JUDGMENT OF THE COURT (FIRST CHAMBER)
26 JANUARY 1984 [1]

Georgette Seingry, née Seiler, v Council of the European Communities

(Official — Occupational disease)

Case 189/82

Officials — Social security — Insurance against the risk of accident and of occupational disease — Disease — Examination as to occupational origin — Powers of appointing authority — Consulting a medical committee — Review by the Court — Scope and limits

(Staff Regulations of Officials, Art. 73)

It is not for the Court to decide whether or not in an individual case an official has been affected by an occupational disease within the meaning of Article 73 of the Staff Regulations. However, the Court has jurisdiction to annul any decision taken by the appointing authority in application of that provision if it is vitiated by illegality inasmuch as it is based on an irrelevant conclusion reached by a medical committee. That would be the case if the Medical Committee adopted an erroneous view of the concept of "occupational disease" or if its report did not establish a comprehensible link between the medical findings which it contains and the conclusions which it draws.

In Case 189/82

1. GEORGETTE SEINGRY, NÉE SEILER, widow of René Seingry, formerly an official of the General Secretariat of the Council of the European Communities;

2. FLORENCE SEINGRY, adult daughter of René Seingry;

3. GEORGES-FRANCIS SEINGRY, adult son of René Seingry;

1 — Language of the Case: French.

all residing in Brussels, represented by Edmond Lebrun of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 Boulevard Grande-Duchesse-Charlotte,

applicants,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by John Carbery, an Adviser in the Legal Department of the General Secretariat of the Council in Brussels, with an address for service in Luxembourg at the office of H. J. Pabbruwe, Director of the Legal Affairs Department of the European Investment Bank, 100 Boulevard Konrad-Adenauer,

defendant,

in the presence of

SA ROYALE BELGE, an insurance company having its registered office at 25 Boulevard du Souverain, Watermael-Boitsfort (1170 Brussels), acting in its own right and as agent of the following insurance companies:

1. SA Generali Belgium (Concorde), Brussels,
2. SA Caisse Patronale, Brussels,
3. SA Assurantie van de Belgische Boerenbond, Louvain,
4. SA Winterthur, Brussels,
5. SA Zürich, Brussels,
6. SA Assubel, Brussels,
7. SA Securitas (formerly Le Phénix Belge), Antwerp,
8. SA Rhin et Moselle, Brussels,
9. SA Le Foyer, Brussels,
10. Nationale Nederlanden, Schadeverzekeringsmaatschappij NV, The Hague, The Netherlands,
11. SA Phoenix Continental, Brussels,
12. Top International Insurance Co. Ltd., Ballerup, Denmark,
13. Excess Insurance Company Ltd., London, United Kingdom,
14. Allianz Versicherungs-Aktiengesellschaft, Munich, Federal Republic of Germany,

represented by François van der Mensbrugghe of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Jean Hoss, 15 Côte d'Eich,

intervener,

APPLICATION for the annulment of the decisions of the Secretary General of the Council, notified to the applicants by letters of 19 October 1981 and 14 May 1982, refusing to recognize that the disease of which R. Seingry died was occupational in origin,

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keeffe and G. Bosco, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

A — The provisions applicable

Article 73 (1) of the Staff Regulations of Officials of the European Communities provides as follows:

"An official is insured, from the date of his entering the service, against the risk of occupational disease and of accident subject to rules drawn up by common agreement of the Institutions of the Communities after consulting the Staff Regulations Committee. . . .

Such rules shall specify which risks are not covered."

Pursuant to that article, there were adopted, by common agreement of the institutions confirmed by the President of the Court of Justice on 22 December 1976, the Rules on the Insurance of

Officials of the European Communities against the Risk of Accident and of Occupational Disease (hereinafter referred to as "the Joint Rules"), defining the conditions under which officials are insured against those risks.

Article 3 of the Joint Rules recognizes two types of occupational disease. According to Article 3 (1), the concept covers first all diseases contained in the "European List of Occupational Diseases" annexed to the Commission's recommendation of 23 July 1962 (*Journal Officiel* 80 of 31. 8. 1962, p. 2191). Secondly, according to Article 3 (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."

According to Article 19 of the Joint Rules, decisions recognizing the occupational nature of a disease are to be taken by the appointing authority. Before taking such a decision, the appointing authority is to notify the official or those entitled under him of the draft decision and of the findings of the doctor or doctors appointed by the institution concerned (Article 21). If the official or those entitled under him so require, the appointing authority's decision is not taken until after consultation of a medical committee consisting of three doctors, one of whom is appointed by the official concerned or those entitled under him (Articles 21 and 23).

On 28 January 1977, the Community institutions took out a collective insurance policy against accidents and occupational diseases with the insurance companies which have intervened in this dispute. According to Article 1 (1), the object of the insurance is to "cover the pecuniary consequences of the obligations which the Communities undertake under the Staff Regulations in relation to accidents and occupational diseases suffered by the persons to whom the provisions of Article 73 of the Staff Regulations apply . . . as well as the rules adopted pursuant to that article."

B — Summary of the facts

René Seingry, an official from 1954 and Director of the Private Office of the Secretary General of the Council from 1958, died on 23 July 1979 at his place of work. The probable cause of death was myocardial infarction, that is to say an infarct of the muscular part of the heart. It is common ground that that disease is not contained in the European List of Occupational Diseases.

According to those entitled under Mr Seingry, the applicants in this case, there is a direct link between the heart failure of which Mr Seingry died and his working conditions and pressure of work. Consequently, by letter of 10 October 1979, they lodged a request with the administration of the Council for recognition that Mr Seingry had died as a result of an occupational disease and that they should therefore benefit from the provisions of Article 73 of the Staff Regulations.

In support of that request, Mr Seingry's dependants, as the persons entitled under him, gave a description of his working life which may be summarized as follows:

For more than 20 years, Mr Seingry had to cope almost daily with working days

of 12 to 15 hours and frequently he had to work at night, either at the office or at home, even at weekends;

The responsibilities of the Director of the Secretary General's Private Office, which Mr Seingry carried out for 21 years, also included duties as Head of Protocol and responsibility for the press office, which exposed him to a multitude of daily worries;

Frequent travelling connected with his duties (sessions in Luxembourg and Strasbourg, European Council meetings in the various capitals, missions to certain African, Caribbean and Pacific countries) gave rise to additional fatigue and stress;

Mr Seingry often had to replace the Secretary General at official ceremonies and diplomatic functions;

Between 1973 and 1976, Mr Seingry was also Director of Operations; owing to the extra work arising from the Directorate of Operations, those duties were entrusted to another official in 1976;

The constant overwork gave rise, at the beginning of 1977, to Mr Seingry's first heart attack. After he had had several month's rest under medical supervision, the doctors permitted him to return to duty, but advised him to avoid overwork.

After receiving the request from Mr Seingry's dependants the administration of the Council consulted a Dr Simons. He drew up a report dated 4 April 1980 in which he concluded that "in general, infarction is not recognized as an occupational disease". Dr Simons reached that conclusion after himself consulting Professor Denolin, a cardiologist. In relation to the individual case of Mr Seingry, Professor Denolin made *inter alia* the following remarks:

"Apart from electrocardiograms made between 1961 and 1978, which were all within normal limits, this patient's medical file is particularly meagre. There is no information on the precise circumstances of the death; . . .

The electrocardiograms have always been unremarkable and we have no clinical or biological information after 1969. The patient was a heavy smoker until a short time ago. In particular, we have no information on the development of his heart condition in recent years.

On the basis of such an inadequate file, it is impossible to reach a conclusion as to the possible role of occupational stress in the development of the illness and the circumstances of death. But it is possible to point to at least one factor giving rise to a major risk: serious nicotinism resulting from cigarette smoking."

On the basis of that medical report, the Secretary General of the Council drew up a draft decision, which was notified to Mr Seingry's dependants by letter of 29 May 1980, foreshadowing a refusal to recognize the occupational nature of the illness which caused the death of Mr Seingry.

At the request of the dependants on 10 July 1980, the Council then decided to consult the Medical Committee provided for in Article 23 of the Joint Rules. The report of that committee, dated 17 September 1981, states *inter alia* that the pathogenesis of coronary disease involves a number of factors, including in particular high blood pressure, nicotinism and an excessive level of cholesterol in the blood. According to the committee, all those factors, including the nicotinism (40 cigarettes a day) applied in the case of Mr Seingry. The Medical Committee reached the following conclusion:

"It appears that the particularly exacting working life led by Mr Seingry may have been a factor which aggravated his coronary disease, but there are in his case other significant risk factors, especially the nicotinism. In our opinion, this cannot be regarded as an occupational disease in the strict sense. Indeed, the factor of 'occupational stress' is only one of the components of the pathogenesis and, as Dr Denolin has stated, it may be questioned whether there was not, in addition to the demanding nature of his duties at work, an element of perfectionism and hyperactivity inherent in his psychology."

Having considered the report of the Medical Committee, the Secretary General of the Council decided, pursuant to Article 19 of the Joint Rules, not to recognize Mr Seingry's disease as an occupational disease. He notified Mr Seingry's dependants of his decision on 19 October 1981.

In reply to the complaint lodged by Mr Seingry's dependants dated 16 January 1982, requesting the annulment of that decision, the Secretary General of the Council on 14 May 1982 informed them that the complaint must be rejected.

C — Procedure

By application lodged at the Court Registry on 28 July 1982, the applicants, the late Mr Seingry's dependants, requested the annulment of the Council's refusal to acknowledge that Mr Seingry's death was caused by an occupational disease within the meaning of Article 73 of the Staff Regulations.

By application lodged at the Court Registry on 11 November 1982, the insurance company SA Royale Belge, acting on its own behalf and as agent of 14 other insurance companies, applied under the second paragraph of Article 37 of the Statute of the Court to intervene in this action in support of the conclusions of the defendant. That application was made in accordance with Article 93 of the Rules of Procedure. By order of 10 March 1983, the Court (First Chamber) allowed the application to intervene.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry. However, it requested the Council to reply to two questions and to provide it with the complete text of the Joint Rules and also of the letters by which the Council referred the matter to Dr Simons, the doctor appointed by the institution, and to the Medical

Committee provided for in Article 23 of the Joint Rules.

II — Conclusions of the parties

The *applicants* claim that the Court should:

1. Declare the application admissible and well founded;

2. (a) Annul the decision notified by letter of 19 October 1981 refusing to recognize the disease of R. Seingry as an occupational disease;

   (b) annul the decision notified by letter of 14 May 1982, rejecting their complaint of 18 January 1982;

   (c) declare that the disease of which R. Seingry died was an occupational disease;

   (d) order the defendant to pay them the benefits provided for by Article 73 of the Staff Regulations in the event of death as a result of an occupational disease;

3. Order the defendant to pay the costs.

The *Council of the European Communities,* the *defendant,* claims that the Court should:

1. Dismiss the claims of the applicants as unfounded;

2. Order the applicants to pay the costs, in so far as they are not to be borne by the defendant by virtue of the provisions of Articles 70 and 95 (2) of the Rules of Procedure.

The *intervener* claims that the Court should:

1. Accept the conclusions of the Council of the European Communities that the applicants' claims should be dismissed as unfounded;

2. Order the applicants to pay the costs of the intervention.

III — Submissions and arguments of the parties in the written procedure

In their application, the *applicants* adduce a single submission relating to (a) infringement of the Staff Regulations, in particular of the second paragraph of Article 25 and Article 73; (b) infringement of the Joint Rules, particularly Article 3 (2) thereof; and (c) breach of rules and general principles of law, especially the principal that every administrative measure must be based on grounds permissible in law, that is to say, relevant and not vitiated by errors of fact or of law, or both.

In support of that submission, the applicants observe first that Article 3 (2) of the Joint Rules expressly provides that any aggravation of a pre-existing disease is to be considered an occupational disease if such aggravation arose in the course of or in connection with the performance by the official of his duties with the Communities. Next, they comment that the report of the Medical Committee of 17 September 1981, on which the contested decisions are based, concluded at least that Mr Seingry's working conditions and pressure of work had aggravated the coronary disease which caused his death. However, the Medical Committee concluded that in this particular case, there was no occupational disease "in the strict sense". According to the applicants, the Committee had wrongly applied a restrictive interpretation of the concept of occupational disease, thus forgetting that in

the framework of the Joint Rules that concept has in fact a wide application, since it also covers aggravation of a pre-existing disease.

On those grounds, the applicants consider that the contested decisions either erroneously interpreted the conclusions of the Medical Committee's report or disregarded the provision contained in Article 3 (2) of the Joint Rules. In the alternative, they claim that the contested decisions do not state the grounds on which they are based, as required by the second paragraph of Article 25 of the Staff Regulations. In that connection, the applicants refer to the uncertainty as to the ground relied upon. The statement of the grounds upon which the contested decisions were based does not make the Council's attitude clear. Indeed, it is not sufficiently clear whether the Council does not recognize that Mr Seingry's working conditions and pressure of work aggravated the disease which caused his death or whether in fact the Council denies that the aggravation of a pre-existing disease may be an occupational disease within the meaning of the Joint rules.

The *Council of the European Communities,* the *defendant,* stresses first that the questions relating to the causes of a disease or of its aggravation are clearly medical questions. It adds that Dr Simons, the doctor appointed by the institution, has stated that infarction is not recognized as an occupational disease. Next, the Council observes that the Medical Committee did not, as the applicants seem to suggest, conclude that Mr Seingry's working conditions and pressure of work *had* aggravated a pre-existing disease: the Committee merely stated that Mr Seingry's "particularly exacting working life . . . *may* have been" an aggravating factor. According to the Council, such a finding involves only the possibility that that factor was one of the causes of the disease which caused Mr Seingry's death. Indeed, although it cannot be denied that a strenuous working life constitutes a risk factor, it is equally true that such risks are aggravated by the personal life-style and character of the person concerned. In that regard, the Medical Committee found that several other factors, in particular nicotinism, gave rise to Mr Seingry's disease. In those circumstances, it has not been sufficiently established that Mr Seingry's disease or its aggravation arose in the course of or in connection with the performance of his duties with the Council.

According to the Council, there is no reason to think that the Medical Committee clearly failed to have regard to the provision contained in Article 3 (2) of the Joint Rules. Nor was there any infringement of the second paragraph of Article 25 of the Staff Regulations. The Council considers that the contested decision, if reference is made to the medical reports annexed thereto, in particular the decision of 14 May 1982, are clear and contain an adequate statement of the grounds on which they are based.

In their rejoinder, the *applicants* observe that, even if the questions relating to the causes of a disease or its aggravation are medical matters, questions concerning the concept of "occupational disease" or the correct interpretation of the conclusions of the Medical Committee are questions of law. In that connection, they again submit that the Medical

Committee's interpretation of the concept of "occupational disease" was too narrow. Having found that Mr Seingry's working conditions and pressure of work aggravated his coronary disease, the Committee erroneously considered, in view of the law applicable, that aggravation of a pre-existing disease was not an occupational disease. According to the applicants, it is of no consequence that the pathogenesis of coronary disease involves a number of factors and that several factors did actually apply in Mr Seingry's case, since such a finding does not affect the fact that Mr Seingry's exacting working life was *an aggravating factor.*

In its rejoinder, the *Council* concedes that the concept of "occupational disease" is a legal one. However, in order to qualify as an occupational disease, a disease must not only have arisen in the course of or in connection with the performance of duties with the institution, but it must also be established that the performance of those duties caused the disease or the aggravation of a pre-existing disease. In this case, it has not been sufficiently established that Mr Seingry's working life was actually a factor aggravating his heart disease. Consequently, the defendant maintains that the contested decisions were based on sound reasoning.

In its application to intervene, the *intervener* sets out in part the same arguments as those put forward by the defendant. In addition, it observes that the Court, in its judgment of 12 January 1983 in Case 257/81, (*K.* v *Council,* [1983] ECR 1) stated under what conditions a disease or the aggravation of a pre-existing disease not contained in the European List may be regarded as an occupational disease. In that judgment the Court stated *inter alia* that it must be sufficiently established that "the applicant's pathological condition has a sufficiently direct relationssship with a specific and normal risk inherent in the duties which he performed." Next, the intervener refers to Recommendation No 66/462, adopted by the Commission on 26 July 1966 *(Journal Officiel* 147, p. 2696), which defined the occupational diseases not contained in the European List as diseases "of which the risk is inherent in the work carried out and to which certain workers are exposed to a greater degree than the population as a whole". Finally, the intervener refers to the opinion of Mr Advocate General Roemer in Case 29/71 (judgment of 15 July 1972, *Vellozzi* v *Commission,* [1972] ECR 513 at p. 523), stating that: "Occupational diseases ... are those ... where it is established that the performance of those duties was the principal or the predominant cause of the disease or of the aggravation of an existing disease." According to the intervener, it follows from the above-mentioned quotations that the Council was right to refuse to acknowledge that Mr Seingry's disease was of occupational origin.

IV — Replies to questions put by the Court

It is clear from the documents supplied to the Court that the administration of the Council requested the Medical Committee to "express its view as to

whether the disease which caused the death of René Seingry should be regarded as having been caused by his occupation".

As regards the question whether the "occupational" nature of a heart condition has been recognized in other cases for the purposes of a finding of the total or partial invalidity of an official or other servant of the Communities, the Council replied in the negative. In addition, the Council observed that its medical officer had never made any recommendation concerning Mr Seingry's occupation on the occasion of his annual medical examinations.

V — Oral procedure

At the sitting on 6 October 1983 the parties presented oral argument.

The Advocate General delivered her opinion at the sitting on 24 November 1983.

Decision

1 By application lodged at the Court Registry on 28 July 1982, Georgette Seingry, née Seiler, widow of René Seingry, in his lifetime an official in the Secretariat of the Council of the European Communities, Florence Seingry and Georges-Francis Seingry, adult daughter and son respectively of René Seingry, brought a claim for the annulment of the decision of the Secretary General of the Council of 19 October 1981 refusing to recognize the disease which caused the death of René Seingry as an occupational disease, and of the decision of the Secretary General of the Council of 14 May 1982 rejecting their complaint. The applicants also claim that the Court should acknowledge that the disease in question was an occupational disease and should order the defendant to pay to them the benefits provided for in Article 73 of the Staff Regulations of Officials in the event of the death of an official as a result of an occupational disease.

2 In support of their claims, the applicants submit that René Seingry, an official of the Communities from 1954 and Director of the Private Office of the Secretary General of the Council from 1958, died at his place of work on 23 July 1979 as a result of myocardial infarction. They claim that the heart disease arose in the course of the performance of duties with the Council and must therefore be described as an occupational disease within the meaning of

Article 73 of the Staff Regulations, particularly as the deceased official had already had a previous heart attack in 1977 after a prolonged period of overwork.

3 By virtue of Article 73 of the Staff Regulations, an official and, in the event of his death, those entitled under him are insured against the risk of occupational disease, subject to rules drawn up by common agreement of the institutions of the Communities.

4 The rules referred to by that provision (hereinafter referred to as "the Joint Rules") provide first, in Article 3 (1), that any disease specified in the "European List of Occupational Diseases", annexed to the Commission Recommendation of 23 July 1962 on industrial medicine in undertakings (*Journal Officiel* 1962, p. 2181) is to be considered an occupational disease. It is common ground that coronary diseases do not appear on that list.

5 According to Article 3 (2) of the Joint Rules: "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."

6 Article 19 of the Joint Rules provides that decisions recognizing the occupational nature of a disease are to be taken by the appointing authority on the basis of the findings of the doctor or doctors appointed by the institutions and, where the official or those entitled under him so request, after consulting the Medical Committee referred to in Article 23 of the Rules.

7 On 10 October 1979, the applicants submitted an application to the Secretary General of the Council requesting that it should recognize the occupational nature of the disease which caused the death of René Seingry, claiming that there was a direct link between the heart failure of which he died and his working conditions and pressure of work since 1958.

8 The Secretary General then consulted the doctor appointed by the Council, who reached the conclusion that "in general, infarction is not recognized as an occupational disease".

9 It may be seen from the papers before the Court that the doctor consulted had himself obtained the opinion of Professor Denolin, a specialist in cardiology, whose comments, on examining René Seingry's medical file, included the following:

"... we have no information of the development of his heart condition in recent years.

On the basis of such an inadequate file, it is impossible to reach a conclusion as to the possible role of occupational stress in the development of the illness and the circumstances of death. But is is possible to point to at least one factor giving rise to a major risk: the serious nicotinism resulting from cigarette smoking".

10 The applicants requested that the Medical Committee be consulted, and the Secretary General decided to appoint such a committee. The documents supplied to the Court show that the committee was asked to "express its view as to whether the disease which caused the death of René Seingry should be regarded as having been caused by his occupation".

11 In its report, the committee found in substance that the pathogenesis of coronary disease involves a number of factors and it referred in particular to high blood pressure, nicotinism and an excessive level of cholesterol in the blood, all factors which were present in the case of René Seingry. The conclusion of the report was worded as follows:

"It appears that the particularly exacting working life led by Mr Seingry may have been a factor which aggravated his coronary disease, but there are in his case other significant risk factors, especially the nicotinism. In our opinion, this cannot be regarded as an occupational disease in the strict sense. Indeed, the factor of 'occupational stress' is only one of the components of the pathogenesis and, as Dr Denolin has stated, it may be

questioned whether there was not, in addition to the demanding nature of his duties at work, an element of perfectionism and hyperactivity inherent in his psychology."

12 By decision of 19 October 1981, the Secretary General of the Council informed the applicants that, in view of the report of the Medical Committee, it was impossible for him to recognize René Seingry's disease as having been caused by his occupation. The applicants' complaint against that decision was rejected on the same ground by decision of 14 May 1982.

13 In challenging those decisions, the applicants submit that the report of the Medical Committee on which the contested decisions are based adopts by implication an erroneous view of the concept of occupational disease. On the one hand, the Commission could not, after finding that René Seingry's particularly exacting working life may have been an aggravating factor of the coronary disease which had been noted as early as 1977, reach the conclusion that it was not an occupational disease "in the strict sense". On the other hand, the Medical Committee overlooked that fact that, in the framework of the applicable Joint Rules, the concept of occupational disease includes the aggravation of a pre-existing disease if, as in this case, such aggravation arises in the course of the performance of duties with the Communities.

14 According to the defendant, the Medical Committee by no means failed to appreciate the scope of the concept of occupational disease as defined by the Joint Rules. On the contrary, it was in application of that definition that the Committee, after a detailed examination of the case, showed that it was not an occupational disease, in view of the fact that, apart from Mr Seingry's working life, several other factors contributed to his death.

15 It should be pointed out first that it is not for the Court to decide whether or not in an individual case an official has been affected by an occupational disease within the meaning of Article 73 of the Staff Regulations. However, the Court has jurisdiction to annul any decision taken by the appointing authority in application of that provision if it is vitiated by illegality inasmuch as it is based on an irrelevant conclusion reached by a medical committee.

That would be the case if the Medical Committee adopted an erroneous view of the concept of "occupational disease" or if its report did not establish a comprehensible link between the medical findings which it contains and the conclusions which it draws.

16 In that regard, the applicants are justified in their contentions that the Medical Committee addressed itself to the question whether a coronary disease can constitute an occupational disease and failed to examine whether the aggravation of the coronary disease which occurred in this case might be regarded as the aggravation of a pre-existing disease which arose in the course of the performance by the official of his duties, within the meaning of the provisions applicable. Indeed, such an examination cannot be found either in the report of the Medical Committee or in the earlier medical opinions.

17 The general terms of the mandate given to the Medical Committee do not state that it is for the committee to examine whether the heart failure in question had a sufficiently close link with a pre-existing coronary disease, as the applicants suggested in their application, and whether the aggravation of the coronary disease within the meaning of Article 3 (2) of the Joint Rules was caused by the working life of the deceased official.

18 The lack of precision in the instructions given to the Medical Committee might explain the equivocal way in which the committee expressed its views in its report. Indeed, by the reference in the opinion to an "occupational disease in the strict sense", a concept which does not appear in the Staff Regulations or in the Joint Rules, the report shows that it is doubtful whether the Committee was aware of the precise scope of the concept of "occupational disease".

19 It is true that the Medical Committee referred to several factors which contributed to the death of Mr Seingry, such as in particular the nicotinism and his hyperactive nervous state. However, it did not establish whether it was one of those factors or rather the official's exacting working life which was most closely connected with the cardiac failure which caused his death.

20 In those circumstances, serious doubts exist, from an examination of the file, as to whether the Medical Committee was given adequate instructions as to its task and whether it failed to have regard to Article 3 (2) of the Joint Rules.

21 It follows from the foregoing that the contested decisions are vitiated by illegality and must therefore be annulled, and that the remainder of the application must be dismissed.

22 It will be for the appointing authority, before taking a decision, to repeat the procedure provided for in Article 29 et seq. of the Joint Rules and refer the matter once again to the Medical Committee, whose task it will be to examine whether or not the cardiac failure which caused the death of Mr Seingry was an aggravation of a pre-existing disease and, if so, whether it is sufficiently established that such aggravation arose in the course of or in connection with the performance by the deceased official of his duties.

Costs

23 According to Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the Council has failed in its submissions, it must be ordered to pay the costs, apart from those of the intervener which must be borne by the intervener.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Annuls the decision of the Secretary General of the Council of 19 October 1981 refusing to recognize the disease which caused the death of René Seingry as an occupational disease and the decision of the Secretary General of the Council of 14 May 1982 rejecting the applicants' complaint;**

2. **Dismisses the remainder of the application;**

3. **Orders the Council to pay the costs, apart from those of the intervener.**

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 26 January 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS DELIVERED ON 24 NOVEMBER 1983 [1]

Mr President,
Members of the Court,

This is an application lodged by Mrs Georgette Seingry (née Seiler), widow of René Seingry, and their two children, Florence and Georges-Francis, for the annulment of a decision refusing to recognize the disease of her late husband and their father respectively as an occupational disease.

1 — Translated from the French.