JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 13 FEBRUARY 1980 [1]

Rolf Misenta
v Commission of the European Communities

"Reimbursement of sickness expenses"

Case 256/78

Officials — Social Security — Reimbursement of sickness expenses — Equal treatment — Exchange rate applicable — Exchange rate for quarter in wich reimbursement is effected
(Staff Regulations, Art. 72; Annex VII, Art. 17)

The principle of equal treatment of officials requires that the rate of exchange to be applied in the reimbursement of sickness expenses should be as close as possible to the rate on the date of reimbursement. The rate to be applied must therefore be that for the quarter in which reimbursement is effected.

In Case 256/78

ROLF MISENTA, an official of the Commission of the European Communities, residing at 6, Via Romans sur Isère, Varese, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 18a, Rue des Glacis,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Raymond Baeyens, acting as Agent, assisted by Victor Wieme, 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,

1 — Language of the Case: French.

APPLICATION primarily for the annulment of the implied decision rejecting an application made on 5 June 1978 under Article 90 (2) of the Staff Regulations of Officials, against the decision of the Director General of the Ispra Centre dated 14 March 1978, refusing to grant a request made on 2 March 1978 concerning the application of up-to-date exchange rates for the reimbursement in Italian lire of sickness expenses paid in German marks, which were included in a statement dated 20 December 1977 of the office at Ispra responsible for settling claims,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: H. Mayras
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

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

I — Facts and written procedure

1. Article 72 (1) of the Staff Regulations provides that

"An official, his spouse, his children and other dependants within the meaning of Article 2 of Annex VII are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the Communities after consulting the Staff Regulations Committee . . .".

Article 9 (1) of the Rules on Sickness Insurance for Officials of the European Communities adopted, as regards the Commission, on 26 September 1974, provides that "persons covered . . . shall

be free to choose their practitioners and hospitals or clinics".

Under Article 13 of those rules the latest date by which an application for reimbursement must be made is "during the calendar year following that in which treatment was administered".

Under Article 17 (1) of Annex VII to the Staff Regulations, "payment shall be made to each official at the place and in the currency of the country where he carries out his duties".

In order to deal with the administrative problems presented by currency fluctuations the Commission decided on 6 November 1974 to apply up-to-date exchange rates to the reimbursement of expenses including sickness expenses within the meaning of Article 72 of the Staff Regulations, and gave its accounting officer instructions to issue in the middle of each quarter the rates to be used from the commencement of the following quarter.

By a circular of 5 March 1975 the Central Office of the Joint Scheme laid down Implementing Provisions relating to the bringing up-to-date of Exchange Rates in the field of Sickness Insurance by which:

— "Where treatment is paid for in currencies other than Belgian francs the sums paid are to be converted into Belgian francs at the up-to-date rate in force at the date when the treatment was provided;

— If payment is made in a currency other than Belgian francs the amount in Belgian francs for each treatment is to be reconverted into the currency in which payment was made at the up-to-date rate in force at the date when treatment was provided."

2. The applicant, a scientific official in Grade A 4, is employed as an assistant to the Director General at the Joint Research Centre at Ispra.

Between 29 November 1976 and 23 August 1977 he and his wife and children received health care in the Federal Republic of Germany. This treatment came to a total of DM 3 317,40 and was paid for by the applicant in that currency.

Reimbursement of these expenses was made in Italian lire on 18 January 1978 on the basis of a statement prepared on 20 December 1977 by the office at Ispra responsible for settling claims.

3. On 2 March 1978 the applicant made a request under Article 90 (1) of the Staff Regulations concerning a loss of DM 326.22 which he had suffered upon reimbursement of his health expenses owing to the application of the system of up-to-date exchange rates.

This request was dismissed by a decision of the Director General of the Ispra Centre on 14 March 1978.

On 5 June 1978 the applicant made a complaint to the Commission under Article 90 (2) of the Staff Regulations against the decision to reject his request.

This application was made on 23 November 1978.

In a decision of 30 November 1978 the Commission rejected the applicant's complaint. The decision was notified to him by a letter of 14 December 1978 signed by Mr. Tugendhat.

On hearing the views of the Advocate General, the Court (First Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

1. The *applicant* claims that the Court should:

"(a) declare this application to be admissible;

(b) declare that the system of reimbursing sickness expenses based upon exchange rates brought up to date for periods in which the expenses were incurred is incompatible with Article 72 of the Staff Regulations and therefore illegal;

(c) annul the implied decision rejecting his complaint;

(d) order the Commission to pay the sum of DM 326.22 with interest thereon according to law from the date of his complaint;

(e) order the Commission to pay the costs."

2. The *defendant* contends that the Court should:

"(a) reject the application as unfounded;

(b) order the applicant to pay the costs."

III — Submissions and arguments of the parties

1. In his application the *applicant* first of all contends that neither Article 72 of the Staff Regulations nor its implementing provisions make any provision for the currency in which sickness expenses are to be reimbursed. Since the Staff Regulations provide that each official shall be free to choose his practitioner he should be entitled to reimbursement of the "actual" cost of the expenses paid to that practitioner. Even though the Court may recognize that reimbursement must be effected in the currency of the country in which the official performs his duties, the fact remains that there must be equivalence between the amount calculated by applying the percentage laid down in the Staff Regulations and the actual amount reimbursed.

The applicant further points out that the system of reimbursing sickness expenses using up-to-date exchange rates causes the rate of reimbursement to vary according to the currency in which the expenses were incurred. Thus, in the case of the same expenses incurred in German marks, an official employed in Brussels or in Luxembourg would be reimbursed at 79,9%, whilst the applicant was reimbursed at less than 70% contrary to the entitlement to 80% reimbursement provided by Article 72 of the Staff Regulations.

The applicant protests that the Commission did not take account of the statement in the proposal from its Secretariat General entitled "Administrative problems created by currency fluctuations" to the effect that: "Situations should be avoided by which officials, having the same amount of expenditure, find themselves reimbursed according to different percentages, depending whether they are employed in a country where the currency which is 'strong' or 'weak' by reference to the currency of the country in which the Community has its seat ... (and) to that of his place of assignment."

The system applied was from the beginning incompatible with Article 72 of the Staff Regulations. In fact expenses incurred during the first quarter of 1975 had to be submitted for reimbursement by December 1976 at the latest: in view of the interval between the submission of

bills and invoices and actual repayment, this reimbursement would only take place in January 1977 at the earliest. For this reimbursement the exchange rates brought up to date for the first quarter of 1975, namely Lit 264.8 for each German mark were applied. The rate on 3 January 1977 however was Lit 372.7 for each German mark.

The applicant suggests the following ways of remedying the situation:

— Reimbursement in the currency in which the obligation arose; or

— Calculation of the equivalent of the amount to be reimbursed in the currency of the country of employment on the basis of the rate in force on the day of payment between the currency in which the expenses were incurred and the one in which reimbursement is made.

2. In its defence the *Commission* takes the view that most of the criticism levelled at the application of the joint scheme for the reimbursement of sickness expenses to the applicant's case does not in any way concern the legality of the system generally, but rather the financial effects from the conjunctural point of view of any changes in exchange rates which may occur between the date of treatment, the only date taken into account as the basis of calculation for reimbursement, and the later date when payment is made by the office responsible for settling claims.

Variations in exchange rate between the different currencies depend on the free world market over which the Community has practically no power. Furthermore the interval of time, which is sometimes rather long, between the time when treatment is given and the submission of the claim for reimbursement to the office responsible, is largely in the hands of the claimant.

The Commission however thinks that if the applicant considers that he has suffered some "loss" from the point of view of social security by comparing over a period of time the amount reimbursed in Italian lire to the payment for the treatment in German marks, then he should still exclude from his calculation — as being a matter of purely private initiative — the conversion of the amount paid in Italian lire into German marks at the free market rate.

3. In his reply the *applicant* protests against the Commission's statement that the only relevant date for the calculation of reimbursement is the date of treatment: this is contrary to the practice of private sickness insurance companies and to Decision No 101 of the Commission of 29 May 1975 concerning the date to be taken into consideration when determining the rates of conversion to be applied when calculating certain benefits (Official Journal C 44 of 26 February 1976, p. 3), which fixes that date as the day on which the decision by the competent institution to reimburse the expenses incurred by the claimant is made.

The applicant submits that Article 17 of Annex VII to the Staff Regulations does not refer to sickness expenses or to those dealt with by the Commission decision of 6 November 1974 on the administrative problems created by currency fluctuations, some of which (for example payments for accident and invalidity allowances) are paid in the currency in which they were incurred. Moreover the German wording of Article 17 refers to

"Bezüge", that is to say, only to "salaries".

Currency fluctuations cannot be regarded as having little significance, especially where the Italian lira is concerned. It may be seen from a table submitted by the applicant that of the 21 quarterly rates issued by the Commission's accounting officer for the 16 quarters of the period between 1 January 1975 and 31 December 1978, 18 were lower than the rate in force on the first day when they were applied. Furthermore these fluctuations are greatly to the advantage of an official who has incurred health expenses in Italian lire and who is reimbursed in a strong currency. The applicant points out that the accounting officer has deviated in any case from the Commission's guidelines by not establishing an exchange rate in the middle of each quarter but at the end of the quarter, "adjusting" the result several times during the course of the period under consideration.

At the most a claimant can reduce the time interval between the receipt of bills and invoices and their submission for reimbursement. But this time interval is insignificant compared to the time taken by the office responsible for payments to make the reimbursement.

As for the Commission's powerlessness in regard to fluctuations in the exchange rate of the different currencies, the applicant points out that any solution other than reimbursement at the rate applicable on the date of payment would represent an unjust enrichment for the scheme fund. Moreover, the Commission doubts its own cause since in a document entitled "Application of Exchange Rates — situation at 15 February 1976" (Annex V to the defence), it introduced a daily rate for the payment of resettlement allowance and that for "unused leave". In the first case it uses the rate on the date the claim was made, in the second, the one on the last working day.

4. The *Commission*, in its rejoinder, replies that under its Decision No 101 referred to above the date chosen in the precise case of "reimbursement by the competent institution of a Member State of expenses incurred during a stay in another Member State" cannot be used as an argument in this case for practical, administrative reasons connected with the diversity of national social security schemes. In any case that choice by no means seems one likely to avoid the effects of fluctuations in exchange rates (especially if they are extensive and sudden) on social security benefits received by migrant workers.

Article 17 of Annex VII to the Staff Regulations is of general scope and there is no exception in the Staff Regulations as regards sickness insurance.

The Commission admits that the theoretical ideal of using daily rates has not been achieved but contends that the use of rates brought up to date quarterly represents a considerable improvement on the use of a fixed exchange rate as provided by Article 63 of the Staff Regulations, which, for weightings, takes account of the par values used on

1 January 1965 to convert Belgian francs into the currency of the country in which an official performs his duties.

There are certainly grounds for debating the system which is used in view of conjunctural fluctuations in exchange rates; but the Commission feels this is not a difficulty which puts in question the lawfulness as such, and thus the operation, of the sickness insurance scheme.

IV — Oral procedure

At the sitting held on 15 November 1979 the applicant, represented by V. Biel, of the Luxembourg Bar, and the Commission, represented by R. Baeyens, acting as Agent, and by V. Wieme, of the Brussels Bar, presented oral argument.

The Advocate General delivered his opinion at the sitting held on 6 December 1979.

Decision

1 The application made on 23 November 1978 seeks primarily the annulment of the implied decision rejecting a complaint made on 5 June 1978 under Article 90 (2) of the Staff Regulations against the decision of the Director General of the Ispra Centre dated 14 March 1978 refusing to grant a request made on 2 March 1978 concerning the application of up-to-date exchange rates for the reimbursement in Italian lire of sickness expenses incurred by the applicant in German marks, which were the subject of a statement dated 20 December 1977 of the office at Ispra responsible for settling claims.

2 Between 29 November 1976 and 23 August 1977 the applicant, a German national and an official at the Ispra Joint Research Centre, and his wife and children received health care in the Federal Republic of Germany, their country of origin. The cost of treatment came to a total of DM 3 317.40 and was paid for by the applicant in that currency. Reimbursement of these expenses was made in Italian lire on 18 January 1978 on the basis of a statement prepared on 20 December 1977 by the office at Ispra responsible for settling claims.

3 On 2 March 1978 the applicant made a request under Article 90 (1) of the Staff Regulations concerning a loss of DM 326.22 which he had suffered upon reimbursement of his health expenses owing to the application of the system of exchange rates brought up to date.

4 This system, which replaces the system of fixed exchange rates, which, for weightings, took account of the par values used on 1 January 1965 for the conversion of Belgian francs into the currency of the country of employment, was adopted by the Commission on 6 November 1974. It was decided, as part of the solution of the administrative problems caused by currency fluctuations, that as regards the reimbursement of expenses, particularly sickness expenses under Article 72 of the Staff Regulations, the accounting officer of the Commission would be given the responsibility of issuing in the middle of each quarter the rates to be used from the commencement of the following quarter.

5 By a circular of 5 March 1975 the Central Office of the Joint Scheme laid down Implementing Provisions relating to the bringing up to date of Exchange Rates in the field of Sickness Insurance by which:

— "Where treatment is paid for in currencies other than Belgian francs the sums paid are to be converted into Belgian francs at the up-to-date rate in force at the date when the treatment was provided;

— If payment is made in a currency other than Belgian francs the amount in Belgian francs for each treatment is to be reconverted into the currency in which payment was made at the up-to-date rate in force at the date when treatment was provided".

6 Article 72 (1) of the Staff Regulations provides that: "An official, his spouse, his children and other dependants within the meaning of Article 2 of Annex VII are insured against sickness up to 80% of the expenditure incurred subject to rules drawn up by agreement between the institutions of the Communities after consulting the Staff Regulations Committee . . ."

7 Under Article 17 (1) of Annex VII to the Staff Regulations, "Payment shall be made to each official at the place and in the currency of the country where he carries out his duties".

8 Article 9 (1) of the Rules on Sickness Insurance for Officials of the European Communities adopted, as regards the Commission, on 26 September 1974

provides that "Persons covered . . . shall be free to choose their practitioners and hospitals or clinics". Under Article 13 of those rules the latest date by which an application for reimbursement must be made is "during the calendar year following that in which treatment was administered."

9 The applicant bases his application on the right given to officials by the Staff Regulations to be reimbursed a fixed percentage of actual sickness expenses incurred, and on the effect which the system of exchange rates brought up to date has on the principle of equality of treatment of officials according to whether they reside in a country with a strong currency or a country with a weak currency in relation to the one where the Community has its seat and the country where they are employed.

10 The Commission defends the choice of the day when treatment was given as the only date relevant for the calculation of the refund, arguing that exchange rate fluctuations between the different countries depend on the free world market over which it has no influence and that the interval, at times rather lengthy, between the provision of treatment and the submission of the claim for reimbursement to the office responsible for settling claims is largely in the hands of the claimant.

11 The difficulties of administering, in a period of floating exchange rates, a system such as that for refunding sickness expenses incurred in many different countries may justify the application of a single exchange rate during a whole quarter; but the delay which may occur between the day on which treatment is paid for and the day on which reimbursement is effected is likely to create inequality between officials according to whether they perform their duties in a country with a weak currency or in one with a strong currency. The existence of a time-limit within which claims for reimbursement must be made is enough to avoid speculative delays without thereby impairing the right of the claimant to receive the same amount of actual reimbursement irrespective of the country to which he is posted.

12 In the light of these considerations the Court holds that the principle of equal treatment of officials requires that the rate of exchange to be applied in the reimbursement of sickness expenses should be as close as possible to the rate on the date of reimbursement. The rate to be applied must therefore be that for the quarter in which the reimbursement is effected.

Costs

13 Since the defendant has failed in its action it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. **Orders the Commission to reimburse to the applicant the difference between the amount of the sickness expenses calculated at the rate for the day on which treatment was received and the rate for the quarter in which reimbursement was effected;**

2. **Orders the defendant to pay the costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 13 February 1980.

A. Van Houtte
Registrar

A. O'Keeffe
President of the First Chamber