ORDER OF THE COURT OF JUSTICE (Fifth Chamber)
19 March 2004 *

In Case C-196/03 P,

Arnaldo Lucaccioni, former official of the Commission of the European Communities, residing in St-Leonards-on-Sea (United Kingdom), represented by M. Cimino, avvocato,

applicant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 26 February 2003 in Case T-164/01 *Lucaccioni* v *Commission* [2003] ECR-SC I-A-67 and II-367, in so far as the latter dismissed as inadmissible the action for damages brought by the applicant,

* Language of the case: Italian.

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall, acting as Agent, assisted by A. Dal Ferro, avvocato, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Fifth Chamber),

composed of C. Gulmann, President of the Chamber, S. von Bahr and R. Silva de Lapuerta, Judges,

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

makes the following

Order

1 By application lodged at the Court Registry on 3 May 2003, Mr Lucaccioni brought an appeal under Article 56 of the Statute of the Court of Justice against

the judgment of the Court of First Instance in Case T-164/01 *Lucaccioni* v *Commission* [2003] ECR-SC I-A-67 and II-367 ('the contested judgment'), in which the latter, first, dismissed as inadmissible his action for compensation under the ordinary rules of non-contractual liability for the non-material damage and physical harm suffered by him during the period before the onset of his occupational disease and, secondly, decided that each party was to bear its own costs.

Legal framework

Article 236 EC provides that 'the Court of Justice shall have jurisdiction in any dispute between the Community and its servants within the limits and under the conditions laid down in the Staff Regulations or the Conditions of employment'.

Article 91 (1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') states:

'The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.'

4 Article 91(2) of the Staff Regulations provides:

'An appeal to the Court of Justice of the European Communities shall lie only if:

— the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein,

and

— the complaint has been rejected by express decisions or by implied decision.'

5 Article 90(1) and (2) of the Staff Regulations is worded as follows:

'1. Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

— on the date of publication of the act if it is a measure of a general nature;

— on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;

— on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.'

6 The first subparagraph of Article 73(1) of the Staff Regulations provides that, subject to rules drawn up by common agreement of the institutions of the Communities, an official is insured, from the date of his entering the service, against the risk of occupational disease and of accident.

7 Article 73(2)(b) and (c) of the Staff Regulations states that the benefits provided are, in the event of total permanent invalidity, 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 12 months before the accident and, in the event of partial permanent invalidity, payment of a proportion of that sum, calculated by reference to the scale laid down in the rules referred to in Article 73 (1).

8 The Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease ('the Insurance Rules') lay down, pursuant to Article 73 of the Staff Regulations, the conditions under which an official is insured against the risk of accident and occupational disease.

9 Article 12 of those rules states:

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

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

10 Article 14 of the Insurance Rules provides:

'After consulting the medical officers referred to in Article 19 or the Medical Committee referred to in Article 23 the official shall be granted an allowance in respect of any injury or permanent disfigurement which, although not affecting his capacity for work, constitutes a physical defect and has an adverse effect on his social relations.

This allowance shall be determined by analogy with the rates laid down in the invalidity scale referred to in Article 12. Where disfigurement results from an anatomical functional lesion the abovementioned rates shall be increased accordingly.'

Facts

11 The facts, as recorded at paragraphs 2 to 12 of the contested judgment, may be summarised as follows.

12 The applicant entered the service of the European Communities in 1962.

13 In 1990, arguing that he had been exposed to asbestos dust during the period when he performed his duties in the Berlaymont Building in Brussels (Belgium), the applicant requested that the pulmonary lesions which he complained of be recognised as an occupational disease and that he be recognised as suffering from permanent invalidity.

14 The procedure under Article 78 of the Staff Regulations led to the applicant's being retired and granted an invalidity pension equal to 70% of his basic salary. At the same time, the procedure under Article 73 of the Staff Regulations led to the applicant's disease being recognised as occupational in nature. A finding of permanent total invalidity was made and an invalidity rate of 100% was therefore set. In addition, taking account of the permanent symptoms and serious psychological disorders experienced by the applicant, the Commission of the European Communities decided, under Article 14 of the Insurance Rules, to award him an allowance set at 30% of the lump sum provided for permanent total invalidity.

15 As the applicant was of the view that that amount did not provide full compensation for the damage and harm suffered by him, on 15 May 1994, he submitted a complaint pursuant Article 28 of the Insurance Rules and Article 90 (2) of the Staff Regulations, which the Commission, in the absence of any prior decision-making act complained of, categorised as a 'request'. The request was the subject of an express decision to reject by the Commission by letter of 22 September 1994.

16 On 15 December 1994, the applicant brought a complaint against that refusal, under Article 90(2) of the Staff Regulations. By decision of 25 April 1995, notified to the applicant by letter of 3 May 1995, the Commission rejected that complaint.

17 By application lodged at the Registry of the Court of First Instance on 29 August 1995 and registered under number T-165/95, the applicant brought an action seeking, first, an award of damages against the Commission and, secondly, the annulment, for the avoidance of doubt, of the Commission's decision of 22 September 1994.

18 By judgment of 14 May 1998 in Case T-165/95 *Lucaccioni* v *Commission* [1998] ECR-SC I-A-203 and II-627, the Court of First Instance rejected that application. That judgment was the subject of an appeal by the applicant, which was rejected by judgment of the Court of Justice in Case C-257/98 P *Lucaccioni* v *Commission* [1999] ECR I-5251.

19 On 29 May 2000, the applicant submitted a request under Article 90(1) of the Staff Regulations for compensation under the ordinary rules in respect of the non-material damage and physical harm suffered by him during the period preceding the occupational disease from which he suffers.

20 In the absence of a reply to that request within the period laid down under the Staff Regulations, the applicant lodged a complaint, which was also the subject of an implied rejection.

21 By application lodged at the Registry of the Court of First Instance on 19 July 2001, the applicant made, under Article 91 of the Staff Regulations, the application which was rejected by the contested judgment. That rejection forms the basis of this appeal.

The contested judgment

22 In support of his application for compensation for the non-material damage and physical harm done to him by the Commission from 1967 to 1990, that is to say before the onset of his occupational disease, the applicant relied before the Court of First Instance on a single plea in law, based on the persecution suffered by him as a result of the working conditions that had been knowingly imposed on him by the Commission and the underhand and secret manner in which the latter had decided to open the procedure relating to his invalidity.

23 Under that plea, the applicant claimed that the Commission and/or its administrative managers were directly and/or indirectly liable on various grounds since they had required him, under threat of being brought before a disciplinary board, to work in a building which was known to be insulated with asbestos, but had concealed that fact by false statements made over several years, while knowing at the same time that asbestos is highly dangerous to health.

24 By the contested judgment, the Court of First Instance dismissed the action as being inadmissible and decided that each party should bear its own costs.

25 In the contested judgment, the Court of First Instance considered separately the grounds of inadmissibility relating to non-material damage and those relating to physical harm.

26 As regards non-material damage, the Court of First Instance, having rejected the objections as to inadmissibility based on *res judicata* and the rule of *non bis in idem* invoked by the Commission, held the action to be inadmissible by reason of failure to satisfy the time-limits laid down under Articles 90 and 91 of the Staff Regulations.

27 Contrary to what the applicant contended, the Court of First Instance categorised the letter addressed to the Commission of 15 May 1994 as a request lodged under Article 90(1) of the Staff Regulations. As that request was rejected by the Commission decision of 22 September 1994 and the applicant did not challenge that decision as regards the damage, in particular non-material damage, and harm suffered before the onset of his disease, the Court of First Instance held that the new request on which the proceedings before it were based, of 29 May 2000, failed to satisfy the mandatory time-limits laid down under that article, as there were no new circumstances such as to justify an exception to the rules governing time-limits for bringing proceedings.

28 As regards the physical harm suffered before the onset of the applicant's occupational disease, the Court of First Instance held that the application was not expressed in sufficiently precise terms and accordingly failed to satisfy the minimum conditions laid down under the first paragraph of Article 19 of the EC Statute of the Court of Justice and Article 44(1) of the Rules of Procedure of the Court of First Instance.

29 The Court of First Instance held in particular, at paragraph 67 of the contested judgment, that the arguments put forward in the application were expressed in imprecise terms which did not allow it to identify the prejudice to the applicant's

health on which he relied in support of his application. In addition, at paragraph 68 of the judgment, the Court of First Instance held that the applicant had put forward no objective factor which allowed the Court of First Instance and the Commission to identify the nature and extent of the damage relied on.

The appeal

Forms of order sought and grounds of appeal

30 In his appeal, Mr Lucaccioni claims that the Court should:

— uphold the appeal and, consequently, the application at first instance;

— grant him compensation for the non-material damage and physical harm caused to him by the Commission between 1967 and 1990 under the general law, the Charter of Fundamental Rights of the European Union and the European Convention for the Protection of Human Rights and Fundamental Freedoms, irrespective of (or under) Article 73 of the Staff Regulations, and as a result of the inexcusable fault of the Commission for having infringed his human dignity and infringed his right to integrity, the damages concerned being estimated at EUR 3 500 000 (ITL 7 000 000 000), by analogy with the

amounts ordered in respect of each victim (approximately EUR 500 000, or ITL 1 000 000 000) in the judgment of the Pretura Circondariale di Torino (Italy) of 5 July 1996 in Case No 4840/96 and the compensation order for each of the victims of the Cermis cable car disaster, namely EUR 2 000 000 (ITL 4 000 000 000);

— order the Commission to pay the costs.

31 The Commission contends that the Court should:

— dismiss the appeal as being inadmissible and/or unfounded;

— order the applicant to pay the costs.

32 In support of his appeal, Mr Lucaccioni relies on two grounds of appeal to challenge the findings of inadmissibility by the Court of First Instance. Those grounds are based, first, on the existence of a fact which constituted an exceptional circumstance under the rules governing time-limits for the bringing of proceedings and, secondly, the presence in the application submitted to the Court of First Instance of objective elements which allowed it to determine the nature and extent of the damage and harm relied on.

33 By his first plea, Mr Lucaccioni argues that, contrary to what was held by the Court of First Instance, the application refers to a significant number of facts which could constitute circumstances justifying an exception to the time-limits for the bringing of proceedings. In particular, he mentions two matters which prevented him from making his application within the time-limits laid down under the Staff Regulations: first, the fear of repressive measures which the Commission might have taken against him and, secondly, the constant persecution to which the latter subjected him.

34 Mr Lucaccioni's second plea is based on what he considers to be an incorrect appraisal of the matters referred to in the application relating to the establishing and the extent of the physical harm suffered by him during the period prior to his invalidity being accepted. He considers that the narrative of the facts set out in the application can be taken as a basis for determining the liability of the Commission to pay compensation and the scope of that liability.

Findings of the Court

35 It must be stated first of all that, under Article 119 of its Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time by reasoned order dismiss the appeal.

36 According to the settled case-law of the Court of Justice, under Article 225 EC and Article 58 of the Statute of the Court of Justice, an appeal lies on points of law only and, therefore, the Court of First Instance alone has jurisdiction to find and appraise the facts, save where the factual inaccuracy of its findings results from the documents in the case before it. The appraisal of the facts by the Court of First Instance does not constitute, save where the clear sense of the evidence produced before it is distorted, a question of law which is subject, as such, to review by the Court of Justice (see, inter alia, Case C-121/01 P *O'Hannrachain* v *Parliament* [2003] ECR I-5539, paragraph 35, and the case-law cited there).

37 In the present case, the applicant invokes in his first ground of appeal a factual criterion which the Court of First Instance failed to have regard to, namely the existence of a new fact which was capable of interrupting the time-limits for bringing proceedings. However, the Court of First Instance rightly held at paragraph 53 of the contested judgment that 'there is, moreover, nothing in the documents before the Court, nor is there anything which the applicant relies on, to show that there was a change of circumstances of such a kind as to justify an exception being made to the rules governing the time-limits for the bringing of an action'. That ground of appeal, as formulated by the applicant, relates only to the existence or the actual finding of a fact of a kind which would constitute such a change of circumstances.

38 Furthermore, the assumption on which the applicant relies, namely the existence of a new fact, is not based on any *prima facie* evidence. There is nothing in the papers before the Court to justify a new appraisal of the facts put forward by the applicant. Although there was no reference in the facts narrated in the contested judgment to the 'persecution' alleged by the applicant, the latter considers it to be a fact acknowledged by the Court of First Instance, on the basis of an order which appears to bear no relationship to the present case. That persecution cannot accordingly be considered to be an established fact, and the applicant's case is therefore lacking in any factual basis.

39 In those circumstances, the first ground of appeal must be rejected as being manifestly inadmissible.

40 As regards the second ground relied on by the applicant in support of his appeal, it must be noted that, according to settled case-law, it follows from the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (order of 12 December 1996 in Case C-49/96 P *Progoulis* v *Commission* [1996] ECR I-6803, paragraph 23; and Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15).

41 According to equally settled case-law, that requirement is not satisfied by an appeal which confines itself to reproducing the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by the Court of First Instance. Such an appeal amounts in reality to no more than a request for re-examination of the application submitted to the Court of First Instance, which the Court of Justice does not have jurisdiction to undertake (order of 26 September 1994 in Case C-26/94 P *X* v *Commission* [1994] ECR I-4379, paragraph 13; and Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 35).

42 In that regard, it must be held that the arguments advanced by the applicant in support of his second ground of appeal do not indicate precisely the elements of the contested judgment that are subject to challenge or the legal arguments relied on in support of the request for its annulment. That ground does not relate to a question of law and does not include any legal argument seeking to demonstrate

that the Court of First Instance committed an error in its assessment of the manner in which the Commission exercised its powers.

43 It follows that the applicant's second ground of appeal must, on any basis, be rejected as being inadmissible.

Costs

44 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and since the applicant has been unsuccessful, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT (Fifth Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. Mr Lucaccioni is ordered to pay the costs of these proceedings.

Luxembourg, 19 March 2004.

R. Grass

Registrar

C. Gulmann

President of the Fifth Chamber