawn up before the author of the report had received those items of the medical file, which he himself had requested.

17 On 17 October 1991 Mr Tallarico sent three additional documents to Parliament, which received them on 18 October, for placing in his file; they included, in particular, a medical certificate from Dr Ruhland, dated 29 July 1991, certifying that the applicant was suffering from 20% invalidity as a result of the accident of 6 August 1985 and a hospital discharge report also signed by Dr Ruhland bearing the same date.

18 By letter of 18 October 1991, the date when the abovementioned documents were received by Parliament's administrative departments, the appointing authority rejected the applicant's complaint of 8 July 1991. In that letter, Parliament stated, among other things, that it was not for the doctors of the institution's medical department to add documents to the Medical Committee's file and that there were no factors capable of casting doubt on the credibility of Dr De Meersman's report.

19 On 21 November 1991 Mr Tallarico again requested that the procedure pursuant to Article 73 of the Staff Regulations be re-opened. That request, which was received by Parliament on 19 December 1991, was refused by a letter dated 4 February 1992. The letter pointed out, in particular, that a request for the re-opening of a file pursuant to Article 22 of the Accident Rules was permissible only where the person concerned claimed that his invalidity had become aggravated after the date on which he had been examined by the Medical Committee, which was not the case here.

20 In the meantime, on 25 November 1991, the administration had returned to the applicant the documents placed in the file on 17 October 1991, informing him that the administrative procedure had been terminated.

Procedure

21 It was in those circumstances that, by application lodged on 17 January 1992, the applicant brought this action for the annulment of the Medical Committee's report of 23 April 1991 and, in so far as is necessary, the decision of the appointing authority rejecting his complaint, and also for the annulment of the appointing authority's two decisions of 27 May 1991.

22 Upon hearing the report of the Judge Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. However, it was decided to ask the defendant to provide certain particulars of the dates of various stages of the pre-litigation procedure; the information requested was provided by letter dated 1 October 1992.

23 The parties' representatives were heard in oral argument and answered questions put by the Court at the hearing on 6 October 1992. On that occasion the defendant produced certain documents, including a letter dated 14 February 1991 from Parliament's social insurance department to Dr De Meersman and the two reports of 19 June and 18 December 1990 drawn up by Dr Vandresse, which were annexed to that letter.

24 By order of 4 December 1992, the Court ordered the oral procedure to be re-opened and asked Parliament to state whether the examination reports drawn up by Dr Vandresse on 19 June and 18 December 1990 had been included amongst the documents available to the three doctors making up the Medical Committee which delivered its report on 23 April 1991. On 8 December 1992 the defendant produced a letter dated 14 February 1991 from Parliament's social insurance department to Professor Van der Ghinst, to which the two reports by Dr Vandresse were annexed.

25 A second hearing took place on 14 January 1993, at which the parties' representatives presented their observations on the documents produced and answered the Court's questions.

Forms of order sought by the parties

26 The *applicant* claims that the Court should:

— declare unlawful, or in the alternative null and void, the report of the Medical Committee of 23 April 1991 and, in so far as is necessary, the decision of the appointing authority on the complaint; and annul the two decisions of the appointing authority of 27 May 1991;

— in the alternative, declare that the contested decisions were taken on the basis of a manifest error of fact, if not of law; consequently, revoke the two contested decisions with all the legal consequences entailed thereby;

— in the further alternative, order an expert's report for the purpose of determining the injuries suffered by the applicant as a result of the accidents of 16 May and 6 August 1988; and

— order the defendant to pay the whole of the costs.

The *defendant* claims that the Court should:

— declare that the plea based on Dr Ruhland's letter of 17 October 1991 is inadmissible and, in any event, unfounded;

— declare the action unfounded as regards to the other pleas;

— make an order as to costs in conformity with the applicable provisions, having regard to the fact that, as the appointing authority had already given clear reasons for dismissing the complaint, it was unnecessary to institute judicial proceedings.

Admissibility

27 The defendant makes no general observation regarding the admissibility of the application. However, as Dr Ruhland's certificates of 29 July 1991 did not reach Parliament until 18 October 1991, which was the very day on which the contested decisions were taken by the appointing authority, it considers that they should not be taken into account. The applicant's third plea is therefore claimed to be inadmissible in so far as it is based on those certificates.

28 The Court takes the view that this argument is not concerned with admissibility, but with the merits of the applicant's third plea. Consequently, this argument will be considered when the Court assesses the merits of the third plea (see below).

Substance

29 The applicant puts forward four pleas in support of the form of order sought. The first two pleas are concerned with the legality of the procedure, inasmuch as the expert appointed to draw up the expert's report did not have the requisite independence and the Medical Committee deliberated on the basis of an incomplete file. The other two pleas relate to the content of the Committee's report, in so far as it is argued that the report is vitiated by a manifest error and does not contain an adequate statement of the grounds upon which it is based.

The claim that the expert appointed to draw up the expert's report was not independent

Arguments of the parties

30 The applicant argues that an expert must act objectively and impartially in relation to all the parties, including the party which appointed him. The fact that, since 1 February 1989, the medical expert has been appointed by the appointing authority and approved by the insurers, and not the other way round, meant that Dr De Meersman did not possess the requisite independence to perform that task. The case-law relied upon by the defendant has ceased to be relevant ever since the appointing authority has appointed medical experts without the prior consent of the insurers.

31 The defendant replies that the medical expert is chosen and appointed by the appointing authority pursuant to Article 19 of the Accident Rules, and consequently this is the procedure expressly intended by the legislator. Furthermore, the applicant has not proved that the doctor did not act with complete independence at the time of the original expert's report. Citing the case-law of the Court of Justice (Case 186/80 *Suss* v *Commission* [1981] ECR 2041), the defendant stresses that the interests of the official are safeguarded by the presence on the Medical Committee of a doctor enjoying his confidence and by the appointment of a third member by agreement between the two others. The mere fact that the member of the Medical Committee appointed by the institution is also approved by its insurer cannot adversely affect the official.

Findings of the Court

32 The Court finds that, as the defendant rightly observes, Articles 19 and 23 of the Accident Rules expressly provide that the medical expert instructed to draw up the first medical report and one of the members of the Medical Committee are to be appointed by the institution. Under the system created by those provisions, the official's interests are safeguarded by the fact that he is examined twice, first by a doctor enjoying the confidence of the institution and, in the event of disagreement, by a Medical Committee to which both parties appoint a doctor enjoying their confidence and of which the third member is appointed by agreement between the other two members (see, most recently, the judgment of the Court of Justice in Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 10). It should also be observed that, as both the Court of Justice and Court of First Instance have consistently held, the fact that the institution chose a doctor who was also approved by the insurance company could in no way adversely affect the interests of the official (*Biedermann* v *Court of Auditors*, paragraph 12, and Case T-31/89 *Sabbatucci* v *European Parliament* [1990] ECR 265, paragraph 3 of the summary). The Court considers that the change in Parliament's practice announced in the notice of 20 February 1989, to which reference has already been made, does not detract from this principle in any way. The Court stresses that it is clear from the case-law of the Court of Justice (*Biedermann* v *Court of Auditors*, paragraph 11) that there is nothing to prevent the institution from appointing under Article 23 of the Accident Rules the same doctor as the one whom it designated pursuant to Article 19 to draw up the first medical report. Furthermore, the applicant has not substantiated his allegations by adducing any evidence from which the Court might conclude that there was any lack of impartiality on the part of the medical expert.

33 The first plea must therefore be rejected.

Incomplete nature of the file on which the Medical Committee deliberated

34 The Court interprets this plea as relating to the allegation that three medical documents relied upon by the applicant were not included in the file submitted to the Medical Committee. In so far as the applicant also seeks to rely upon certain defects in connection with the report dated 17 January 1990 previously drawn up by Dr De Meersman, these will be considered together with the applicant's third plea.

Arguments of the parties

35 The applicant claims that the Medical Committee did not examine a memorandum of Dr Di Paolantonio of 18 December 1990 and two reports and radiological forms drawn up by Dr Vandresse on 19 June and 19 December 1990 because they were not submitted to it. These relate to radiological examinations of the applicant's left wrist and both his knees carried out on 19 June 1990 and 18 December 1990, respectively. The left ankle, which was sprained in the accident of 16 May 1988, was not examined on those occasions.

36 According to the applicant, it was for Parliament's social insurance department alone, and not him, since he had received no instructions regarding the submission of the documents in question, to ensure that the file supplied to the Medical Committee was complete. This was not the responsibility of the doctor appointed by him to the Medical Committee either. However, the judgment in *Biedermann* v *Court of Auditors* did not authorize the Medical Committee to base its decision on an incomplete medical file.

37 In its defence, the defendant admitted that neither the doctor instructed to draw up the first report, Dr De Meersman, nor the Medical Committee had received the report drawn up by Dr Vandresse. The defendant explained that the radiological documents in question had been drawn up at the request of the institution's medical department and addressed to it. The medical department was separate from the social insurance department and did not intervene with the latter spontaneously in

a procedure for the settlement of claims following an accident, a procedure of which the medical department might be unaware.

38 However, according to the defendant, the doctor chosen by the official is responsible for checking that the file contains all the material in the official's favour. The institution and the official have both a right and a duty to provide the doctors appointed by them with all the documents which they consider to be in their favour. In addition, the applicant has not explained how the missing documents in the present case might have altered the opinion of the Committee, which moreover was not required to take account of any expert's reports other than its own.

39 However, at the hearing on 6 October 1992, when the defendant produced for the first time a letter of 14 February 1991 to Dr De Meersman from Parliament's social insurance department (see paragraph 23 above), together with two reports drawn up by Dr Vandresse on 19 June and 18 December 1990, it became clear that that letter stated that the accompanying documents were 'to be added to the Medical Committee's file'. At that hearing, the applicant stated that he himself had provided Parliament's social insurance department with those documents on the assumption that it would place them in the Medical Committee's file.

40 It subsequently became clear that another letter dated 14 February 1991, which was produced by the defendant on 8 December 1992 following the re-opening of the oral procedure (see paragraph 24 above) and had been sent by Parliament's social insurance department to Professor Van der Ghinst, the member of the Medical Committee appointed by agreement between the two other doctors, indicated that the documents in question had also been sent to him.

41 At the second hearing held on 14 January 1993, the defendant stated, in answer to a question from the Court, that it had not provided the documents to Professor Hess, the member of the Medical Committee appointed by the applicant. The applicant also stated that he had not sent them to Professor Hess. As regards the X-ray photographs themselves, to which Dr Vandresse's reports refer, the parties

explained that these were given by the applicant to Parliament's social insurance department, which returned them to him, but that it was not possible to establish whether they had been returned before or after the meeting of the Medical Committee. The applicant himself did not give them to the Medical Committee.

Findings of the Court

42 In the light of the explanations given by the parties at the hearings, the Court finds that the applicant submitted the two reports drawn up by Dr Vandresse on 19 June and 18 December 1990 to Parliament's social insurance department, which forwarded them to Dr De Meersman and Professor Van der Ghinst on 14 February 1991 in order for them to be placed in the Medical Committee's file. Therefore, the defendant wrongly admitted in the defence that those reports were not so submitted (see paragraph 37 above).

43 In those circumstances, the Court considers that the applicant was entitled to believe that those documents would be placed in the Committee's file. The defendant's argument that an institution's medical department is not required to ensure that such documents are so forwarded, which was one of the grounds on which the complaint was rejected, was put forward in ignorance of the material facts and is not relevant for the purposes of deciding this case.

44 It must therefore be held that, although the Medical Committee's report does not refer to the two reports drawn up by Dr Vandresse, it has been established that those documents were brought to the attention of Dr De Meersman and Professor Van der Ghinst by the aforementioned letters of 14 February 1991.

45 It follows that at least two members of the Medical Committee knew of the existence of the opinions expressed by Dr Vandresse in those reports. As far as the third member, Professor Hess, was concerned, he was the doctor appointed by the applicant, whom he had already examined and of whom he had made certain X-ray photographs (see paragraph 6 above and paragraph 54 below). Even assuming that the documents in question were not brought to his attention, it must nevertheless be assumed that he was aware of the applicant's state of health.

46 In those circumstances, the mere fact that the Medical Committee's report of 23 April 1991 does not expressly refer to Dr Vandresse's reports is not sufficient to invalidate the report, particularly since it is for the Medical Committee to decide to what extent account should be taken of medical reports drawn up in advance (see *Biedermann* v *Court of Auditors*, paragraph 19). As far as the X-ray photographs are concerned, it was also for the Medical Committee to decide which ones were relevant and whether others should be examined.

47 Furthermore, in principle a procedural irregularity will entail the annulment of a decision in whole or in part only if it is shown that, in the absence of such irregularity, the contested decision might have been substantively different (judgment of the Court of Justice in Case 150/84 *Bernardi* v *Parliament* [1986] ECR 1375, paragraph 28, citing Joined Cases 209 to 215 and 218/78 *Van Landewyck SARL and Others* v *Commission* [1980] ECR 3125). However, the applicant has not produced any evidence suggesting that the two radiological examinations in question, carried out by Dr Vandresse, might have affected the Medical Committee's conclusions regarding the existence of a causal connection between the disorders complained of by the applicant and the accidents which he sustained on 6 August 1985 and 16 May 1988. The same applies to the memorandum from Dr Di Paolantonio, which was not produced by either party.

48 Moreover, it appears from the Medical Committee's report that on 23 April 1991 the doctors on the Committee carried out a clinical examination of the applicant and examined certain X-ray photographs, including one of his left hand. On the completion of its work, the Committee found that there was no aggravation of the sequelae described in the Medical Committee's report of 11 January 1988 and that there were no sequelae of the accident of 16 May 1988. It must be stressed that those conclusions were adopted unanimously and that the doctor appointed by the applicant, Professor Hess, signified his agreement.

49 In addition, it should be observed that the Medical Committee consisting of Dr Bleser, Dr Lamy and Dr Daro, which prepared the report of 11 January 1988, had also reached the conclusion that there had been no aggravation of the sequelae of the accident of 6 August 1985 after the date of consolidation, 5 January 1987. In view of those findings, made unanimously in 1988 and again in 1991 by two Med-

ical Committees consisting of a total of six doctors (including two appointed by the applicant himself) who examined the applicant, the Court considers that the applicant has adduced no evidence suggesting that there was any irregularity in the way in which the Committee drew up its report. Consequently, the applicant's second plea must be rejected.

Alleged manifest error in the Medical Committee's report

50 In support of this plea, the applicant adduces two arguments, one alleging that Dr De Meersman's report of 17 January 1990, the report on which the Medical Committee's report is said to be based, lacks credibility and the other alleging a factual error on the part of the Committee, which is attested to by Dr Ruhland's reports of 29 July 1991 which were not taken into account. Those two arguments should be examined separately.

First argument: alleged lack of credibility of Dr De Meersman's report

Arguments of the parties

51 The applicant claims that the Medical Committee's report is largely based on Dr De Meersman's report dated 17 January 1990. The latter is said to have no credibility whatever as it was drawn up on the day after a request made by Dr De Meersman himself for radiographs and hence before these documents in the file could have been supplied to him. Therefore the report of 17 January 1990 should be declared legally null and void. Even if the date of the report were wrong, as the defendant alleges, that manner of proceeding discloses a manifest failure to follow the correct procedure. Drawing up an expert's report requires a minimum degree of formalism and accuracy, failing which its credibility will seriously damaged. The applicant also complains that Dr De Meersman did not have the complete file on the accident of 6 August 1985 and that the file does not cite the whole of Dr Morelli's certificate.

52 The defendant rejects the criticisms of Dr De Meersman's report. It regrets that he did not alter the date of his report or indicate the date on which he signed it, but

considers that it is clear from the reference which it contains to the results of radiological examinations carried out on 5 February 1990 that at least the last part and the conclusions of the report were drawn up after 17 January 1990, and that he did not complete the report until he was in possession of the results of the additional radiological examinations requested. The defendant adds that the date-received stamp of the social affairs department shows that the document arrived at Parliament on 13 March 1990.

Findings of the Court

53 At the hearing, in reply to questions put by the Court, the parties furnished certain additional information concerning the radiographs mentioned on pages 5 and 6 of Dr De Meersman's report. On the basis of this additional information, and having regard to the documents annexed to the written statements of the parties, the Court finds the following facts.

54 Dr De Meersman examined the applicant on 16 January 1990 and gave him a form bearing that date addressed to the 'Radiology Department', without further particulars, requesting a radiological examination of the applicant's spine, both his knees and the his left ankle, with dynamic tests. As he stated at the hearing, the applicant presented this form to Professor Hess, who had already taken some X-ray photographs of him on 1 September 1989. In view of these radiographs, Professor Hess found that only one further radiograph, of the left ankle, was necessary. He carried this out on 5 February 1990. The applicant then handed to Dr De Meersman the radiographs made by Professor Hess on 1 September 1989, together with the new one made on 5 February 1990. The applicant does not dispute that the radiographs described on pages 5 and 6 of Dr De Meersman's report are those made by Professor Hess.

55 In those circumstances, the Court considers that, although Dr De Meersman's report is dated 17 January 1990, it must have been completed at a date later than 5 February 1990, after Dr De Meersman received from the applicant the radiographs

made by Professor Hess. According to the date-received stamp on the report, it reached Parliament's insurance department on 13 March 1990.

56 It also appears from the reference on page 6 of the report that, contrary to that which the applicant alleges, Dr De Meersman did indeed receive the earlier report of the Medical Committee of 11 January 1988 concerning the accident of 6 August 1986 before he completed his own report.

57 It follows the foregoing that the applicant's argument that Dr De Meersman's report was drawn up on 17 January 1990, the day after the clinical examination, without taking account of the radiographs requested by Dr De Meersman himself, must be rejected. Furthermore, there is no evidence that Dr De Meersman's file was incomplete in material respects at the time when he reached his conclusions.

58 With regard to Dr Morelli's certificate, the Court has found no error in its transcription into Dr De Meersman's report.

59 Although the confusion surrounding the dating of Dr De Meersman's report is regrettable, the Court finds, in the light of the explanations given by the parties in the course of the procedure, that the applicant has not alleged any circumstance tending to prove that there was an irregularity in the report which would cast doubt on its validity.

60 It follows from the foregoing that the applicant's argument that the Medical Committee's report was based on a report which itself suffered from a lack of credibility cannot be upheld.

Second argument: alleged factual error on the part of the Medical Committee, attested to by Dr Ruhland's reports

Arguments of the parties

61 The applicant claims that the Medical Committee's report confirming a 3% degree of PPI is vitiated by a manifest error of fact, having regard to the medical reports drawn up by Dr Ruhland on 29 July 1991, which conclude that the accident suffered by the applicant on 6 August 1985 caused sequelae justifying a degree of invalidity of at least 20%. Those reports were allegedly submitted to the appointing authority on 17 October 1991, the day before that authority took the decision rejecting the applicant's complaint. However, the decision could have been stayed until the file was complete. Moreover, to deprive the applicant of the opportunity to produce medical documents contradicting the findings of the expert's report amounts to preventing him from making the slightest criticism of the report, thus prejudicing the right to a fair hearing.

62 The defendant considers this argument to be inadmissible, if not unfounded. The applicant's letter of 17 October 1991 to the Director General for Personnel, the Budget and Finance, accompanying Dr Ruhland's reports, reached Parliament's mail room only on 18 October 1991 and therefore could not have been forwarded to the appointing authority before the decision of 18 October 1991 was taken. Consequently, those documents could not have been taken into consideration. In any case, as the expert's reports were subsequent to the appointing authority's decisions of 27 May 1991, they could not have taken issue with those decisions and could only have been regarded as finding the existence of aggravation capable of justifying a statement concerning the aggravation of invalidity within the meaning of Article 22 of the Accident Rules. At the hearing, the defendant stressed that those reports had been considered in the course of a procedure for the recognition of such aggravation and had been the subject of a subsequent reply to the applicant.

63 Furthermore, the defendant observes that the Medical Committee's report of 23 April 1991 is based on an examination by three doctors, at which the applicant had put his case, and that the report was adopted unanimously, that is to say, also by the doctor appointed by the applicant. This disposes of the possibility of an error which must necessarily have been common to all three.

Findings of the Court

64 The applicant's argument consists in maintaining, firstly, that the appointing authority ought to have taken account of Dr Ruhland's reports when it took its decision of 18 October 1991 rejecting the applicant's complaint and, secondly, that that report discloses a manifest error of fact on the part of the Medical Committee.

65 It is common ground that the two reports by Dr Ruhland were drawn up after the Medical Committee's report was signed and after the two decisions taken by the appointing authority on 27 May 1991. As far as the appointing authority's obligations in such circumstances are concerned, it should be observed that Article 19 of the Accident Rules provides as follows:

'Decisions ... assessing the degree of permanent invalidity shall be taken by the appointing authority in accordance with the procedure laid down in Article 21,

— 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 referred to in Article 23.'

It follows that once the appointing authority was in possession of the reports of Dr De Meersman and the Medical Committee, it had to take its decision on the basis of those documents alone, without having to take into consideration later reports submitted by the person concerned.

66 Consequently, even if Dr Ruhland's reports were given to the appointing authority before it took its decision of 18 October 1991, it was not under a duty to take them into consideration.

67 In addition, it should be observed that the findings of a medical committee which has duly given a decision on the questions submitted to it must be regarded as final and may not be disputed in the absence of any new matter of fact. That new matter of fact may not consist in the production by the applicant of medical certificates calling in question the conclusions of the Medical Committee, but putting forward no ground which would suggest that the Committee did not have knowledge of the principal facts contained in the applicant's medical records (judgment of the Court of Justice in Case 107/79 *Schuerer* v *Commission* [1980] ECR 1845, paragraphs 10 and 11). However, Dr Ruhland's reports do not put forward any such grounds.

68 It follows from the foregoing that the applicant's argument that the Medical Committee's report is vitiated by an error of fact, as attested to by Dr Ruhland's reports which were not taken into account, cannot be upheld.

69 It follows that the applicant's third plea must be rejected.

Inadequate statement of reasons

Arguments of the parties

70 The applicant claims that the Medical Committee's report does not establish a comprehensible link between the medical findings which it contains and the conclusions which it draws, as required by settled case-law. In this connection, the applicant cites the judgment of the Court of Justice in Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15.

71 The defendant observes that, in the abovementioned case, the Court of Justice held that it was not for the Court to give a ruling on the actual medical assessment by the Medical Committee, unless its report does not establish such a connection. Parliament cannot substitute its own assessment for that of the doctors. The defendant considers that, within the limits laid down by the Community judicature to its power of review, there is nothing in the Medical Committee's report which would justify the appointing authority in finding a manifest error of assessment.

Findings of the Court

72 In accordance with the case-law of the Court of Justice, in particular *Jänsch* v *Commission*, the Court of First Instance has jurisdiction only to annul decisions of a Medical Committee which are unlawful on the ground of irrelevance. On this point, it is sufficient to observe that, contrary to the applicant's claim, which is not coupled with precise evidence, it does not emerge from the Medical Committee's report of 23 April 1991 that there was no connection between the medical findings and the conclusions reached by the Committee.

73 Therefore, that plea must also be rejected.

74 Since an examination of the applicant's pleas has disclosed no factor warranting the annulment of the contested decisions or the commissioning of an expert's report, the application as a whole must be dismissed.

Costs

75 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under the second subparagraph of Article 87(3), the Court may order a party, even if successful, to pay costs which it considers that party to have unreasonably or vexatiously caused the opposite party to incur. Moreover, under Article 88 of the Rules of Procedure, in proceedings between the Communities and their servants, the institutions are to bear their own costs.

76 In the circumstances of this case, it must be held that it was only in the course of the proceedings that the applicant was able to obtain certain particulars as to whether certain medical reports had been taken into consideration. Moreover, the procedure was prolonged by reason of a mistaken assertion by the defendant in the defence (see paragraph 42 above), which had to be clarified at a second hearing.

Accordingly, having regard to the provisions of the Rules of Procedure, the Court considers that the defendant should pay a quarter of the applicant's costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application.**

2. **Orders the defendant to pay its own costs and one quarter of the applicant's costs.**

3. **Orders the applicant to bear the remainder of his own costs.**

Bellamy Kirschner Saggio

Delivered in open court in Luxembourg on 18 February 1993.

H. Jung
Registrar

C. W. Bellamy
President