JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
14 January 1993 *

In Case T-88/91,

Mr F., a former official of the Commission of the European Communities, represented by F. Jongen, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of L. Frieden, 62 Avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by H. Van Lier, of the Legal Service, acting as Agent, assisted by D. Waelbroeck, of the Brussels Bar, with an address for service at the office of R. Hayder, representing the Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decision rejecting the applicant's complaint concerning the calculation of his entitlement to an invalidity allowance, in so far as it determines the basis for the calculation of the allowance,

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

composed of: C. W. Bellamy, President, A. Saggio and C. P. Briët, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 17 November 1992,

* Language of the case: French.

gives the following

Judgment

Facts and procedure

1 The applicant entered the employment of the Commission in 1975. He was appointed an official with effect from 1 April 1980. After an altercation on 6 October 1982 with the Director-General for Personnel and Administration, a decision was taken to remove him from his post without withdrawal or reduction of entitlement to a retirement pension. On 6 May 1985, following a judgment of the Court of Justice annulling that decision, the Commission adopted a fresh decision removing the applicant from his post, also without withdrawal or reduction of his entitlement to a retirement pension.

2 On 15 May 1985 the applicant made a claim under Article 73 of the Staff Regulations of officials of the European Communities (hereinafter referred to as 'the Staff Regulations'), which provides that 'an official is insured, from the date of his entering the service, against the risk of occupational disease and of accident ...'. On 28 July 1987 the appointing authority notified him, in accordance with Article 21 of the Rules on such insurance, drawn up by common agreement of the institutions pursuant to Article 73(1) of the Staff Regulations (hereinafter 'the Rules'), of the draft decision on his claim, accompanied by the findings of the doctor appointed by the institution, Professor De Buck.

3 It must be observed that the draft decision of 28 July 1987 stated, inter alia, that 'as the precise date of the aggravation (of Mr F.'s health) has not been given, and as no unfitness for work was noted in 1978, that date (should) be fixed as 1 July 1978'. The draft decision determined the amount of invalidity benefit 'on the basis of the

monthly salary payments received by the applicant in the twelve months before the accident' in accordance with Article 73(2) of the Staff Regulations, which provides that the benefit for permanent partial invalidity is calculated 'on the basis of the monthly amounts of salary received during the twelve months before the accident'. In the draft decision the Commission acknowledged a degree of permanent partial invalidity resulting from his occupation of 30%.

4 Following this decision, the applicant asked for his case to be referred to the Medical Committee pursuant to Article 21 of the Rules. On 26 May 1988 the Committee decided that the applicant's disorder had consolidated; it determined the degree of permanent partial invalidity as 80%, broken down as follows: 12% attributable to his condition prior to entering the service of the Communities and 'the remainder, that is 68%, results from his occupation, and there are no other concomitant factors which have helped to bring it about'. The Committee included in the 68% a degree of invalidity of 18% resulting from the episode of 6 October 1982 which had led to the applicant's removal from his post.

5 By decision of 15 July 1988 the Commission found that the applicant's degree of invalidity resulting from his occupation was 50% on the basis of its interpretation of the Medical Committee's report, that is to say excluding the 18% resulting from the incident of 6 October 1982. This decision did not expressly mention the date of the event giving rise to the invalidity. It stated the amount of the lump sum for a 50% degree of invalidity less the sum for 30% invalidity which had previously been awarded to the applicant on the basis of the draft decision referred to above.

6 On appeal by Mr F., the decision of 15 July 1988 was annulled by the Court of First Instance in so far as it fixed the degree of invalidity resulting from his occupation at 50% (Case T-122/89 *F.* v *Commission* [1990] ECR II-517). In the appeal the applicant claimed and the Court held that the Medical Committee had established to the requisite legal standard that the degree of invalidity of 18% was the result of the applicant's pre-existing occupational disease. By judgment of 8 April 1992 the Court of Justice dismissed the appeals brought by both parties against the judgment at first instance (Case C-346/90 P *F.* v *Commission* [1992] ECR I-2691).

7 Pursuant to the judgment of the Court of First Instance of 26 September 1990, the Commission informed Mr F. in a letter of 6 November 1990 that the degree of permanent partial invalidity resulting from his occupational disease would be fixed at 68%. The letter also indicated the lump sum for the 18% increase in the degree of invalidity.

8 On 29 January 1991 the Commission, at the applicant's request, sent him a breakdown of the settlement of his claim under Article 73(2) of the Staff Regulations. The breakdown shows that the reference period taken by the appointing authority for calculating the lump sum was the period from 1 July 1977 to 30 June 1978.

9 By letters of 2 and 4 March 1991 the applicant lodged a complaint against the breakdown in so far as it used his monthly basic salary from 1 July 1977 to 30 June 1978 for the purposes of calculating his benefit. He asked that it be calculated on the basis of the monthly basic salary from October 1981 to October 1982. By decision of 20 September 1991, notified to the applicant on 7 October 1991, the Commission expressly rejected the complaint.

10 Therefore, by application lodged at the Registry of the Court of First Instance on 13 December 1991, the applicant sought the annulment of the decision rejecting his complaint. The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. The hearing took place on 17 November 1992.

Forms of order sought by the parties

11 The applicant claims that the Court should:

— declare the present application admissible and well founded;

— annul the Commission decision of 20 September 1991 in so far as it rejects the applicant's complaint of 2 and 4 March 1991;

— consequently, declare the said complaint admissible and well founded and declare that the applicant is entitled to an invalidity lump sum calculated on the basis of his salary in the twelve months prior to October 1982 or March 1985;

— order the defendant to pay all the costs.

The defendant contends that the Court should:

— dismiss the application as inadmissible or at least unfounded;

— make an appropriate order for costs.

Admissibility

Arguments of the parties

12 The Commission objects that the application is inadmissible. It claims that the basis for calculation disputed by the applicant was notified to him in the letter of 28 July 1987 and was used in the decision of 15 July 1988 accepting a 50% degree of invalidity and in that of 6 November 1990 increasing the degree by 18% pursuant to the judgment of the Court of First Instance of 26 September 1990.

13 According to the Commission, therefore, the breakdown sent to the applicant at his request on 29 January 1991 was a purely confirmatory act which was not capable of adversely affecting him. The decision of 6 November 1990 merely increased by 18% the degree of permanent invalidity resulting from his occupation, which alone had been contested by the applicant in his action against the decision of 15 July 1988. The Commission therefore considers that it was under no obligation, after the judgment of the Court of First Instance of 26 September 1990 and in pursuance of Article 176 of the EEC Treaty, to reconsider its decision of 15 July 1988 with regard to the reference date used. Furthermore, the defendant states that the draft decision notified to the applicant on 28 July 1987 expressly indicated that the date of commencement of his occupational disease had to be put at 1 July 1978. The draft stated that it would have to be regarded as a definitive decision unless within 60 days the applicant requested that the Medical Committee provided for in Article 23 of the Rules be consulted. As the applicant requested that the Medical Committee be convened with a view to contesting the degree of invalidity and not the basis for calculating his entitlement to benefit, and as the Medical Committee confirmed the findings of Professor De Buck — which were set out in the draft decision of 28 July 1987 — regarding the date of commencement of the applicant's occupational disease, the Commission had reconsidered the provisional decision of 28 July 1987 solely with regard to the degree of invalidity and not with regard to the basis for the calculating the lump sum payable to the applicant.

14 Accordingly, the defendant contends that the letter of 28 July 1987, or alternatively those of 15 July 1988 and 6 November 1990, determining the date of the aggravation of the applicant's health owing to his occupation, were acts adversely affecting him and consequently open to appeal. From this viewpoint the question whether the breakdown of the settlement of his claim was sent to the official, as prescribed by Article 26 of the Rules, is irrelevant for the purpose of these proceedings in so far as the draft decision of 28 July 1987 expressly stated that the date to be taken as the basis for the calculation of benefit was 1 July 1978. Moreover, and in any case, the draft decision constituted the breakdown provided for in Article 26 of the Rules.

15 The applicant for his part considers that the application is admissible. He contends that the breakdown of the settlement of his claim, which was sent to him on 29 January 1991, is an act adversely affecting him. It was the first and only document to state the basis for calculation chosen by the Commission. The documents of 28 July 1987, 15 July 1988 and 6 November 1990 were merely statements of sums without any details or calculation.

16 The applicant adds that, under Article 26 of the Rules, the defendant had an obligation to send him the breakdown of the settlement of his claim. In his opinion, the letters of 28 July 1987, 15 July 1988 and 6 November 1990, which contained disjointed information and did not list all the items and figures relevant to the settlement of the benefit, cannot be regarded as breakdowns within the meaning of Article 26. It was therefore owing to the Commission's failure to fulfil its obligation under Article 26 that the applicant was unable to lodge a complaint before the breakdown was sent to him on 29 January 1991.

Findings of the Court

17 In order to ascertain whether in this case the complaint and the appeal were lodged within the time limits laid down in the Staff Regulations, it is first necessary to identify the decision adversely affecting the applicant with regard to the basis for calculating the invalidity benefit, which forms the subject-matter of this action.

18 In accordance with settled case-law, a decision definitively adopts a position and is therefore capable of adversely affecting an official only if it clearly indicates, with an adequate statement of the reasons on which it is based, that the administration intends to create legal effects (see, for example, Case 806/79 *Gerin* v *Commission* [1980] ECR 3515, paragraph 5, Case 145/80 *Mascetti* v *Commission* [1981] 1975, paragraph 10, and Case T-135/89 *Pfloeschner* v *Commission* [1990] ECR II-153, paragraph 17).

19 Moreover, under the second paragraph of Article 25 of the Staff Regulations, any decision relating to a specific individual must be communicated in writing to the official concerned and must state the grounds on which it is based. Time begins to run for the purposes of the complaint and appeal provided for in Articles 90 and 91 of the Staff Regulations only after a decision has been communicated.

20 More specifically, Article 26 of the Rules provides that the official is to be sent a breakdown of the settlement of his claims under the insurance against the risk of accident and occupational disease. This particular rule meets a more general requirement regarding the settlement of pecuniary rights, also to be found in Article 40 of Annex VIII to the Staff Regulations, pursuant to which an official is to be sent a detailed statement of the calculation of his pension entitlement. The person concerned must be notified of all the factors taken into account by the administration for the purpose of calculating his pecuniary rights before he can assess the lawfulness of the decision setting out the calculation and lodge an appeal. Time begins to run for the purposes of lodging a complaint and an appeal only from the date of such notification.

21 In the light of these principles, therefore, the nature and content of the various documents sent to the applicant must be examined in order to ascertain the date on which he received clear and express notification of the decision establishing the contested basis of calculation, which depends on the date taken by the administration as the starting date of the deterioration in his health attributable to his work.

22 The Court finds, firstly, that the draft decision of 28 July 1987, which expressly mentioned the date of aggravation of the applicant's occupational disease and which was notified to him, cannot be regarded as a decision capable of adversely affecting him or take the place of the breakdown of the settlement of his claim within the meaning of Article 26 of the Rules, for the following reasons.

23 Such a draft decision is by nature a purely preparatory act, communicated to the official under a procedure laid down in the Staff Regulations in order to safeguard

his rights. While it may, owing to the subject-matter of the procedure of which it forms part, give rise to certain rights in favour of the person concerned, it cannot in any event be relied on against him by the institution, as the Court of Justice held in its order in Case 123/80 R *B.* v *Parliament* [1980] ECR 1789, paragraph 2.

24 In this connection it should be observed that, although an official is entitled to submit objections to the draft decision referred to in Article 21 of the Rules, where he requests that the Medical Committee be consulted, the Committee is competent to deliver an opinion on all the relevant factors referred to it by the administration which come within the scope of a medical assessment. Consequently, only the decision adopted on the basis of the medical opinion may be regarded as definitive, even in relation to the factors already set out in the draft decision which were not disputed by the official concerned in his request for consultation of the Medical Committee.

25 It follows that since in this case the applicant requested consultation of the Medical Committee, the Commission had an obligation, on the completion of the procedure, to notify him of a decision showing clearly the various factors in the calculation of his invalidity benefit, including those which he had not disputed and in respect of which the Medical Committee had confirmed the draft decision.

26 The Court must therefore ascertain, secondly, whether the decisions of 15 July 1988 and 6 November 1990 were capable of adversely affecting the applicant with regard to fixing the basis for calculating his invalidity benefit in the light of the above-mentioned principles.

27 On this point the Court finds that both decisions use the contested basis of calculation without expressly indicating either the period taken into account or the calculations made for that purpose, although these factors are essential components of every decision pursuant to Article 73(2)(b) and (c) of the Staff Regulations. Therefore the administration ought to have notified the applicant of the decision determining the contested basis of calculation, in accordance with the principles in Article 25 of the Staff Regulations and Article 26 of the Rules. As the settlement of pecuniary rights was involved, the applicant could not have been expected to undertake an arithmetical exercise on the basis of the amount of the benefit awarded in the decisions of 15 July 1988 and 6 November 1990 in order to determine the date taken by the administration as the date of the event giving rise to the occupational disease.

28 Consequently, as the applicant was not given prior notification of a decision clearly and expressly showing the essential factors in the calculation of his invalidity benefit, the breakdown of 29 January 1991 must be regarded as the decision adversely affecting him with regard to the contested basis for calculation.

29 It follows that the present appeal, which has properly been brought against the breakdown of 29 January 1991, was filed within the period laid down in Article 91 of the Staff Regulations, after an administrative procedure in due form. It must therefore be found admissible.

Substance

Arguments of the parties

30 The applicant puts forward a single plea in law alleging infringement of Article 73(2)(b) and (c) of the Staff Regulations. He complains that the Commission took the twelve months up to July 1978 as the basis for calculating his invalidity benefit instead of the twelve months up to October 1982, although the accident which caused the invalidity arising from his occupation occurred at that point, not in 1978. He adds that there is even justification for querying whether the date taken should not be March 1985, which he relies on as the date on which he first ceased work. He points out that, in the decision of 20 September 1991 rejecting his complaint, the Commission accepted that 'the date for calculating the benefit in ques-

tion is determined, under Community law as it stands, by a specific event (the accident) ...'. However, examination of his career shows that the only specific events which might be taken into account are the incident of 6 October 1982, which finally led to his removal from office, or the first occasion when he stopped work, which was not until March 1985. Although the 1982 incident was a direct consequence of his occupational difficulties, the fact remains that those difficulties did not constitute a specific event or an 'accident' within the meaning of Article 73(2)(b).

31 The applicant seeks support for this argument in Professor De Buck's report of 11 February 1987, according to which 'in October 1982, following (the abovementioned incident), Mr F. (displayed) a major decompensation of his psychological condition and showed behavioural problems at a distinctly psychopathic level. It is therefore in October 1982 that I would place the origin of his permanent invalidity, which appears to be clearly associated with the particularly stressful events of his occupational life, taking account of his predisposition'. Likewise, a certificate from the Head of the Health and Accident Insurance Unit of the Commission (Annex 10 to the application) is said to prove that 'the date of first incapacity for work with the Communities, to be related (to the permanent partial invalidity of Mr F. found by the Medical Committee), is October 1982'. The applicant further claims that his recruitment in 1978 and his establishment on 1 April 1980 show that his mental health was not defective at the time. Moreover, even after the 1982 incident, the opinions of the medical experts were not unanimous, as shown by the expert report of 29 October 1982 attached to the opinion of the Medical Committee, which found that the applicant's mental health was good.

32 The Commission, for its part, considers that the appeal is clearly unfounded. It points out that the applicant does not deny that, where invalidity is not due to an 'accident', the relevant date is the date when the other occupational circumstances originated which may be treated as an accident and which gave rise to the invalidity, and not the date of its subsequent aggravation. The Commission stresses that 1 July 1978 was taken on the basis of the unanimous findings of the medical experts. On this point it seeks support in Professor De Buck's report, which found that 'it was therefore in the context of his work with the European Communities that a process of gradual unfitness began. It may therefore be concluded that the aggravation of the existing psychological state began in 1978. At that point Mr F.'s psychological condition began to affect his fitness for work'. According to the

Commission, this assessment was confirmed in the Medical Committee's report of 26 May 1988, which found that 'it was during 1978 that the decompensation of (the applicant's) psychological condition began owing to the occupational difficulties encountered, as may be seen in the various reports of his superiors'. Finally, the Medical Committee found that 'the date of the aggravation of the pre-existing disease may remain at 1 July 1978. This was when Mr F.'s psychological condition began to affect his fitness for work'.

33 The Commission adds that, if 1 July 1978 is taken as the origin of the applicant's occupational disease, this is consistent with the judgment of 26 September 1990 in which the Court accepted that the Medical Committee had established to the requisite legal standard that the aggravation of the applicant's invalidity which followed the 1982 incident was in fact caused in the performance of his duties (Case T-122/89 *F.* v *Commission*, cited above, paragraph 14). The Commission further argues that, by stating in the present proceedings that the origin of his occupational disease was in 1982, the applicant contradicts his submissions in Case T-122/89 that the aggravation of his disease which followed the incident in 1982 was the result of the prior performance of his duties. Such an attitude, according to the Commission, is contrary to good faith, as stated in the judgment in Joined Cases 59/80 and 129/80 *Turner* v *Commission* [1981] ECR 1883, paragraphs 35 and 36.

Findings of the Court

34 It must be observed, firstly, that Article 73(2)(c), which sets out the rules for calculating the benefit for permanent partial invalidity by reference to subparagraph (b), provides for 'payment to the official 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 twelve months before the accident' adjusted by a coefficient equal to the degree of invalidity resulting from his occupation.

35 It follows from the aforementioned provisions that while Article 73(1) expressly provides that an official is insured, from the date of his entering the service, against

'the risk of occupational disease and of accident', it generally lays down the rules for calculating invalidity benefit by reference to the date of the 'accident', without specifying the date to be taken into account for determining the basis for calculating invalidity benefit where an occupational disease contracted by the official concerned in the performance of his duties is the cause of a continuous deterioration in his health.

36 The date of the occupational circumstances to be treated as an 'accident' within the meaning of Article 73(2)(b) and (c) resulting in a deterioration in an official's health must therefore be determined in accordance with the arrangements for insurance against the risk of accident and of occupational disease laid down by the Staff Regulations. In this connection the benefits referred to in Article 73 are social security benefits and not payments to compensate for loss in the context of an action for damages. They are therefore in the nature of flat-rate benefits and are assessed on the basis of the lasting effects of the 'accident', in accordance with settled case-law (see Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraph 34, and Case T-8/90 *Colmant* v *Commission* [1992] ECR II-469, paragraph 35).

37 In the case of occupational disease, the date of the 'accident' within the meaning of the abovementioned provisions must therefore be interpreted as referring to the date of the occupational circumstances which gave rise to the deterioration in the official's health attributable to his work. This reasoning is consistent with the logic followed by the Court of First Instance in the *Colmant* case, where it was held that the aggravation of injuries caused by an accident could not be assimilated to a new accident (*Colmant*, paragraph 28).

38 Furthermore, the date of the events giving rise to an occupational disease is a matter for medical assessment. That date is determined in the medical procedure for establishing whether the official's working conditions in the institution caused the deterioration in his health which made him unfit for work. It cannot be considered

separately from the question of the occupational circumstances which gave rise to the deterioration and is necessarily established at the same time as the occupational origin of the official's disease.

39 It has consistently been held that medical appraisals, properly so-called, of the Medical Committee must be regarded as definitive provided that they have been duly formulated. Moreover, the Court's review of such appraisals is confined to ascertaining whether the medical report establishes a comprehensible link between its medical findings and the conclusions which it reaches (see Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraphs 9 to 15, Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 8, Case T-154/89 *Vidrányi* v *Commission* [1990] ECR II-445, paragraph 48, and Case T-122/89 *F.* v *Commission*, cited above, paragraphs 14, 15 and 16).

40 In the present case, the Court finds that the Medical Committee put the commencement of the occupational disease of the applicant, who entered the employment of the Commission in 1975, at 1 July 1978, linking that finding with the later findings in paragraph E of its report, headed 'discussion': 'the decompensation of the psychological condition commenced at the beginning of 1978 owing to the occupational problems encountered, as shown by the various reports of his superiors. That is the time at which his fitness for work was really affected'. In the report the Committee concluded that the date of the aggravation of the pre-existing illness (existing before the date when the applicant joined the service of the Commission) could remain at 1 July 1978. That is the point at which Mr F.'s psychological condition began to affect his fitness for work.

41 Consequently, the Court considers that the Medical Committee adequately established that the circumstances giving rise to the aggravation of the applicant's disease attributable to his work must be placed at 1 July 1978.

42 Furthermore, the applicant's argument that the specific occupational circumstances giving rise to the deterioration in his health attributable to his work were situated in 1982 cannot succeed because it is contrary to the findings of the Medical Committee. They show clearly and beyond doubt that the 1982 incident to which the applicant refers was only a manifestation of the earlier deterioration in his health, the cause of which must be situated in 1978, and which subsequently led to his unfitness for work. The Medical Committee clearly established the causal connection between the deterioration in the applicant's health as a result of his work even before the 1982 incident and the triggering of that incident, which itself aggravated his degree of invalidity by 18%. The Committee stated in its report that it was 'clear that at the material time the patient had lost control of his behaviour, which is perfectly consistent with his pathology. It seems clear to us that the events of 6 October 1982 are a direct consequence of the difficulties which the patient experienced in his occupation over a number of years. The aggressive behaviour of which the patient is accused merely expresses his psychopathic condition and forms an integral part thereof ... We therefore consider that the entire permanent partial incapacity, as estimated in our conclusions, results from the working conditions experienced by Mr F. in the performance of his duties which were the essential cause of the aggravation of a pre-existing disorder'. It is precisely because of this causal connection between the pathological condition attributable to his occupation, the origin of which the Medical Committee situates in 1978, and the 1982 incident which led to an 18% increase in his unfitness for work, that the Court found, in its judgment of 26 September 1990, that the Medical Committee had established to the requisite legal standard that the applicant's occupation was the origin of the 18% aggravation in the degree of his invalidity.

43 Consequently the Court of First Instance can but find that, by situating at 1 July 1978 the origin of the deterioration in the applicant's health attributable to his work, the Commission drew the correct legal conclusions from the medical findings duly made by the Medical Committee.

44 It follows that this action must be dismissed.

Costs

45 Pursuant to Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, Article 88 provides that, in proceedings between the Communities and their servants, the institutions shall bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the action.

2. Orders the parties to bear their own costs.

Bellamy Saggio Briët

Delivered in open court in Luxembourg on 14 January 1993.

H. Jung C. W. Bellamy

Registrar President