pension provided for in Article 78, which is only awarded in the case of incapacity for work. The benefit provided for in Article 73, on the other hand, is paid whatever the capacity of the person concerned to continue to perform his duties. Partial permanent invalidity gives rise to a right to the benefit even if it does not in any way affect the ability of the person concerned to perform his duties. Moreover, the degree of invalidity, which is one of the factors which determine the amount of the benefit, is fixed at flat rates in accordance with a general scale which does not take account of the nature of the official's employment. A given category of injuries, which in one official amounts to total incapacity for work but does not affect the capacity for work of another official, gives a right to the same benefit in each case. Although it is true that in a general way the degree of incapacity for work forms the basis for the degrees of invalidity fixed by the scale it cannot be said that that has been the only decisive criterion and it is in any event established that the degree of incapacity is of no importance in determining, in each particular case, the degree of invalidity. In these circumstances Article 73 cannot be interpreted by reference to comparable provisions in the laws of the Member States, special features and conditions of application whereof are, moreover, different from those of the provision in dispute. The result is that invalidity within the meaning of Article 73 must be interpreted as referring to the impairment of the bodily or mental health of the official irrespective of any degree of incapacity for work which may result from the accident.

3. Since there is no provision in the Staff Regulations of Officials or in the insurance policy which expressly provides for the payment of interest, delay in payment of the invalidity benefit only imposes an obligation on the institution to pay interest if the official establishes that such delay constitutes on the part of the institution a wrongful act or omission which has in fact caused him damage.

4. The benefit provided for in Article 73 of the Staff Regulations of Officials is only payable as from the date on which the degree of permanent invalidity has been finally fixed.

In Case 152/77

MISS B., an official of the Commission of the European Communities, represented by L. Jaconis and G. Bettoni, Advocates at the Rome Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, Centre Louvigny b/IV, 34 Rue Philippe II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Giorgio Pincherle, acting as Agent, and Wilma Viscardini, Advocate at the Padua Bar, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION, principally for an order for the Commission to pay to the applicant under Article 73 of the Staff Regulations of Officials an invalidity benefit corresponding to 100% invalidity,

THE COURT (Second Chamber)

composed of: Lord Mackenzie Stuart, President of Chamber, M. Sørensen and A. Touffait, Judges,

Advocate General: G. Reischl
Registrar: J. A. Pompe, Deputy Registrar

give the following

JUDGMENT

Facts and Issues

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

I — Facts and procedure

1. On 24 February 1966 the applicant was recruited as a temporary servant of the High Authority of the ECSC in Luxembourg, in Category B, Grade 3. She served as secretary to the President of the High Authority. She was appointed a probationer in Grade 5 of the same category in the Directorate General for Regional Policy of the EEC with effect from 4 July 1967 and was subsequently established in that grade.

2. On 3 January 1968 the appli. ..t fell in the offices of the Commission because too much wax polish had been applied to the floor. She was admitted to hospital as the result of a diagnosis which established that she had a "serious triple malleolar fracture with extensive bone fragmentation and a dislocation of the right foot" and she underwent surgery in order to reduce the fracture. She has never completely recovered. After the accident she was transferred to Brussels but was unable to resume work, except for short periods. She is at present on sick leave.

By letter of 15 March 1972 the Commission informed the applicant that in accordance with the terms of Article 73 of the Staff Regulations of Officials she had been recognized as suffering from partial permanent invalidity of 9%. The applicant contested that decision by an application to the Court in which she asked, principally, that she be recognized as suffering from a higher degree of invalidity. By a letter of 17 October 1972 the Commission informed the applicant that it had been "decided to have the degree of partial permanent invalidity established by a doctor ... not belonging to the institution, to be appointed by mutual agreement between the medical adviser to the said institution and ... the doctor attending" the applicant. The Court accordingly declared in its judgment in that case that it "cannot intervene before the arbitration procedure ... has been exhausted". In a report dated 21 February 1975 Dr Nicola Vita, appointed as arbitrator, expressed the following opinion:

"1. Miss B. is suffering from the effects and consequences of, first, a triple malleolar fracture with subsequent dislocation of the right foot accompanied by evidence of secondary arthritis and, secondly, the removal of the left breast made necessary by the presence of cancer, with curettage of the armpit, as well as from a slight reactionary syndrome of depression and anxiety.

2. The accident which occurred on 3 January 1968 caused a triple malleolar fracture with dislocation of the right foot and a continuing anatomical and functional limitation affecting in particular the tibio-tarsal region, with muscular hypotrophy of the corresponding limb and radiological evidence of incipient arthritis, the cause of which must be attributed to the afore-mention accident sustained by Miss B. on January 1968.

Accordingly,

3. The undersigned assesses the injury giving rise to compensation at 15% of the maximum sum assured."

By letter of 25 February 1975 the applicant informed the Commission that Dr Vita's report "is not impartial, since it does not take account of all the disabilities resulting from the accident, and that it must therefore be supplemented and a further degree of permanent invalidity added to the 15% already awarded in respect of only some of the consequences of the accident".

After much correspondence the parties agreed on the appointment of a new arbitrator, Dr Angelo Bellini. By letter of 19 December 1975 the Commission asked Dr Bellini the following question, which had also been drawn up by agreement between the parties: "Is it necessary to fix a degree of partial permanent invalidity in addition to that of 15% already determined, in respect of possible injuries of a mental nature resulting directly and exclusively from

the accident and, if so, what is the degree of permanent partial invalidity in question?"

On 26 October 1976 Dr Bellini replied to that question in a detailed report, in which his conclusion was worded as follows: "Dr Vita's medical report did not take account of the mental injuries suffered by Miss B. as a result of the trauma. I consider that the injuries of a mental nature from which Miss B., is suffering and which are the direct and exclusive consequence of the accident which she sustained in Luxembourg on 3 January 1968, have resulted in her case in total permanent invalidity".

By letter of 3 February 1977 the Commission asked Dr Bellini:

"Whether it is true that the gravity of Miss B.'s illness (tumour in the breast) affects or may affect directly or exclusively the injurious psychological consequences of the trauma connected with the accident which she sustained on 3 January 1968".

By a letter of 26 March 1977 Dr Bellini replied to that question in the following terms:

"The injurious psychological effects to which I referred in my opinion and which have resulted in the total and permanent incapacity of the patient appeared at an earlier date and are certainly not connected with Miss B.'s illness. The injurious psychological effects in fact appeared during the years immediately following the trauma connected with the accident sustained on 3 January 1968, whereas the tumour in the breast was discovered during November 1973".

In a letter of 6 October 1977 the administrative authority expressed doubts whether the conclusions formulated by Dr Bellini in his opinion of 26 October 1976 were appropriate having regard to the provisions of Article 73 of the Staff Regulations and it suggested that the applicant take steps to obtain from him the necessary clarification. By letter of 25 October 1977 the applicant's advocate sent to the administrative authority a proposal for an additional question to be put to Dr Bellini.

In fact, on 7 December 1977 the administrative authority sent Dr Bellini a letter in the following terms: ". . . Within the context of Article 73 . . . and in the insurance policy taken out for the purpose of the implementation of that provision it is understood that the risks which are covered in the manner provided for therein do not include invalidity in so far as it results in incapacity for work but cover solely the physical and/or mental injuries suffered. The question to be settled is therefore to what extent (expressed as a degree or percentage) the bodily and/or mental health of the victim has been impaired as a result of the accident. The insurance policy contains a list of cases of impairment of bodily and mental health, by analogy with which the percentage of loss of health may be established in the cases not provided for, although it is true that the task is not without difficulty. That policy provides for a loss of mental health of 100% in the case of 'incurable insanity'. Without wishing in any way to trespass on the domain of the psychiatrist I consider that there may be other cases of 100% impairment of mental health. However, for the purposes of Article 73 and of the insurance policy, that im-

pairment of mental health must be at least comparable in seriousness to that caused by 'incurable insanity' in order to amount to 100% or total invalidity within the meaning of Article 73.

In other words, therefore, it is necessary to establish in Miss B.'s case whether the gravity of the impairment of mental health is comparable or identical to that caused by incurable insanity or what, in relation to the gravity of incurable insanity, is the degree of loss of mental health suffered by Miss B.".

The applicant contests that the questions posed in the letter of 7 December 1977 correspond to those which she proposed in her letter of 25 October 1977.

By a letter of 10 January 1978 Dr Bellini gave the following reply to the questions raised: "In reply to your letter of 7 December 1977 I am able to state that:

'I consider that it emerges clearly from the explanations given in my report that the mental injury suffered by Miss B. does not take the form of psychological disorder or disorder of consciousness but only affects her emotional faculties.

The injury consists in a state of profound depression and, in particular, in an incapacity for work which is emotional in origin and derives from the fact that any form of work arouses in the patient an unbearable feeling 'that her life has been a total failure'.

However painful it may be, the 'illness' protects the patient against that feeling of failure.

It is thus clear that although Miss B. is unfit for work, her mental health is not 100% impaired.

I would say that the loss of mental health suffered by Miss B. as a result of the accident of 3 January 1968 may be assessed at 60% (sixty per cent) and that that injury affects the emotions and, through them, only indirectly the mental faculties' ".

3. In a letter of 1 December 1976 to the Commission the applicant had requested the implementation of the arbitration decision of 26 October 1976. As the applicant received no reply either to that letter or to the complaint which she submitted under Article 90 (2) of the Staff Regulations she lodged the present application on 16 December 1978.

4. 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.

By order of 22 February 1979 the Court also decided to ask Dr Bellini to give evidence at the hearing on 14 June 1979 concerning the meaning and scope of his arbitrator's opinion of 26 October 1976 as regards the psychological disorders suffered by Miss B., as well as on the relationships of cause and effect existing between the accident sustained on 3 January 1968 and the psychological disorders recorded.

II — Conclusions of the parties

After amending her conclusions in her reply the *applicant* claims that the Court should:

1. declare that the action is admissible;

2. grant the application on the merits; therefore:

3. annul the tacit refusal and the implied decision of rejection by the Administration of the applicant's request of 1 December 1976 and of the complaint of 20 June 1977 concerning the implementation of the arbitration award made by Dr Bellini by report dated 26 October 1976, and consequently;

4. order the Commission to implement the aforesaid arbitration award, and consequently;

5. order the Commission to pay to the applicant the amount corresponding to 100% invalidity to be calculated in accordance with the provisions of Article 73 of the Staff Regulations minus the amount corresponding to 15% invalidity which has already been paid to her on account;

in the alternative;

6. should the Court declare that in implementation of Article 73 of the Staff Regulations the monetary rights must be related to the loss of bodily and/or mental health rather than to the permanent invalidity, declare that the applicant's right to obtain implementation of the arbitration award referred to under 3. as supplemented by the opinions of Dr Bellini given on 26 March 1977 and 10 January 1978, which recognized her as suffering from a loss of mental health of 60% in addition to the 15% permanent invalidity recognized by Dr Vita in his opinion of 22 February 1975 in respect of the bodily injury, and consequently:

7. Order the Commission to implement the aforesaid arbitration award supplemented as above, and consequently;

8. order the Commission to pay to the applicant the amount corresponding to a loss of health of 60% to be calculated in accordance with the provisions of Article 73 of the Staff Regulations in addition to the amount corresponding to the 15% invalidity which has already been paid to her on account;

9. order the Commission to pay to the applicant the amount corresponding to the interest on the capital sum calculated as under 5. or, in the alternative, calculated as under 8. at the legal rate of 5% from the date of the accident until settlement, which as to 15% has already been effected, of the capital sum and thus until the date of final settlement which as to 85% or, in the alternative, as to 60% is still to be effected;

10. order the reimbursement to the applicant of the costs, expenses and fees of the proceedings;

11. subject to all reservations and subject to the right to indicate subsequent measures of inquiry and to the right, if necessary, to ask that the proceedings be stayed for a separate decision on matters relating to the subject-matter of the proceedings.

After amending its conclusions in the rejoinder the *Commission* contends that the Court should:

1. dismiss the applicant's request for the implementation of Dr Bellini's award of 26 October 1976 as inadmissible and unfounded;

2. dismiss the applicant's alternative request for the implementation of Dr Bellini's award as modified by his

letter of 10 January 1978, as inadmissible and unfounded;

3. declare that the partial invalidity awarded to the applicant shall be in the degree of 15% and that as the corresponding capital sum has already been paid to her nothing further is due under Article 73 of the Staff Regulations;

4. in the alternative, after determining the criteria applicable and, if appropriate, after considering a fresh expert medical opinion based solely upon the reports drawn up by Dr Vita and Dr Bellini, fix a higher degree of invalidity, up to a limit of 40%, in order to take account of the mental injuries suffered and declare due the difference between the capital sum corresponding to the degree thus fixed and that already paid on the basis of the degree of 15% invalidity;

5. dismiss the claim for interest as unfounded or, in the alternative, fix the period for which interest is to be paid on the basis of the principles of natural justice, taking into account the amount corresponding to 9% invalidity paid by the Commission in March 1972;

6. order each party to bear its own costs.

III — Submissions and arguments of the parties

A — Admissibility

1. The *Commission* observes that by endorsing in her letter of 25 October 1977 the administrative authority's proposal to put an additional question to Dr Bellini the applicant accepted that the arbitration procedure be reopened and thus by implication accepted that the request and complaint submitted on the basis of Article 90 of the Staff Regulations became devoid of purpose. The Commission considers, furthermore, that since Dr Bellini's opinion of 10 January 1978 is totally different from his first opinion the aim of the applicant's request should be different from that of the original request and it adds that it is only if the fresh request is expressly rejected or rejected by implication that the applicant may submit a fresh complaint and, if that is rejected, a fresh application. However, the Commission does not consider that that aspect is sufficiently important to justify a formal plea of inadmissibility. It therefore leaves that question to the discretion of the Court.

2. The *applicant* disputes that she accepted the reopening of the arbitration procedure. As evidence of that she refers to the fact that the question put to Dr Bellini was totally different from that to which she had agreed.. She maintains, furthermore, that the request for implementation of the arbitration award cannot be regarded as devoid of purpose on the ground that she agreed to seek clarification of certain of the technical conclusions contained in the opinion.

B — Substance

1. Observations of the applicant

(a) In support of her request for the arbitration award of 26 October 1976 to be implemented the applicant recalls that the Commission put forward no

objection concerning the lawful nature of the arbitration procedure and that it was, on the contrary, the Commission which decided to implement that form of procedure and drew up the questions to be put to the arbitrator.

The applicant considers the procedure lawful because it is provided for in the Rules on the Insurance of Officials of the European Communities against the risk of Accident and of Occupational Disease adopted by the Commission which take effect from 1 January 1977 (Staff Courrier, Spécial Interinstitutions [Special Inter-Institutional Edition], of 25 February 1977), in Article 13 of the insurance policy taken out by the Commission and in Article 73 of the Staff Regulations. She adds, furthermore, that the Court of Justice considered the procedure to be lawful in its judgment in the first case between the parties.

As regards the appointment of the doctor acting as arbitrator the applicant considers that it too was properly made and that the award itself is convincing and comprehensive.

(b) The applicant considers that Dr Vita's arbitration award of 21 February 1975 shows such substantial defects that it must be regarded as invalid. The applicant in fact considers that award to be biased, inconsistent and incorrect and, furthermore, that insufficient reasons were given for it.

In that connexion the applicant then emphasizes that as regards the preparation of the opinion she was not given any opportunity of expressing a preference as regards the choice of the institution, the town or the person who was to draw it up.

She recalls that Dr Vita entrusted a neurologist with the task of examining her and that the medical association, which was asked to express an opinion on the procedure followed, stated that if the arbitrator refers to the findings of another doctor he shall be under a duty to produce the documents, whereas if he adopts those findings as his own without referring to their source the award shall be invalid.

(c) As regards the opinion of Dr Bellini given on 10 January 1978 the applicant observes that it resulted from an initiative on the part of the administrative authority of which she did not approve, that she did not accept the argument on which it was based and that she expressed a clear reservation concerning both the factual and legal position as regards each aspect of that initiative. Furthermore, the question put by the administrative authority to the arbitrator is completely different from that contained in the applicant's letter of 25 October 1977.

By its letter of 7 December 1977 the Commission in effect told the doctor acting as arbitrator what it wished him to say. Finally, that letter was only brought to the applicant's notice a long time after it was sent to the doctor in question.

In that connexion the applicant again emphasizes that the question which the Commission put to Dr Bellini by letter of 3 February 1977 fell outside the framework of the arbitration procedure.

(d) The applicant then maintains that the factor to be taken into consideration within the context of Article 73 of the Staff Regulations is that of permanent invalidity. The aim of that article is in fact protection against the loss of the specific capacity, that is to say, the capacity to be a Community official etc., rather than against the loss of general

capacity, that is, general fitness for everyday life. That explains the difference between the two factors fixed by Dr Bellini: that of 100%, which relates to the total loss of the capacity for work, and that of 60%, which relates to the loss of general capacity.

The applicant considers her opinion to be borne out both by the terms of Article 73 of the Staff Regulations and by the Commission's established practice. In support of that she maintains that there is a close correlation between Article 73 and Article 78. The applicant is in no doubt that the latter provision always and only applies in cases of total permanent invalidity. Finally she points out that both the insurance contribution paid by officials and the allowance payable by way of Article 73 of the Staff Regulations are in proportion to the salary received and, therefore, to the capacity for employment since the performance of duties and the payment of salary are the counterparts of the employment relationship.

(e) The applicant considers that Article 73 of the Staff Regulations covers every infirmity and that if the table annexed to the insurance policy provides no precise information in relation to certain specific infirmities resort must be had to the accepted rules of interpretation, in particular, interpretation by analogy. She considers that any limitation which may be contained in that table cannot modify or restrict the scope of Article 73 since that article remains the source of the rules carried into effect by the policy. Moreover, the Court has accepted that the body of rules formed by the insurance policy supplements the rules contained in Article 73. She adds that the policy contains no restrictions as regards the infirmity involved in the present case. She regards it as incorrect to equate insanity with total invalidity, since the policy does not cover insanity as such but only to the extent to which it has resulted in permanent invalidity.

(f) The applicant maintains, finally, that there can be no question of the depression having already begun when the accident occurred. She points out that in the twenty years during which she was employed by the national administrative authority she was never absent through illness and that she entered the service of the High Authority after a medical examination on recruitment. She claims, furthermore, that her depression is not caused by the fact that she was classified in a lower grade, since she accepted reclassification from Grade B 3 to Grade B 5 so that she could be established.

2. Observations of the Commission

(a) The Commission considers that in the light of the revised opinion given by Dr Bellini, which reduced to 60% the degree of impairment of the applicant's mental health, the applicant can no longer sustain her request for the payment of a capital sum corresponding to total invalidity.

In the Commission's view the incorrect nature of Dr Bellini's first opinion is shown by the fact that Article 73 of the Staff Regulations in conjunction with the insurance policy taken out by the

Commission only covers risks of accidents affecting bodily or mental health of officials and therefore deals with bodily or mental infirmities as such, irrespective of the effect which they may have on the capacity for work of the officials concerned.

The Commission considers that to result from the fact that a "once for all" payment is provided for in respect of every type of infirmity, even one that does not affect capacity for work.

Moreover, an infirmity resulting in a total incapacity for work is not automatically regarded as total invalidity within the meaning of Article 73.

Furthermore the fourth subparagraph of Article 9 (b) of the insurance policy states that as regards the cases of partial permanent invalidity not specifically provided for in the table set out in the policy the degree of invalidity shall be determined by analogy with that table without regard to the duties performed by the insured person.

In any event the Commission considers that Article 25 of the rules which entered into force on 1 January 1977 eliminates any possibility of doubt, since it expressly provides that "Recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and to these rules shall in no way prejudice the application of Article 78 of the Staff Regulations and vice versa". The latter article in fact provides for a pension to be paid to an official in the case of total permanent invalidity "preventing him from performing the duties corresponding to a post in his career bracket".

On that point the Commission refers finally to Article 2 of the rules which entered into force on 1 January 1977, the first paragraph of which is worded as follows: "An accident means any occurrence or external factor of a sudden, violent or abnormal nature affecting an official's bodily or mental health".

(b) The Commission expresses surprise at the degree of 60% invalidity given by Dr Bellini in his latest opinion.

1. In that context in observes, first, that Dr Bellini himself does not appear to be very convinced of the value of his conclusions, since he expressed them in the conditional mood.

2. Secondly, it emphasizes that Dr Bellini also points out that the injury of a mental nature suffered by the applicant affects the emotions rather than the intellect. It doubts whether it is possible for disorders of an emotional origin to fall within the terms of Article 73, first, because the table set out in the insurance policy only refers to one type of invalidity caused by injury of a mental nature, namely "insanity", which is a disorder affecting the intellect and not the emotions, and, secondly, because the degree of invalidity may only be determined either by reference to the maximum percentages fixed by that table (in the case of infirmities which are expressly provided for) or by analogy with the information provided therein (in the case of infirmities which are not provided for). As the table makes no express provision for mental disorders of an emotional origin the Commission is unable to fix any degree of invalidity, even by analogy.

What is more, it maintains that the logical explanation for the exclusion of emotional disorders from the benefit of compensation is to be found in the fact than an emotional reaction is almost inevitable when a person has suffered injuries resulting in permanent physical disabilities.

3. Even it if is accepted that disorders of an emotional origin fall within the scope of Article 73 the Commission doubts whether it is possible for that article to give rise to a right to compensation in respect of an incapacity for work which is emotional in origin, since such a disorder only affects the capacity for work which as such has no relevance for the application of the article in question. The Commission also observes that since the emotional state in question is reactive in nature it is an indirect rather than a direct result of the accident. In the view of the Commission the emotional state in question is post-traumatic in nature and does not result from the accident as such but rather from the injuries caused by the accident and from the effects of those injuries on the working life of the person concerned.

4. However that may be, the Commission doubts whether disorders of a reactive type are as such to be taken into consideration for the purposes of the application of Article 73, first, because they are more a consequence of the injuries suffered than of the accident itself and, secondly, because the Community rules provide no yardstick by which an independent assessment may be made of the degree of impairment of mental health caused by those disorders.

5. The Commission therefore considers that the only valid yardstick by which to judge such disorders in that which relates to the physical injury resulting from the accident. It is therefore of the opinion that in the applicant's case the level of compensation cannot exceed that which corresponds to the loss of a foot, that is to say, 40%.

6. Furthermore the Commission points out that the accident occurred at a time when the applicant was to make a fresh start in her career. It believes that the depression was probably already present, possibly in a latent form, and that the accident only brought it to the surface.

On the basis of the foregoing considerations the Commission therefore concludes that if Dr Vita ruled out the existence of any relationship of cause and effect between the "syndrome of depression and anxiety" affecting the applicant and her accident that is because he probably found that the origin of that syndrome did not lie in the accident.

The Commission concludes that since the only injury connected with the accident is the physical injury which has resulted in 15% permanent invalidity, it alone gives rise to a right to compensation.

C — *Interest*

1. In this connexion the *applicant* maintains that the delay in payment of the capital sum must be attributed to the administrative authority, which she regards as bound to pay compensation in full from the date of the accident since it is with effect from that date that the official in question is incapable of working.

The applicant adds that in the judgment given in the first case between the parties the Court recognized that she was entitled to interest on the capital sum due with effect from the date of the accident and at the rate which was at that time being determined by the arbitration procedure.

The applicant recalls that by letter of 28 April 1975 the administrative authority informed her that with effect from 15 March 1972 it was prepared to pay interest on the capital sum corresponding to 9% invalidity at the current legal rate in Belgium of 5%.

2. The *Commission* maintains that even if it is accepted that the Court acknowledged "in the abstract" a right to the payment of interest it is impossible to find in the aforementioned judgment any information as to the date from which such interest began to run. It considers that in normal circumstances interest is only payable on debts the amount whereof is ascertained and due, that is to say, in the present case, only with effect from the date of the decision of the Court fixing definitively the degree of invalidity and until final settlement of the corresponding capital sum.

The Commission maintains that the position would only be different if it were proved that the delay in fixing the degree of invalidity is imputable to it. It refers to the judgment of the Court of Justice of 26 February 1976 in Case 101/74 *Kurrer* v *Council of the European Communities* [1976] ECR 259, at p. 269, paragraphs 31 and 32, in which it was stated that the burden of proof is on the applicant. The Commission claims moreover that it is guilty of no wrongful act or omission; it considers that the fact that it has not yet been possible to fix the degree of invalidity may only be imputed to the complexity of the case.

The Commission contests the applicant's argument that the compensation shall be payable from the moment that the official in question becomes totally or partially incapable of work. It maintains that the sum referred to in Article 73 of the Staff Regulations relates to the deterioration which occurs in the bodily or mental health of an official and does not concern his capacity for work.

The Commission adds that even if it is assumed that the aim of the sum provided for in Article 73 of the Staff Regulations is to compensate for the losses caused by a reduction in the capacity for work the fact remains that the applicant has suffered no loss on that account: with the exception of one period of unpaid leave the applicant has received her full salary from the date of the accident up to the present time.

The Commission refers, finally, to the rules laid down by the Court in its judgment of 16 March 1978 in Case 115/76 *Leonardini* v *Commission* [1978] ECR 735), which state that the point of reference for the fixing of the period in respect of which interest is payable cannot be purely and simply the date of the accident and that the interest on an overdue payment shall be calculated on the basis of the amount finally ascertained to be due to the person concernend less the amounts already paid by the Commission, even if the latter have been refunded by the person concerned.

D — Costs

Since the application to the Court has been made necessary by the complexity

of the facts of the case the Commission considers it fair that each party be ordered to bear its own costs.

IV — Oral procedure

The parties presented oral argument at the hearing on 14 June 1979. At that hearing Dr Bellini was heard in reply to the questions posed by the Court on the subject referred to in the order of 22 February 1979. The hearing was ordered to be held *in camera.*

The Advocate General delivered his opinion at the sitting on 12 July 1979.

Decision

1 The application lodged on 16 December 1977 seeks to obtain payment to the applicant of an invalidity benefit under Article 73 of the Staff Regulations of Officials in respect of permanent invalidity resulting from the accident which she sustained on 3 January 1968 in the course of her employment with the Commission.

2 The question of the degree of invalidity resulting from that accident first formed the subject of arbitration proceedings. Dr Vita of Milan, who was appointed to act as arbitrator with the agreement of both parties, found in an opinion given on 21 February 1975 that the injury giving rise to compensation was to be assessed at 15% of the maximum sum assured. The applicant claimed that that opinion was not appropriate on the ground that it only took account of the bodily injury suffered to the exclusion of the injury of a mental nature. The parties subsequently agreed to ask another doctor, Dr Bellini of Latina, to act as arbitrator and to give a medico-legal opinion on the question whether it was "necessary to fix a degree of partial permanent invalidity, in addition to that of 15% already determined, in respect of possible injuries of a mental nature resulting directly and exclusively from the accident". If so, Dr Bellini was to fix that degree of invalidity.

3 In his report of 26 October 1976 Dr Bellini concluded that Dr Vita's medical report had not taken account of the mental injuries which, as they derived

directly and exclusively from the applicant's accident, had resulted in "total permanent invalidity".

4 In a letter of 1 December 1976 to the Commission the applicant asked for the arbitration award to be implemented. As the Commission doubted whether Dr Bellini's conclusions were appropriate having regard to Article 73 of the Staff Regulations it did not comply with that request. When no reply was received to the complaint through official channels submitted by the applicant she lodged the present application within the time-limits prescribed by the Staff Regulations.

Admissibility

5 Without putting forward a formal plea of inadmissibility the Commission has pointed out that in October 1977 the applicant had accepted a proposal by the Commission for a further question to be put to Dr Bellini in order to clarify the meaning and scope of his earlier report. She therefore by implication consented to the reopening of the arbitration procedure, as a result of which her request became devoid of purpose.

6 The Court cannot accept that assessment of the applicant's conduct or the conclusions drawn by the defendant as regards her interest in bringing the action. Although it is true that the applicant agreed that an additional question be put to Dr Bellini she did not approve the terms of the question actually put by the Commission. In those circumstances it cannot be claimed that there was agreement between the parties to reopen the arbitration procedure. That procedure was terminated by the report of 26 October 1976, which is therefore the final basis for determining the reciprocal rights and obligations of the parties. The subsequent correspondance and negotiations which took place between them have not served to alter that situation. The applicant's complaint through official channels and her application in fact concern the subject-matter of the original request and the application, which was lodged within the prescribed time-limits, is admissible.

Substance

7 The applicant seeks, principally, the implementation of the arbitration award by Dr Bellini in the report of 26 October 1976 and, accordingly, the payment of an amount corresponding to 100% invalidity minus the amount already paid which corresponds to the 15% invalidity recognized by the first arbitration award. In the alternative the applicant seeks payment of an amount corresponding to 60% invalidity in addition to the 15% already recognized. The Commission contends that the Court should dismiss both the applicant's principal and alternative claims and, in the alternative, should fix a degree of invalidity which is higher than the 15% already recognized.

8 It must be stated first of all that the arbitrators' opinions in question were given by virtue of a clause in the insurance policy taken out by the Commission in the period before the adoption of rules for the implementation of Article 73 of the Staff Regulations and applicable at the time of the events giving rise to the present application. The arbitration procedures followed the proper course and the opinions of the arbitrators, in particular that of Dr Bellini of 26 October 1976, thus form the legal basis for the relationships between the parties in the matter in dispute in so far as they do not exceed the limits of the Commission's obligations under Article 73. The disagreement between the parties concerns, first, the concept of invalidity within the meaning of that article and, secondly, the meaning and scope of Dr Bellini's opinion.

9 As regards the concept of invalidity within the meaning of Article 73 it is not disputed that in addition to physical injuries that concept includes injuries of a mental nature. The parties differ, however, over the question whether these disorders which do not directly affect the mental faculties but only concern the emotions may be taken into account.

10 In that connexion it must be said that there are no grounds for giving the concept of invalidity a restrictive interpretation. Within the meaning of the article in question an invalid must be regarded as a person who as a result of an accident or an occupational disease is totally or partially unable to lead a normal active life. If an expert medical assessment establishes that a mental

injury which only affects the emotions satisfies that condition there is nothing to prevent its being considered as falling within the concept of invalidity within the meaning of Article 73 of the Staff Regulations. The fact that injuries of that nature do not appear in the table of degrees of partial permanent invalidity annexed to the insurance policy is of no relevance in this connexion. Like any other case for which no provision is made in the table the question of such an injury must be resolved by fixing the degree of invalidity by analogy with those cases for which express provision is made.

11 It must therefore be concluded in this instance that Dr Bellini's report, as supplemented by his evidence before the Court, did not exceed the limits of Article 73 of the Staff Regulations when if found that, in addition to the physical injury ascertained by the first doctor to act as arbitrator, the applicant was affected by permanent invalidity in the emotional sphere.

12 The Commission maintains, however, that in assessing that invalidity as total Dr Bellini applied a criterion which is foreign to Article 73, that is, the applicant's capacity for work. According to the Commission that article must be interpreted as relating to those risks of accident which affect the bodily or mental health of officials, irrespective of repercussions on their capacity for work. The applicant, on the other hand, maintains that Article 73 must be interpreted as relating to incapacity for work.

13 The choice between those two different interpretations of Article 73, neither of which is positively supported by the wording of that provision, must be determined by the position of that provision within the social security system of officials.

14 In this connexion it is essential to point out, first, that the invalidity benefit provided for in Article 73 differs from the invalidity pension provided for in Article 78, which is only awarded in the case of incapacity for work. The benefit provided for in Article 73, on the other hand, is paid whatever the capacity of the person concerned to continue to perform his duties. Partial permanent invalidity gives rise to a right to the benefit even if it does not in any way affect the ability of the person concerned to perform his duties.

Moreover, the degree of invalidity, which is one of the factors which determines the amount of the benefit, is fixed at flat rates in accordance with a general scale which does not take account of the nature of the official's employment. A given category of injuries, which in one official amounts to total incapacity for work but does not affect the capacity for work of another official, gives a right to the same benefit in each case. Although it is true that in a general way the degree of incapacity for work forms the basis for the degrees of invalidity fixed by the scale it cannot be said that that has been the only decisive criterion and it is in any event established that the degree of incapacity is of no importance in determining, in each particular case, the degree of invalidity. In these circumstances Article 73 cannot be interpreted by reference to comparable provisions in the laws of the Member States, special features and conditions of application whereof are, moreover, different from those of the provision in dispute. The result is that invalidity within the meaning of Article 73 must be interpreted as referring to the impairment of the bodily or mental health of the official irrespective of any degree of incapacity for work which may result from the accident.

15 In the present case it follows from Dr Bellini's report of 26 October 1976 as supplemented by his evidence before the Court that the total permanent invalidity ascertained by him refers to the incapacity for work. Before the Court Dr Bellini has explained, as he had previously done in correspondence with the Commission, that the loss of mental health suffered by the applicant as a result of her accident may be evaluated at 60%.

16 Having regard to the interpretation of Article 73 set out above the latter is the degree of invalidity which must be accepted and added to the figure of 15% ascertained by the first arbitrator as regards the impairment of the applicant's bodily health.

17 It also follows from the evidence given by Dr Bellini that the degree of invalidity ascertained by him results solely from the accident which occurred on 3 January 1968, so that that figure need not be reduced in order to take account of any subsequent contributory causes.

18 The Commission must therefore be ordered to pay the applicant the amount corresponding to 60% invalidity, to be calculated in accordance with the provisions of Article 73 of the Staff Regulations, in addition to the amount which has already been paid to her on the basis of a degree of invalidity of 15%.

Interest

19 The applicant also seeks payment of interest at the rate of 5% on the amounts which she claims as due to her.

20 The Court has already held in its judgment of 26 February 1976 in Case 101/74 *Kurrer* v *Council* [1976] ECR 259, at p. 269, that since there is no provision of the Staff Regulations or of the insurance policy which expressly provides for the payment of interest it is for the applicant to establish that the delay in payment of the allowance constitutes a wrongful act or omission on the part of the defendant institution which has in fact caused him damage.

21 The benefit provided for in Article 73 is only payable as from the date on which the degree of permanent invalidity has been finally fixed. In this instance there was no delay on the part of the Commission in paying the benefit corresponding to the physical injury once the relevant degree of invalidity was fixed by Dr Vita in his arbitration award. As regards the injury of a mental nature, the delays which have occurred in the determination of the degree of invalidity are not solely due to negligence on the part of the Commission. In particular it must be remembered that Dr Bellini's report of 26 October 1976 fixing the degree of invalidity at 100% was based upon an interpretation of Article 73 of the Staff Regulations which the Court has not accepted.

22 It was not until 10 January 1978 that the degree of invalidity was fixed in such a way as to establish the liability of the Commission on which date Dr Bellini sent a letter to the Commission in which he assessed the applicant's loss of mental health at 60%. If it has not been possible to resolve the difference between the parties on the basis of that assessment that is primarily due to the applicant's refusal to accept the assessment. The Commission is therefore not obliged to pay interest on the amount due.

Costs

23 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. As the Commission has, in the main, failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Orders the Commission of the European Communities to pay the applicant, Miss B., by way of invalidity benefit the amount corresponding to a degree of invalidity of 60%, to be calculated in accordance with the provisions of Article 73 of the Staff Regulations, in addition to the amount which has already been paid to her on the basis of a degree of invalidity of 15%.**

2. **Orders the Commission to bear the costs.**

Mackenzie Stuart Sørensen Touffait

Delivered in open court in Luxembourg on 2 October 1979.

A. Van Houtte
Registrar

A. J. Mackenzie Stuart
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 12 JULY 1979 [1]

Mr President,
Members of the Court,

The proceedings in which I am giving my opinion today concern settlement of the consequences of an accident sustained in the course of employment, which has already formed the subject of a judgment of this Court of 12 July 1973 (*Anna Di Blasi* v *Commission of the European Communities* Case 74/72 [1973] ECR 847). In giving an account

1 — Translated from the German.