OPINION OF MR ADVOCATE GENERAL DA CRUZ VILAÇA
delivered on 27 October 1987 *

Mr President,
Members of the Court,

I — The subject-matter of the action and the background to the dispute

1. The applicant, an official of the Court of Auditors, seeks the annulment of a report drawn up by a Medical Committee on 5 December 1985, assessing at 9% the degree of invalidity suffered by him as a result of a road accident which he sustained on 8 December 1980 and, consequently, the appointment of a special medical committee to re-examine his degree of invalidity.

2. The applicant also claims that the Court of Auditors should pay him default interest on the amounts due to him from 9 December 1983, the date on which, according to the medical experts, the sequelae were consolidated.

3. The contested report is the last in a series of medical reports drawn up after the accident, from the sequelae of which the applicant is still suffering.

4. After his state of health had been assessed by various specialists, who assessed his degree of invalidity at between 15% and 40%, the applicant was examined by a doctor chosen in accordance with Article 18 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'), who (in a report dated 15 November 1983) assessed his degree of invalidity at 6%. Accordingly, the defendant paid him, on 1 August 1984, an amount corresponding to that degree of invalidity, that is to say BFR 930 030.

5. As he was not satisfied with that report, the applicant requested that a Medical Committee be constituted in accordance with Article 21 of the Rules; under Article 23 the Committee is to consist of one doctor appointed by the applicant, one appointed by the defendant and a third one appointed by agreement between the first two.

6. In its report the Medical Committee concluded that the degree of invalidity suffered by the applicant should be assessed at 9%, and the Court of Auditors accordingly paid the applicant the difference between that and the original 6%, namely BFR 466 016.

7. The applicant did not accept that conclusion and on 9 June 1986 submitted a complaint in which he requested the annulment of the Medical Committee's report, the payment of default interest and the appointment of a special medical committee to re-examine his case.

8. On the defendant's rejection of that request, the applicant brought the present action.

* Translated from the Portuguese.

II — Examination of the arguments of the parties

9. The Court has already clearly stated [1] that in principle its review of decisions fixing the degree of invalidity of an official must be confined to questions concerning the constitution and functioning of medical committees and may not extend to medical appraisals made by the members thereof.

10. The Court has stated — in proceedings concerning the concept of 'occupational disease' within the meaning of Article 73 of the Staff Regulations [2] — that it has jurisdiction solely 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'.

11. In the same way, the Court [3] considered that it had jurisdiction to 'examine whether an expert who has been consulted kept within the limits of the relevant rules when referring in his opinion to an occupational disease'.

12. Neither of those situations arises, however, in the present case, in which the applicant merely alleges that there were irregularities in the composition and functioning of the Medical Committee.

(a) *The constitution of the Medical Committee*

13. The applicant alleges that the doctor appointed to the Medical Committee by the defendant does not have the independence necessary to perform his duties, since he not only drew up the first medical report, contested by the applicant, but also acted as the medical expert of the insurance company concerned. In spite of that, it was he who coordinated the work of the Committee.

14. However, there is no rule or principle of law to prevent the doctor who carried out the examination provided for in Article 18 of the Rules from being a member of the Medical Committee. Moreover, in the absence of any specific evidence calling in question the impartiality of that member of the Committee in the exercise of his clinical functions, the fact that he is also the insurance company's doctor is not sufficient to cast doubt on the way in which he carried out his duties.

15. Furthermore, the Court has already expressly held [4] that those very circumstances are entirely legitimate and not capable of adversely affecting the interests of officials, and therefore they do not constitute adequate grounds for officials to challenge the composition of the Committee, especially as the Rules do not provide for any right of objection to an appointment. [5]

1 — Judgment of 21 May 1981 in Case 156/80 *Morbelli* v *Commission* [1981] ECR 1357, paragraph 20; judgment of 29 November 1984 in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraph 11.

2 — Judgment of 26 January 1984 in Case 189/82 *Seiler* v *Council* [1984] ECR 229, at p. 241.

3 — Judgment of 20 June 1985 in Case 118/84 *Commission* v *Royale Belge* [1985] ECR 1889, paragraph 17.

4 — Judgment of 14 July 1981 in Case 186/80 *Suss* v *Commission* [1981] ECR 2041, paragraphs 10 and 11.

5 — Judgment of 14 July 1981 in *Suss*, paragraph 9.

16. Moreover, the defendant chose to be its representative on the Committee — as it was entitled to do under Article 23 (1) of the Rules — the doctor in whom it had confidence; as the Court also stated in *Morbelli* (at paragraph 24), the applicant 'was not required to take any part in the choice of the doctor' appointed by the institution.

17. In addition, the applicant duly chose the doctor whom he was entitled to appoint under Article 23, and the third doctor was appointed, in accordance with that provision, by agreement between the other two members of the Committee.

18. Thus the necessary balance and objectivity forming the foundation of the complaints procedure set out in Articles 19 to 23 of the Rules, which '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',[6] were preserved.

19. Of course, by agreeing to be a member of the Committee, the doctor appointed by the defendant agreed to weigh his views against those of two colleagues, and it is not surprising that the Committee altered, in a manner favourable to the applicant, the degree of invalidity attributed to him in the first report (from 6% to 9%). Furthermore, the doctor appointed by the applicant had also examined him before and had on that occasion (on 20 September 1983) considered that the degree of invalidity was higher than that finally fixed by the Medical Committee with his agreement.

6 — Judgment of 29 November 1984 in *Suss* v *Commission* [1984] ECR 4029, paragraph 11.

20. Indeed, it is common ground between the parties that the final report was drawn up by the doctor chosen by agreement and was signed by all the members without reservation; that confirms, regardless of who coordinated the proceedings (as to which the applicant's statement constitutes the only evidence available) the propriety of the constitution and proceedings of the Committee.

(b) *The functioning of the Medical Committee*

21. First of all, the applicant complains that he was not given an opportunity of putting his own views to the Medical Committee, in order to 'contradict opinions which had been given without due consideration and were difficult to justify from an ethical point of view, by presenting the opinion of a doctor whom he had consulted'.

22. Secondly, the applicant alleges that the Committee's report refers to a 'scan' which was never carried out: the only examinations carried out were X-rays and preparation of a tomogram.

23. Thirdly, the applicant states that the Committee did not take account of the opinions of various doctors previously consulted by him and relied essentially on the report of a neurologist which had already been accepted by the doctor appointed by the Court of Auditors and to which the latter had referred when preparing the contested report of 15 November 1983. The applicant also refers to the discrepancy in dates between that report

and the neurologist's report, and states that it is strange that the latter, bearing a later date (22-23 December 1983), was used as the basis for the former. All this demonstrates the lack of order in the conduct of the procedure.

24. Those allegations call for the following brief observations:

(1) Under the procedure for fixing the degree of permanent invalidity laid down in Article 21 of the Rules, the official or his representatives are notified of the appointing authority's draft decision and of the findings of the doctor appointed under Article 18 and, if he so requests, the full medical report is communicated to a doctor chosen by him. The official or his representatives, together with his doctor, may examine those documents and, where appropriate, may request that a Medical Committee be established. The Rules do not provide for the Committee to hear the official and there would be no purpose in imposing such a requirement, in the light of the composition of the Committee and the nature of its work, which the Court has held must be organized in such a way as 'to settle definitively at that stage, in case of dispute, all questions of a medical nature' (judgment of 29 November 1984 in *Suss*, at paragraph 11).

(2) Within the Committee, the official's interests are safeguarded by the doctor enjoying his confidence, who is appointed by him and who in this case endorsed all the Committee's findings. As has been shown, the tripartite membership of the Committee guarantees the impartiality of its proceedings and the balance of the interests at issue.

(3) The Court has held[7] that 'the Committee's task, which consists in considering entirely objectively and independently medical questions, requires that it be allowed complete freedom of appraisal'. In particular, it is for the Committee to assess 'the appropriateness of taking into consideration the medical reports which the applicant himself placed on his file';[8] it is clear from the Committee's report that it not only took into account but also critically assessed the result of the reports obtained previously. Moreover, it was for the Committee alone to decide whether or not a fresh neurological examination should be carried out, being entitled, by virtue of its unrestricted power of appraisal on medical matters, to accept the findings of the neurologist consulted previously as correct. Also, in the exercise of its functional and professional independence, the Committee was the sole judge of whether or not it was appropriate to carry out further tests; on that point, the Committee's report refers to the results of a 'scan', which the defendant's medical officer confirmed had been carried out (see reply to the complaint), and it is not for the Court to dispute the medical terminology used to describe that examination.

(4) The discrepancy in dates referred to by the applicant between the report of 15 November 1983 and the neurologist's report cannot have any effect on the validity of the contested report of the Medical Committee; it is therefore unnecessary to consider whether that

7 — Judgment of 29 November 1984 in *Suss*, op. cit., paragraph 13.

8 — Judgment in *Morbelli*, op. cit., paragraph 27.

discrepancy might be attributable to a logical cause (or merely to an accident).

25. For the foregoing reasons, it must be concluded that the complaint relating to the functioning of the Medical Committee is unfounded.

(c) *The findings of the Medical Committee*

26. Referring to the judgments of the Court (of 18 March 1982 in *Chaumont-Barthel* v *Parliament*[9] and of 8 October 1986 in *Leussink* v *Commission*[10]), the applicant maintains that no account was taken of the distinction between 'compensation for permanent invalidity and compensation (for damage) of a non-material nature' or between 'the economic consequences and consequences as far as family and social relationships are concerned'; in particular, he alleges that the compensation awarded (corresponding to the degree of incapacity determined) 'at best, compensates for the anatomical and functional invalidity, albeit inadequately, but wholly neglects the invalidity of a psychological nature', caused in particular by a sinistrosis connected with the accident.

27. Those allegations seem to me to be the result of a misunderstanding which should be clarified.

28. A clear distinction should in fact be drawn — and that was the Court's intention in the two judgments cited by the applicant — between compensation for total or partial permanent invalidity sustained by an official as a result of an accident or an occupational disease (Article 12 of the Rules), compensation 'in respect of any injury or permanent disfigurement which, although not affecting his capacity for work, constitutes a physical defect and has an adverse affect on his social relations' (Article 14 of the Rules) and additional compensation, not provided for in the Rules, payable 'where the institution is responsible for the accident according to general law and the benefits payable under the staff insurance scheme are insufficient to provide full compensation for the injury suffered' (*Leussink*, paragraph 13 of the judgment).

29. The sole issue in the present case is the assessment of the degree of permanent invalidity sustained as a result of the accident, in accordance with the procedure laid down in Articles 18 to 23 of the Rules.

30. In that regard, it is clear from its report that the Medical Committee considered 'the real post-traumatic consequences of the accident', took into account the applicant's subjective complaints and concluded that they were not 'post-traumatic sequelae but infirmities of constitutional origin'; as regards the alleged diminution in the ability to concentrate, the Committee did not consider that that could reduce the applicant's capacity to work, and it deferred to the report drawn up by the neurologist who had undertaken a general investigation of the matters falling within his terms of reference.

31. Under those circumstances, the conclusion of the Medical Committee's report which assessed the applicant's degree of invalidity at 9%, reflecting its general appraisal of the applicant's state of health in relation to his capacity to work, must be considered 'final and conclusive', as the Court stated in paragraph 29 of its judgment in *Morbelli*.

9 — Case 103/81 [1982] ECR 1003, paragraph 9.

10 — Joined Cases 169/83 and 136/84 [1986] ECR 2801, paragraph 18.

III — Conclusion

32. On the basis of the foregoing considerations I consider that, since all the applicant's complaints are unfounded, the Court should dismiss the application for the annulment of the contested report and, consequently, the claim for default interest and for the appointment of a new medical committee, particularly in view of the fact that the latter is not provided for in the Staff Regulations or the Rules.

33. In accordance with Article 69 (2) in conjunction with Article 70 of the Rules of Procedure, each of the parties should bear their own costs.