question may not rely on the fact that it failed to reply to a complaint within the period laid down by the Staff Regulations.

2. In relation to a decision by a medical committee assessing the degree of partial permanent invalidity pursuant to the rules on insurance against the risk of accident and of occupational disease, the remedies provided by the Staff Regulations of Officials may in principle be employed only in order to obtain a review by the Court confined to questions concerning the constitution and proper functioning of that committee. The Court's review may not extend to medical appraisals properly so called which must be considered definitive, provided that they are adopted in accordance with the correct procedure.

3. Under the insurance provided for by the Staff Regulations the compensation payable in the event of invalidity is in the nature of a flat-rate award assessed on the basis of the lasting effects of an accident. Interest may thus be claimed only where the person entitled to that award is able to establish that payment thereof was improperly delayed by the administration.

In Case 156/80

GIORGIO MORBELLI, an official of the Commission of the European Communities, residing in Luxembourg, represented by Edmond Wirion of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 1 Place du Théâtre,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Joseph Griesmar, acting as Agent, assisted by Daniel Jacob of the Brussels Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for assessment, under the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease, of the degree of permanent partial invalidity from which the applicant is suffering as a result of an accident and of the compensation to which he is entitled in respect thereof,

THE COURT (Second Chamber),

composed of: P. Pescatore, President of Chamber, A. Touffait and O. Due, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

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

I — Summary of the facts

On 21 February 1976 Giorgio Morbelli, an official of the Office for Official Publications of the European Communities, residing in Luxembourg, sustained an injury to the head as a result of a defective automatic sliding door whilst entering the post office near Luxembourg railway station. He suffered contusions in the region of his temples and a slight cut behind his left ear and felt somewhat faint.

Mr Morbelli was taken to hospital where his wound was stitched and he underwent a radiographic examination of his cranium which did not show any fracture. Some hours after the accident, at his home, Mr Morbelli suffered a violent headache accompanied by dizziness and a feeling of sickness and vomiting followed by a state of profound torpor.

It was stated in a medical certificate issued on 24 February 1976 that Mr Morbelli had a temporary total incapacity for work which would probably last 10 days.

On 27 February 1976, in accordance with Article 16 (1) of 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 Rules"), Mr Morbelli submitted a report for the purpose of the Community group insurance scheme with an insurance undertaking established in Belgium.

Mr Morbelli again went into hospital where an electro-encephalographic examination revealed an irregularity in the electrical impulses of the brain attributable to minor concussion.

Since his health deteriorated Mr Morbelli underwent various medical examinations in the succeeding weeks in Luxembourg and in Italy, in particular in Camglio (Genoa) and in Milan.

Dr Franco Luckenbach of Milan drew up a report on 1 October 1976 in which he assessed Mr Morbelli's permanent incapacity for work at 10%.

A medical report drawn up on 28 April 1977 in Luxembourg by Dr Roger Glaesener in conjunction with Dr Jean Hein and Dr Aloyse Stumper concluded that the post-traumatic after-effects of Mr Morbelli's accident of 21 February 1976 consisted in a subjective post-concussion syndrome of medium severity accompanied by damage to the central vestibulary structures in the brain stem and that the appropriate level of compensation to be fixed as from 1 October 1976 should be based on a permanent partial invalidity of 10%.

Mr Morbelli, who had been authorized to work part-time between 1 February and 30 April 1978, underwent at the request of the Commission a medical examination on 12 May 1978 conducted by its medical officer, Dr D. Meersman. As a result of that examination the competent insurance undertaking informed the Commission in a letter of 4 July 1978 that "its consultant physician has concluded that the victim of the accident now suffers a permanent invalidity amounting to 3%" and that the corresponding lump sum amounted to BFR 95 064.

On 6 July Mr Morbelli was informed of this by the Commission's sickness fund which asked him to notify it in writing whether he intended to accept that offer.

On 12 July 1978 Mr Morbelli informed the Commission that he did not accept the offer of the insurers. Consequently his file was sent by the Personnel Branch to Dr H. A. Semiller, the head of the Commission's Medical Department in Brussels.

By a memorandum of 10 November 1978 Dr Semiller informed the Personnel Branch that "having regard to the medical reports in our possession, according to the scale of degrees of invalidity in force and as a result of the examinations carried out by specialists, I am of the opinion that the permanent partial invalidity indicated after review of the accident of 21 February 1976 should be estimated at 3 %. The patient's condition stabilized in September 1978". These conclusions were notified to Mr Morbelli on 16 November 1978.

By a letter of 26 November 1978 Mr Morbelli again refused to agree to the Commission's proposal and on 16 January 1979, in response to a note of 12 January 1979 from the Personnel Branch, he requested that the Medical Committee provided for in Article 23 of the Rules should be consulted and appointed by Dr Roger Glaesener as a member of that Committee.

The Medical Committee consisted of Dr Jean-François Elens, appointed by the appointing authority, Dr Roger Glaesener, and, as the third member, Dr Van Bever. After studying the medical file and examining Mr Morbelli, it issued a joint report on 27 June 1979 in which it expressed the view that his condition might be regarded as having stabilized and that his degree of partial permanent invalidity should be assessed at 3% dating from 25 February 1978.

The opinion of the Medical Committee was notified to Mr Morbelli by the Commission's Director-General for Personnel and Administration on 11 September 1979. In that letter the Director-General observed *inter alia* that Mr Morbelli had made as complete a physical recovery as possible and he requested from him the information necessary to enable him to pay the lump sum of BFR 95 064, corresponding to the degree of invalidity established.

By a note of 21 September 1979 Mr Morbelli confirmed to the Director-General for Personnel and Administration that he refused to agree to his accident of 21 February 1976 being dealt with on the basis of the proposed degree of invalidity.

By a memorandum dated 11 December 1979 and registered at the Secretariat-General of the Commission, Mr Morbelli, who in the meantime had entered hospital in Germany and was still being treated by various doctors, submitted a complaint against the decision of 11 September 1979 under Article 90 of the Staff Regulations. In it he reguested that the implementation of the measures provided for in that decision should be suspended, that a new committee should be appointed, that interest at the legal rate should be paid from the date of the accident, that a percentage to compensate for the effects of inflation should be paid and that the lump sum should be calculated by reference to the remuneration prevailing at the date of payment.

That complaint of 11 December 1979 was supplemented by a note from Mr Morbelli of 5 March 1980 to which he appended a medico-legal report written by Professor Anselmo Zanalda in February 1980 in Turin. That report concluded that, as a result of the accident of 21 February 1976, Mr Morbelli was suffering from injuries constituting permanent partial invalidity at a rate of 15%.

Mr Morbelli's complaint was expressly rejected by a letter from the Commission dated 30 May 1980.

II — Written procedure

On 2 July 1980 Mr Morbelli instituted these proceedings.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Second Chamber), decided to open the oral procedure without any preparatory inquiry. Nevertheless it requested the two parties to reply in writing to certain questions; the parties complied with that request within the period prescribed.

III — Conclusions of the parties

The *applicant* claims that the Court should:

(a) Principally,

— Declare the application admissible and well founded;

— Fix the degree of his permanent partial invalidity at 15%;

— Award him interest on the lump sum payable to him from the date of the accident or such other subsequent date as the Court may determine;

— Adjust that lump sum so as to allow for the fall in the value of money; and

— Declare that the sum payable to him is to be recalculated on the basis of his grade and duties during the 12 months preceding the accident by reference to the salary now carried by the said duties;

(b) In the alternative,

Order a new report to be made by experts in order to establish the degree of his invalidity;

(c) Order the Commission to pay the costs.

The *Commission* contends that the Court should:

— Dismiss the application as inadmissible and in any case as unfounded; and

— Order the applicant to pay the costs.

IV — Submissions and arguments of the parties in the course of the written procedure

A — Admissibility

The *Commission* considers the application inadmissible.

(a) The measure which is contested in the application is the Commission's decision of 30 May 1980 rejecting the applicant's complaint of 11 December 1979.

A decision rejecting a complaint cannot constitute the basis for an action: Article 91 (1) of the Staff Regulations requires in this connexion an act adversely affecting the person concerned, and since according to decisions of the Court a confirmatory measure is not capable of producing a direct effect upon a given situtation, it cannot adversely affect the person concerned. Applications directed against such measures must accordingly be declared inadmissible.

The most typical example of a confirmatory measure is a measure whereby the appointing authority, having received a complaint under Article 90 (2) of the Staff Regulations, confirms the decision against which the complaint is directed. That applies with even greater force when, as in this case, the contested measure is a decision expressly rejecting a complaint which had already been rejected by implication on the expiry of the period of four months laid down in the last subparagraph of Article 90 (2) of the Staff Regulations; that implied decision already constituted the initial confirmatory.

In this case the act adversely affecting the applicant is the Commission's decision of 11 September 1979 communicating to the applicant the opinion of the Medical Committee; the applicant's complaint of 11 December 1979 was rejected by implication on 12 April 1980 and then expressly on 30 May 1980; those two rejections constitute purely confirmatory measures.

(b) It is impossible to challenge this finding by claiming that the application is directed by implication against the real measure adversely affecting the applicant. The applicant should have expressly indicated in his application the measure adversely affecting him which he wished to have set aside.

(c) Likewise it is impossible to concur in the argument that the contested decision was separate and distinct because it included a statement of the reasons on which it was based which did

not appear in the measure adversely affecting the applicant. A decision rejecting a complaint, even if it contains a separate statement of the reasons on which it is based, cannot, according to the case-law of the Court, directly affect the legal position of the person concerned; hence it does not constitute an act adversely affecting him.

(d) The applicant cannot cure the inadmissibility of his action by trying to represent that it is also intended to obtain compensation and that it is thereby an action in which the Court has unlimited jurisdiction. Previous decisions of the Court indicate, on the one hand, that it is impossible to bring proceedings in which the Court has unlimited jurisdiction if an action for the annulment of a measure cannot be brought and, on the other, that a party may not endeavour by means of an action for damages to obtain a result similar to the annulment of a measure if an action for the annulment of that measure is inadmissible.

The *applicant* challenges the relevance of the objection of inadmissibility raised by the Commission.

(a) The reference to the decision of 30 May 1980 was made primarily to establish that the application was made within the period prescribed by the Staff Regulations. However, in substance the application is not limited to the confirmatory decision but refers by implication to all the prior decisions having the same subject-matter, namely the rejection of the applicant's complaint.

(b) A distinction should be drawn between purely confirmatory decisions which do not themselves contain a statement of the reasons on which they are based and confirmatory decisions which do contain such a statement. A confirmatory decision which resumes discussion of the dispute, analysing the various complaints submitted by the claimant, constitutes a separate decision which it is sufficient to contest. That applies to the decison of 30 May 1980.

(c) The application complies with the requirements of form and substance laid down by Article 38 of the Rules of Procedure of the Court; it is accordingly admissible.

(d) In a court of exclusive jurisdiction like the Court of Justice an objection of inadmissibility may be raised only in cases in which such an objection is strictly necessary.

B — Substance

1. The report of the Medical Committee

Although the *applicant* does not contest the formal regularity of the procedure followed in this case, he criticizes the manner in which the Medical Committee operated and so calls in question the opinion which it delivered in its report of 27 June 1979 and which the Commission subsequently confirmed.

(a) The Medical Committee may not be the final arbiter of the matter and the Court is not obliged to confirm its findings.

There exist many grounds on which the Court may find that the expert opinion of the Medical Committee fails to comply with the requirement of objectivity, that it is contradicted by prior and subsequent events and that a new expert opinion should therefore be obtained.

The Court is required to ensure that a Medical Committee is properly constituted and in particular to ascertain whether a third doctor who is neutral and capable of acting as umpire has in fact been appointed; it is also entitled to verify whether the opinion in the report of the Medical Committee corresponds to the views of all its members.

(b) Persistent headaches like that from which the applicant suffers very often defy purely medical and objective examination; their existence can only be established by the congruity of various observations. The Medical Committee could not make such observations in a few hours.

The Medical Committee carried out only a brief examination of the applicant lasting less than 30 minutes.

The preliminary tests were carried out by ancillary medical staff and most of the time the doctor was not present.

The method of examination adopted by the Medical Committee was too perfunctory.

(c) It seems most improbable that any of the three members of the Medical Committee knew sufficient Italian to understand or grasp in detail a medical report drawn up in Pavia on 15 June 1979 by Professor P. Pinelli. Certain tests carried out on the applicant by the professor had never been repeated; one such test was the computerized axial tomography.

(d) The outcome of the examination of the Medical Committee is manifestly at variance with the opinion in the report of Dr Glaesener of 28 April 1977.

(e) The effects of cranial traumatism may be established on the one hand objectively and on the other subjectively without its being possible to cast doubts on the latter findings. With regard to the subjective effects the assessment of the degree of invalidity depends in large measure on the experience of the doctor; Dr Elens's professional qualifications do not ensure that he has the necessary experience in the relevant field.

(f) The accident suffered by the applicant had produced objectively identifiable effects, in particular damage to the central nervous system, as is conceded by the Medical Committee. If there are no objectively ascertainable after-effects experts generally find, depending on the initial seriousness of the accident, a degree of permanent partial invalidity of between 5 and 10%. Since Mr Morbelli's headaches had been objectively established the opinion of the Medical Committee cannot be upheld.

Furthermore, the Committee failed to take into consideration the serious deterioration in the mental state of the applicant or the subjective effects as a whole of his accident.

The application is directed in principle against the arbitrary and prejudicial manner in which the assessment was made by the Medical Committee.

(g) Although the applicant has drawn the attention of the Commission to the aggravation which has occurred in his injuries and which is documented in the medical reports the procedure provided for in Article 22 of the Rules has never been initiated.

(h) The documents annexed to the applicant's replies to the questions submitted by the Court show that Dr Glaesener denies that he appointed Dr Van Bever as the third member of the Committee: he did not know him and, at the proposal of Dr Elens, agreed that he should be appointed as an expert in this case. In those circumstances it must be held that the Medical Committee was improperly appointed.

Furthermore, with regard to the substance of the proceedings Dr Glaesener maintained against the two other members of the Committee that the real degree of the applicant's invalidity was 10% and that it had in fact increased after his examination owing to the deterioration, as a result of the accident, in the health of the applicant. Dr Glaesener only signed the report because his colleagues informed him that it was impossible to take into consideration the scale used by him, that it was necessary to adopt the rates used by the Commission's insurer and that compensation could not be granted for deterioration in the psychological state of the insured.

The *Commission*, having regard to the fact that, in its view, the application is inadmissible, contests the case as to its substance only in the alternative.

(a) The applicant fails to put forward any submission, that is to say advance any argument, based on the breach of a provision of the Staff Regulations or of a general principle of law. The application really constitutes a claim for review, as to its substance, of the report drawn up by the Medical Committee.

The applicant fails to submit any serious complaint against the procedure followed in this case which furthermore is in accordance with the provisions of Article 73 of the Staff Regulations taken together with the Rules, in particular Articles 19, 20, 21 and 23 thereof; nor does he argue that there has been any error of fact or of law vitiating the proceedings of the Medical Committee or the decision of the appointing authority. In those circumstances the application is unfounded. In fact the case-law of the Court shows that, when a medical committee has duly settled a question submitted to it its decision is final unless fresh evidence is adduced; the submission of medical certificates calling in question the opinion of the Committee but failing to put forward any grounds for considering that that Committee was not acquainted with the principal matters on the file of the person concerned may not, however, be regarded as new evidence. In this case the question of the degree of the applicant's partial permanent invalidity was definitively settled by the Medical Committee whose opinion was followed by the appointing authority.

The Court may be asked to annul the decision based on the opinion of a medical committee only if it appears that the adoption of the opinion in question entailed an infringement of an essential procedural requirement, for example that the authority which adopted the opinion exceeded its powers or that the opinion of the committee was adopted in breach of the rights of the defence, for example in the absence of the doctor representing the official, or, further, if the opinion

contains a manifest error, such as the adoption of a manifestly inadequate degree of invalidity having regard to the scale applicable or the failure to take into consideration the result of examinations by specialists.

In the absence of any submission of a breach of the provisions of the Staff Regulations or of a general principle of law the Medical Committee alone is entitled to settle the medical aspects of the case.

(b) Against the arguments advanced by the applicant must be put the fact that his case was submitted successively, in addition to various examinations by specialists, to the medical adviser to the insurers, the head of the Commission's Medical Department for Decentralized Staff and the Medical Committee and that those authorities unanimously concluded that there was a permanent invalidity at the rate of 3%.

(c) The fact that the report of the Medical Committee was signed by the three doctors belonging to it shows perfectly well that they reached agreement as to the applicant's degree of permanent invalidity. If there had been disagreement one of the doctors could have indicated his reservations in the Committee's report; that was not done in this case.

(d) The Medical Committee delivered its opinion after taking into consideration the existing medical data as a whole, including those submitted by the applicant, and after examining him.

The duration of a medical examination does not determine its quality: it is normal for the technical tests to be carried out by ancillary medical staff.

(e) Doctor Elens in fact knows Italian, which enabled him to study the medical reports written in that language and to inform his colleagues of their contents.

The Medical Committee had no reason to repeat the examinations carried out in Pavia less than 15 days before it met.

(f) Dr Glaesener's report was written before the applicant's condition stabilized and is clearly based on criteria in force in the Grand Duchy of Luxembourg and alien to the provisions of the Staff Regulations; furthermore, Dr Glaesener was a member of the Medical Committee and fixed the degree of permanent invalidity at 3%, in agreement with his two colleagues.

(g) The qualifications of the members of the Medical Committee cannot be called in question.

(h) The allegation that the Medical Committee failed to take into account the alleged deterioration in the applicant's mental state is unfounded and is disproved by the committee's actual report.

In any event, according to previous decisions of the Court medical matters are solely a matter for the medical committees set up under the Rules.

(i) With regard to the alleged aggravation of the applicant's injuries after the contested decision it must be noted that he failed formally to notify the

administration thereof in accordance with Article 22 of the Rules. In any event, such an aggravation, even if it were proved to exist, does not constitute the subject-matter of this action.

2. Interest and the re-assessment of the lump sum

The *applicant* considers that he is entitled to interest at the legal rate on the sum payable to him by way of compensation as from the date of the accident, to the adjustment of that sum to take account of the fall in the value of money and to the calculation of the lump sum on the basis of the remuneration payable at the date of calculation.

(a) The lump sum becomes payable at the time of the accident and not several years later. Furthermore there has been wrongful delay in investigating the matter and in paying the lump sum.

The accident occurred on 21 February 1976 but the Commission took no action until 10 May 1978; subsequently a lump sum was offered but it was manifestly inadequate and was withdrawn when the applicant refused to accept an unfair estimation of his degree of invalidity. In the meantime money has fallen in value and rates of interest in the region of 15% are to be found on the money market.

The Commission should therefore be ordered to pay interest of at least 10% *per annum.*

(b) The rate of compensation itself should be increased; the Commission should at least take into consideration the remuneration now received by an official in the same post as that held by the applicant at the time of his accident.

Article 73 of the Staff Regulations must be interpreted equitably on the basis of general principles. Its basic purpose is to provide adequate compensation for an official who suffers bodily harm. It is unfair, having regard to the galloping inflation of money, to indemnify an official in 1980 on the basis of a salary of 1960. Article 73 seeks to prevent the compensation from being calculated on the basis of the present salary of an official who may have been promoted to another grade; it does not prohibit, and fairness urgently requires, the adjustment of the monthly salary to its present figure for the various posts which the applicant held in the 12 months preceding the accident. This principle has been unanimously recognized by the courts of the various Member States.

(c) The charging of interest and the revaluation of compensation do not overlap; the revalued amount represents only the present equivalent of an initial capital in "harder" currency and the interest represents the inability to enjoy that capital.

The *Commission* considers the heads of claim concerning the calculation of the compensation to be unfounded.

(a) With regard to the question of interest on the lump sum awarded under Article 73 of the Staff Regulations, the applicant is evidently confusing the principles applicable to reparation in an action for damages and those applicable in the context of a scheme of accident

insurance, which excludes the concept of liability and whose scope is limited by law or by contract.

The procedure followed by the Commission took place without unreasonable delay, having regard to the fact that the opinion of the Medical Committee shows that the applicant's condition did not stabilize until 25 February 1978; it is sufficient to recall the facts to verify that the Commission was in no way guilty of wrongful delay in investigating the matter. In the absence of any fault on the part of the administration the complaint must be rejected.

(b) Article 73 (2) of the Staff Regulations provides for the payment in the event of invalidity of a lump sum expressed in terms of the annual basic salary calculated on the basis of the monthly amounts of salary received during the 12 months before the accident. The applicant confuses the principles applicable to liability in civil matters with those applied in Article 73 of the Staff Regulations; that article provides for the payment of a fixed lump sum to all officials suffering from the permanent after-effects of an accident without regard to any question of liability.

The notions of "equity" or of "adequate compensation" cannot be taken into account in the context of a scheme of accident insurance pursuant to which the administration is required to compensate its employees for the consequences of any accident, whether or not it is related to the performance of his duties.

The applicant's argument certainly does not constitute a principle recognized by the courts of the various countries of the Community.

V — Oral procedure

The applicant, represented by Mr Wirion, and the Commission, represented by Mr Jacob, presented oral argument and gave their replies to the questions put by the Court at the hearing on 19 March 1981.

The *applicant* continued to maintain that the Medical Committee had not been properly constituted; the name of Dr Van Bever was "suggested" to Dr Glaesener, who was not entitled to abandon the choice of the third member of the Committee to the decision of the doctor appointed by the opposing party. Furthermore, the subjective effects of an accident, in particular mental or psychological problems, of such a nature as to affect fitness for work must be taken into consideration; Dr Glaesener was misled in this matter and signed the report against his real persuasions.

The *Commission* emphasizes that the third member of the Medical Committee was duly appointed by agreement between the first two doctors and the report was adopted unanimously by the three doctors. The documents before the Court show that the report of the Medical Committee took account of the applicant's general state of health including the subjective effects of his head injuries.

The Advocate General delivered his opinion at the sitting on 7 May 1981.

Decision

1 By application lodged at the Court Registry on 2 July 1980, Mr Morbelli, an official of the Commission of the European Communities assigned to the Office for Official Publications of the European Communities, Luxembourg, brought an action for the review of the degree of his permanent partial invalidity fixed pursuant to the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease enacted under Article 73 of the Staff Regulations of Officials (hereinafter referred to as "the Rules").

2 On 21 February 1976 the applicant suffered an accident in the post office near Luxembourg railway station caused by a faulty sliding door as a result of which he sustained head injuries. On 27 February 1976 he reported the accident, pursuant to Article 16 (1) of the Rules, for the purposes of the insurance provided under a contract entered into by the Community pursuant to Article 73 of the Staff Regulations.

3 On 12 May 1978, when the injuries appeared to have stabilized, the applicant was examined by the medical adviser appointed by agreement between the Commission and the insurer. That doctor came to the conclusion that the degree of permanent invalidity suffered by the applicant was 3 %. Accordingly the insurer assessed the compensation in accordance with the conditions in the policy at BFR 95 064. That offer was notified to the applicant on 6 July 1978 by the Commission.

4 The applicant refused that offer and the Commission sent him to the head of its Medical Department who, after re-examining him, reached the conclusion that the degree of invalidity determined by the above-mentioned medical adviser was correct. Consequently, in a letter dated 16 November 1978, the administration confirmed its original offer and again expressed its willingness to pay the sum of BFR 95 064.

5 The applicant refused to accept that offer and requested that his case be submitted to the Medical Committee provided for in Article 23 of the Rules. In accordance with that provision he appointed one of the members of that Committee, choosing a doctor who was already acquainted with his case through an action for damages against the Luxembourg State.

6 The Commission likewise appointed a member of the Medical Committee and the two doctors appointed the third member by agreement, in accordance with Article 23 of the Rules.

7 After studying the file and examining the applicant the Committee thus constituted delivered its opinion on 27 June 1979 in the following terms:

"The undersigned ... having examined and heard, in accordance with our instructions, Mr Giorgio Morbelli, an official of the EEC, Personnel No 3744, who suffered an accident on 21 February 1976, consider that his condition may be regarded as having stabilized.

Mr Morbelli must be considered to suffer from a degree of permanent partial invalidity of 3 % (three per cent) as at 25 February 1978. We have had regard to Mr Morbelli's general state of health.

We swear that we have performed our task properly, correctly and honestly.

Brussels, 27 June 1979.

(The names and signatures of the doctors)."

8 On 11 September 1979 the administration informed the applicant of the decision of the Medical Committee and repeated its offer of payment of the lump sum previously calculated. On 11 December 1979 the applicant submitted a complaint pursuant to Article 90 of the Staff Regulations of Officials in which he challenged the opinion of the Medical Committee, requested the setting up of a new committee and claimed from the institution, in addition to the lump sum to be fixed, payment of interest from the day of the accident and compensation for the loss which had in the meantime occurred through the fall in the value of money. A number of documents and medical reports were appended to the complaint; the file was later supplemented by the lodging of a medical report drawn up at the request of the applicant by Professor Zanalda, a physician in Turin.

9 The Commission did not reply to that complaint within the period laid down in the second subparagraph of Article 90 (2) of the Staff Regulations. However, by a letter of 30 May 1980 it expressly rejected the complaint and stated the reasons for its attitude. The application, which was lodged on 2 July 1980, is directed against that letter.

10 From the terms of the complaint through official channels, read in conjunction with the application, it is apparent that the purpose of the action is as follows:

— To obtain the annulment of the Commission's decision contained in the letter of 30 May 1980;

— To obtain a re-assessment of the degree of invalidity, either directly by the Court at 15 %, in accordance with the medico-legal opinion of Professor Zanalda, or following a new expert opinion to be ordered by the Court or by referring the matter to another medical committee;

— To obtain payment of interest from the date of the accident together with an adjustment of the lump sum on the basis of the fall in the value of money which has occurred whilst the proceedings have been pending.

Admissibility

11 The Commission contests the admissibility of the application on the ground that it is directed against a decision which merely confirmed a prior decision which was not challenged. It relies upon the fact that the application is directed against a decision of the Commission rejecting a complaint, a decision which was adopted after the expiry of the period of four months laid down by the last subparagraph of Article 90 (2) of the Staff Regulations, and not against the implied decision rejecting it, which was deemed to be taken on the expiry of that period.

12 In this case the act adversely affecting the applicant is the communication of 11 September 1979 whereby the Commission confirmed the report of the Medical Committee and notified the applicant of its decision. The applicant submitted a complaint which was received by the Secretariat-General of the Commission on 12 December 1979, thus setting in motion a period of four months within which the Commission had to reply. That period expired in principle on 12 May 1980. It is accordingly on that date that an implied decision to reject the complaint is deemed to have been taken, which caused a further period of three months to start to run, within which the applicant

was able to lodge an application in accordance with Article 91 (3) of the Staff Regulations.

13 It is apparent from the foregoing that the applicant submitted his application within the limitation period set in motion by the implied decision to reject his complaint. The Commission's objection of inadmissibility is accordingly based solely on the fact that the application is directed against the subsequent express decision instead of the implied decision of rejection.

14 That line of argument on the part of the Commission must be rejected since it is contrary to the good faith which must prevail in relations between the Commission and its employees, including their relations in legal proceedings. The Commission may not rely on the fact that it failed to reply to a complaint within the period laid down by the Staff Regulations. Since the decision of 30 May 1980 and the earlier implied decision to reject the complaint were the same in substance, it is irrelevant to establish which of those decisions the application formally contests in view of the fact that the adoption of the confirmatory measure and the lodging of the application occurred within the limitation period which started to run from the date of the implied decision rejecting the complaint.

Substance

15 In order to give judgment on the claims submitted by the applicant it is necessary first of all to clarify the scope of the Court's power to review decisions of the kind under challenge in the present proceedings. The scope and the limits of that power of review must be determined on the basis of the relevant provisions of the Treaty, the Staff Regulations of Officials and the Rules.

16 According to Article 179 of the EEC Treaty the Court has jurisdiction in any dispute between the Community and its servants "within the limits and under the conditions laid down in the Staff Regulations".

17 The rules drawn up under Article 73 of the Staff Regulations adopt the following procedure for the settlement of disputes which may arise in the application of the insurance scheme against the risk of accident and of occupational disease:

Article 19

"Decisions recognizing the accidental cause of an occurrence including a decision as to whether the occurrence is to be attributed to occupational or non-occupational risks, or decisions recognizing the occupational nature of a disease and 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 24."

Article 23

"(1) The Medical Committee shall consist of three doctors:

— One appointed by the appointing authority;

— One appointed by the official concerned or those entitled under him;

— One appointed by agreement between the first two doctors.

Where agreement cannot be reached on the appointment of the third doctor within a period of two months following appointment of the second doctor, the President of the Court of Justice of the European Communities shall appoint the third doctor at the request of either party.

On completing its proceedings, the Medical Committee shall set out its opinion in a report to be communicated to the appointing authority and to the official or those entitled under him."

18 Those provisions are intended to confer upon medical experts the task of appraising in their entirety medical questions which are relevant to the operation of the insurance scheme set up by the Rules. Under them each official is entitled to two examinations, the first by the doctor or doctors of

the institution and the second, in case of disagreement, by a medical committee composed in such a way that each of the parties is entitled to appoint a doctor of his choice, whilst the impartiality of the third doctor is guaranteed by the requirement that he be appointed by agreement between the first two doctors appointed, or, where agreement cannot be reached, by the President of the Court of Justice.

19 The organization of that complaints procedure and the care with which the provisions quoted strive to ensure the balance and objectivity of medical committees are evidence of a desire to settle definitively at that stage, in case of dispute, all questions of a medical nature.

20 In those circumstances the remedies provided by the Staff Regulations may in principle be employed only in order to obtain a review by the Court confined to questions concerning the constitution and proper functioning of the committees provided for by Articles 19 and 23 of the Rules. On the other hand, the Court's review may not extend to medical appraisals properly so called which must be considered definitive, provided that they are adopted in accordance with the correct procedure.

21 It is in the light of these principles that the complaints submitted by the applicant must be examined.

22 First, the applicant submits various complaints concerning the constitution of the Medical Committee, the qualifications of its members and the reality of the agreement reached within that Committee. It is argued that the third member of the Committee was irregularly chosen since his appointment was suggested by the Commission's doctor to the doctor appointed by the applicant who did not authorize that choice or approve it. The applicant further calls in question the qualifications both of the doctor appointed by the Commission and of the third doctor, contrasting them with the high qualifications of the various specialists which he himself consulted and whom he classifies as "eminent authorities in the field of injuries to the brain". Finally, he claims that the doctor appointed by him was misled and that he signed the report "against his real persuasions".

23 Those allegations must be dismissed as unfounded in fact and in law.

24 It is not in dispute that the applicant duly appointed the doctor whom he was entitled to appoint under Article 23 of the Rules. He was not required to take any part in the choice of the doctor appointed by the Commission and the criticisms made by him as to the qualifications of that doctor must thus be dismissed as entirely unfounded. With regard to the appointment of the third doctor it is sufficient to refer to Article 23 of the Rules which provides that the third doctor is to be appointed "by agreement between the first two doctors". It follows from this that the doctor chosen by the applicant was not required to take instructions from the applicant or seek his approval. The fact that the name of the third doctor was suggested by the Commission's doctor is a normal practice in this connexion since either of the first two doctors is free to make suggestions as to the choice of the third, the sole requirement of the Rules being that the appointment of that third doctor should be by "agreement" between the first two doctors, as undoubtedly happened in this case.

25 The allegation that the doctor appointed by the applicant signed the report only against his real persuasions appears to be based on the consideration that in a previous report drawn up for the purpose of an action for damages against the Luxembourg State he had expressed the opinion that the applicant's degree of invalidity was higher. That view, which was reached at another time and in a different context, cannot in any way bind that doctor who, according to the declarations made in the course of the inquiry into the case, ultimately concurred in the opinion of the other two members of the Medical Committee. Whatever doubts he may have entertained, the adoption of the opinion of the Committee, whether unanimously or by a majority, constitutes a final decision which cannot be called in question.

26 Secondly, the applicant claims that the examination procedure followed by the Medical Committee was inadequate. It had only carried out a "summary examination" lasting 30 minutes which bore no comparison with the thorough examinations which he underwent privately; certain preliminary

tests were carried out by ancillary medical staff; finally, he doubts whether all the members of the Committee were able to understand the finer points of the medical reports which he had placed on his file and which were written in Italian.

27 Those affirmations are not of such a nature as to cast any doubt whatever on the proper conduct of the Medical Committee's proceedings. It is normal medical practice for certain preliminary examinations to be carried out by ancillary staff. Furthermore, it is not contested that the Committee had before it the whole medical file which included the results of the thorough examinations carried out at an earlier stage of the procedure by the Commission's doctors. Finally, the Committee remained entitled to determine the nature and length of the personal examination of the applicant. It was also for the Committee to assess the appropriateness of taking into consideration the medical reports which the applicant himself placed on his file and to resolve the translation problems which such reports might entail for one or other of its members.

28 Finally, the applicant claims that the Medical Committee took into consideration only the "objective" elements of his invalidity and entirely disregarded the "subjective" effects of the accident. The rate of 3% is said to be manifestly insufficient to take account of the "serious deterioration in the mental state" of the applicant and of "hypochondria caused by the accident". According to the applicant, the rate of 15%, at which Professor Zanalda arrived by taking account of the subjective factor, represents a more appropriate level of compensation.

29 On this question it is sufficient to remark that, in assessing the degree of invalidity at 3%, the Medical Committee expressly stated that it "had regard to the general state of health" of the applicant. It is thus clear that the Committee considered all aspects of the case of invalidity in question and that it did not consider that the physical and mental after-effects of the accident justified finding a degree of invalidity in excess of 3%. Having regard to the foregoing considerations that appraisal must be considered final and conclusive.

30 With regard to the request that the Court should order a new expert opinion to be obtained, that claim must be dismissed as exceeding the bounds of the judicial review which the Court is able to perform in this case.

31 It is clear from the foregoing that the conclusions and arguments relating to the work of the Medical Committee must be dismissed in their entirety.

The claim for adjustment of the compensation awarded

32 Finally, the applicant claims that the lump sum paid by the Commission should attract interest as from the date of the accident and that it should be adjusted by some means or other in order to take account of the fall in the value of money.

33 As the Commission rightly states, that claim is based on a confusion between reparation for loss in the context of an action for damages and the principles applicable in the context of accident insurance.

34 Under the insurance provided for by the Staff Regulations the compensation payable in the event of invalidity is in the nature of a flat-rate award assessed on the basis of the lasting effects of an accident. Interest may thus be claimed only where the person entitled to that award is able to establish that payment thereof was improperly delayed by the administration.

35 In this case it is clear that the Commission offered the applicant the compensation payable under the terms of the insurance policy as soon as it was possible to consider that his condition had stabilized and that the appropriate examinations had been concluded. In challenging that decision the applicant took upon himself the risk of delay inevitably associated with the settlement of such a dispute. He may not cast the blame for that upon the Commission.

36 It is thus necessary to dismiss the claim for interest and the claim for adjustment of the compensation offered by the Commission.

Costs

37 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application;**

2. **Orders the parties to bear their own costs.**

Pescatore Touffait Due

Delivered in open court in Luxembourg on 21 May 1981.

A. Van Houtte
Registrar

P. Pescatore
President of the Second Chamber