ORDER OF THE COURT (Fifth Chamber)
11 February 2004 *

In Case C-180/03 P,

Benito Latino, a former official of the Commission of the European Communities, residing at Sérignac-Peboudou (France), represented by J.R. Iturriagagoitia Bassas and K. Delvolvé, avocats,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (First Chamber) of 26 February 2003 in Case T-145/01 *Latino* v *Commission* [2003] ECR-SC I-A-59 and II-357, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by J. Currall, acting as Agent, assisted by J.-L. Fagnart, avocat

* Language of the case: French.

THE COURT (Fifth Chamber),

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

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

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion

makes the following

Order

1 By application lodged at the Court Registry on 25 April 2003, Mr Latino brought an appeal under Article 56 of the Statute of the Court of Justice against the judgment of the Court of First Instance of 26 February 2003 in Case T-145/01 *Latino* v *Commission* [2003] ECR-SC I-A-59 and II-357 (hereinafter the 'contested judgment') in which that Court, first, annulled the decision of the Commission of the European Communities of 10 August 2000 rejecting his application seeking acknowledgment of the occupational origin of his arthrosis-related damage (hereinafter the 'contested decision'), but only in so far as the decision charged to him the fees and incidental expenses of the doctor appointed by him to the Medical Committee and half of the fees and incidental expenses of the third doctor appointed to that Committee, and, secondly, dismissed the remainder of his application.

Legal background

2 The first subparagraph of Article 73(1) of the Staff Regulations of Officials of the European Communities (hereinafter the 'Staff Regulations') provides that 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.

3 Article 73(2)(b) and (c) of the Staff Regulations states that the benefits payable 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).

4 The Rules on the insurance of officials of the European Communities against the risk of accident and occupational disease (hereinafter the 'Rules on Insurance') specify, as required by Article 73 of the Staff Regulations, the conditions under which the official is insured against the risks of accident and occupational disease.

5 Article 3 of those rules states that:

'1. The diseases contained in the "European List of Occupational Diseases" annexed to the Commission Recommendation of 22 May 1990 and to any

supplements thereto shall be considered occupational diseases to the extent to which the official has been exposed to the risk of contracting them in the performance of his duties with the European Communities.

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.'

6 The first subparagraph of Article 17(1) of the Rules on Insurance states that an official who requests application of those rules on grounds of an occupational disease must submit a statement to the administration of the institution to which he belongs within a reasonable period following the onset of the disease or the date on which it was diagnosed for the first time.

7 The first subparagraph of Article 17(2) of those rules provides that the administration is to hold an inquiry in order to obtain all the particulars necessary to determine the nature of the disease, whether it has resulted from the official's occupation, and also the circumstances in which it arose. The third subparagraph states that after seeing the report drawn up following the inquiry, the doctor(s) appointed by the institutions are to state his or their findings as provided for in Article 19 of those rules.

8 Article 18 of the Rules on Insurance permits the administration to obtain any expert medical opinion necessary for the implementation of the rules.

9 Article 19 of the Rules on Insurance states that decisions recognising the occupational nature of a disease and assessing the degree of permanent invalidity are to be taken by the appointing authority in accordance with the procedure laid down in Article 21 of the rules, 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 23 of the rules.

10 The first subparagraph of Article 21 of the Rules on Insurance states that, before taking a decision pursuant to Article 19, the appointing authority is to notify the official or those entitled under him of the draft decision and of the findings of the doctor(s) appointed by the institution. The second subparagraph of Article 21 provides that within a period of 60 days the official may request that the Medical Committee provided for in Article 23 deliver its opinion.

11 Under the first subparagraph of Article 23(1) of the Rules on Insurance, the Medical Committee is to consist of three doctors, of whom one is to be appointed by the appointing authority, one is to be appointed by the official concerned, and one is to be appointed by agreement between the first two doctors. The third subparagraph of Article 23(1) provides that on completing its proceedings, the Medical Committee is to set out its opinion in a report to be communicated to the appointing authority and to the official.

The facts

12 The facts of the case, as set out in the contested judgment, may be summarised as follows.

13 The applicant took up his duties in the service of the European Communities in 1964.

14 From 1990 to 1994, as the result of an initial medical opinion relating to arthrosis-related, cervical, and lumbar problems suffered by the applicant, the latter carried out his duties in a sitting position and was relieved of the obligation to carry heavy weights.

15 By Commission decision of 7 June 1994, the applicant was granted an invalidity pension under Article 78 of the Staff Regulations with effect from 1 July 1994.

16 Following a request by the applicant for the recognition of the occupational nature of a respiratory disease from which he suffered, the Commission held an inquiry, the result of which was that Dr Dalem, the doctor appointed by that institution, stated in relation to the arthrosis-related damage that it did not appear to him that that damage was the result of an occupational disease. On the basis of those findings, and of the opinion of Professor Bartsch, the Commission, in a draft decision of 9 February 1996, refused to recognise the arthrosis-related damage as having an occupational origin.

17 On 7 May 1996, the applicant submitted a fresh request for the recognition of the occupational nature of his arthrosis-related damage. Although the Commission took the view that this had already been considered by the previous inquiry, it accepted that request, which sought in particular a finding that the Medical Committee should treat the pulmonary symptoms and the arthrosis-related damage as arising from separate diseases.

18 The new Medical Committee appointed for that purpose held that the applicant was suffering from 'degenerative arthrosis-related damage', but that 'there was a

lack of sufficient evidence to show that this originated in the course of or in connection with the performance of duties with the Communities'. In the light of those findings, the Commission, by letter of 25 November 1998, confirmed its draft decision of 9 February 1996, refusing to accept that the arthrosis-related damage from which the applicant suffered had an occupational origin.

19 On 15 January 1999, the applicant submitted a complaint against that decision. On 29 March 1999, following a meeting of the 'interservices group' of the Commission, he lodged a summary of his complaint.

20 The Commission allowed the complaint, and referred the matter once again to the Medical Committee, requesting it to draw up an additional, more detailed, report, particularly in relation to the question of whether the performance of the applicant's duties had contributed to the emergence, the development, the aggravation or the acceleration of his arthrosis-related damage.

21 In its opinion issued on 18 April 2000, the Medical Committee concluded that:

'In the current state of medical knowledge, it cannot be held to be proved that this polyarthrosis originated in the course of or in connection with the performance of his duties with the Communities. Nor is it proved that the performance of those duties contributed to the emergence, the development, the aggravation or the acceleration of the degenerative symptoms with which Mr Benito Latino presented. Objectivity requires the Committee to say that while the influence of occupational activities on the degenerative symptoms is not proved, it cannot be entirely ruled out. But the Committee points out that the question referred to it was not whether an influence of this kind is possible, but whether it is proved.'

22 By letter of 10 August 2000, the Commission notified the applicant of the opinion of the Medical Committee and confirmed its draft decision of 9 February 1996, which has now become the contested decision. On 10 November 2000, the applicant submitted a complaint against that decision. That complaint has not been expressly rejected.

23 By application lodged at the Registry of the Court of First Instance on 20 June 2001, the applicant brought an action for annulment of the contested decision.

The contested judgment

24 In support of his application to the Court of First Instance, the applicant alleged, first, infringement of Article 73 of the Staff Regulations citing the purportedly incomprehensible and incoherent nature of the Medical Committee's opinion. Secondly, he alleged infringement of that article of the Staff Regulations, of Article 3(2) of the Rules on Insurance, and failure to observe the duty to have regard to the welfare of officials and the principle of proportionality, in connection with the purported impossibility of establishing scientific proof of the occupational origin of the arthrosis-related damage. Thirdly, he alleged that the Commission had infringed Article 21 of the Rules on Insurance.

25 By the contested judgment, the Court of First Instance annulled the contested decision, in so far as it charged to the applicant the fees and incidental expenses of the doctor appointed by him to the Medical Committee and half of the fees and

incidental expenses of the third doctor appointed to that committee, and dismissed the remainder of the application.

26 In essence, as regards the applicant's first plea, alleging infringement of Article 73 of the Staff Regulations and citing the purportedly incomprehensible and incoherent nature of the Medical Committee's opinion, the Court of First Instance, at paragraphs 47 to 67 of the contested judgment, dismissed that plea, holding that the successive opinions of the Medical Committee were entirely valid, having regard in particular to the weight of expert opinion and to the medical reports relating to the applicant on which those opinions were based and to the difficulty of assessing the causes of the illness, which involved a 'multifactorial' disease.

27 As regards the second plea, alleging infringement of Article 73 of the Staff Regulations, of Article 3(2) of the Rules on Insurance and failure to observe the duty to have regard to the welfare of officials and the principle of proportionality, in conncection with the alleged impossibility of proving the occupational origin of the arthrosis-related damage in question, the Court of First Instance held, at paragraphs 82 to 90 of the contested judgment, that, having regard to the principle that the onus lay on the applicant to prove to the requisite legal standard that the disease from which he was suffering had an occupational origin, he had failed to satisfy those evidential requirements.

28 The applicant's third plea, alleging infringement of Article 21 of the Rules on Insurance, was also dismissed as unfounded by the Court of First Instance, which held that the proceedings before the Commission made reference, from the time of the adoption of the draft decision of 9 February 1996, to arthrosis-related damage, and, accordingly, that the Commission was entitled, without being in breach of that provision, to refuse to adopt a second draft decision following the applicant's new request of 7 May 1996.

The appeal

29 In his appeal, the applicant claims that the Court should:

— principally, declare that the appeal is admissible and well founded, and set aside the second point of the operative part of the contested judgment;

— in the alternative, annul the contested decision;

— in any event, make an order as to costs in accordance with the applicable provisions of the Rules of Procedure.

30 The Commission contends that the Court should:

— declare that the appeal is inadmissible, or, failing that, unfounded;

— decide, in accordance with Article 122 of the Rules of Procedure, that the applicant should bear the whole of the costs of the appeal.

The pleas in law on which the appeal is based

31 In support of his appeal, Mr Latino relies on two pleas in law, claiming, first, that the Court of First Instance failed to apply the general principle of law *semper in dubiis benigniora praeferanda sunt*, and, second, that the Court of First Instance failed to take account of the limits of the competence of the Medical Committees.

32 By his first plea, Mr Latino claims that the Court of First Instance failed to consider the application to the present case of the general principle of law *semper in dubiis benigniora praeferanda sunt*. He translates this principle, taken from the Code of the Emperor Justinian, as meaning that in case of doubt, the most favourable solution is to be preferred and provides several examples, taken in particular from criminal law, in which this principle may fall to be taken into account. He argues that the principle must be regarded as part of the modern legal culture. The application of that general legal principle would require a broad interpretation of certain provisions of secondary Community law, including in particular Article 3(2) of the Rules on Insurance.

33 By his second plea, Mr Latino claims that in the contested judgment the Court of First Instance also failed to consider an alleged failure to take into account the limits of the competence of the Medical Committees.

34 The second plea is in two parts. In the first, the applicant argues that the Medical Committee, following its first opinion issued on 25 March 1998, had exhausted its competence. In the second, the applicant calls into question the impartiality of some of the members of that Medical Committee.

Assessment

35 It should be noted at the outset that, under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time by reasoned order dismiss the appeal in whole or in part.

The first plea

36 As regards the first plea, the applicant considers that the contested judgment failed to apply the general principle of law *semper in dubiis benigniora praeferanda sunt*, which, according to him, would have the result that in case of doubt as to the occupational origin of the disease from which he suffers, his claim should be accepted as being well founded.

37 Such a broad interpretation of that principle cannot in any event be accepted.

38 First, such an interpretation is incompatible with the wording of Article 3(2) of the Rules on Insurance. That provision, which takes the form of a rule of positive law and which, as such, prevails over the principle on which the applicant relies, clearly sets a precise limit on recognition of diseases as occupational in origin, by requiring that, in the case of diseases other than those included in the list annexed

to Commission Recommendation 90/326/EEC of 22 May 1990 to the Member States concerning the adoption of a European schedule of occupational diseases (OJ 1990 L 160, p. 39), such recognition is to be subject to the requirement that it be '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'. That provision precludes the adoption of the broad interpretation put forward by the applicant, as it is the Community legislature itself which has restricted the scope of the presumption in favour of the official concerned. According to those rules, the onus is on the latter to prove the existence of a causal link between the performance of his duties and the disease. The broad interpretation suggested by the applicant would have the effect of reversing the onus of proof, which rests in principle on the person seeking to be covered by those rules.

39 Secondly, it should be noted that the purpose of Article 3(2) of the Rules on Insurance is to supplement Article 3(1), which contains a presumption in favour of the official as regards certain diseases contained in the European list of occupational diseases annexed to Recommendation 90/326. That list therefore sets an initial limit on the application of the principle relied on by the applicant and any claim that the definition of occupational disease should be broadly construed. Where a disease is not included in that list, proof of a causal link between the performance of duties and that disease is necessary in order for the occupational origin of the disease to be recognised, and the competent administrative authority cannot be required to accept the occupational character of such a disease solely on the ground that there is doubt as to its origin.

40 In those circumstances, the first plea in law should be dismissed as being plainly unfounded.

The second plea in law

41 As regards the second plea in law, it should be pointed out that Article 118 of the Rules of Procedure of the Court, read in conjunction with the first subparagraph of Article 42(2) of those Rules, prohibits in principle the introduction of new pleas in law in the course of proceedings, unless those pleas are based on legal and factual material that has arisen in the course of those proceedings (order in Case C-352/99 P *Eridania and Others* v *Council* [2001] ECR I-5037, paragraph 52).

42 It is clear from the Court's case-law that in an appeal the Court's jurisdiction is confined to review of the findings of law on the pleas argued before the Court of First Instance (see the order, cited above, in *Eridania and Others* v *Council*, paragraph 53; judgment in Case C-121/01 P *O'Hannrachain* v *Parliament* [2003] ECR I-5539, paragraph 39).

43 The two parts of the second plea relied on by the applicant in support of his appeal must be regarded as being new pleas, submitted for the first time for consideration by the Court of Justice. It is not in dispute that before the Court of First Instance it formed no part of the applicant's case that following its first opinion issued on 25 November 1998, the Medical Committee had exhausted its competence, nor that the latter was a 'court' which failed to observe the necessary requirement of impartiality which applies to all courts and tribunals.

44 It follows that this plea, which did not form part of the application before the Court of First Instance, is a new plea, submitted for the first time before the Court of Justice, and is accordingly inadmissible.

45 In accordance with Article 119 of the Rules of Procedure, the appeal should therefore be dismissed as being clearly unfounded, as regards the first plea in law, and clearly inadmissible, as regards the second plea.

Costs

46 Under Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118 thereof, 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 the applicant to be ordered to pay the costs and the latter has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby orders:

1. The appeal is dismissed.

2. Mr Latino shall bear the costs.

Luxembourg, 11 February 2004.

R. Grass

Registrar

G. Gulmann

President of the Fifth Chamber