JUDGMENT OF THE COURT (First Chamber)
7 October 1987 *

In Case 140/86

Gisela Strack, the widow of and the person entitled under Gerhard Strack, former official of the Commission of the European Communities, residing in Biebertal (Federal Republic of Germany), represented by B. Potthast and H. J. Rüber, Rechtsanwälte of Cologne, acting as Agents, with an address for service in Luxembourg at the Chambers of Victor Biel, 18A rue des Glacis,

applicant,

v

Commission of the European Communities, represented by its Principal Legal Adviser, Henri Étienne, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision refusing to allow the applicant to acquaint herself with the complete personal file of Gerhard Strack

THE COURT (First Chamber),

composed of: M. G. Bosco, President of Chamber, R. Joliet and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: Mrs B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 19 March 1987,

* Language of the Case: German.

after hearing the Opinion of the Advocate General and his Opinion delivered at the sitting of 2 July 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 June 1986, Gisela Strack, the widow and the person entitled under Gerhard Strack, a former official of the Commission of the European Communities employed as a technician at the Atomic Research Centre of the European Communities in Geel in Belgium, brought an action essentially for the annulment of the Commission's decision which refused her authorization to acquaint herself with the complete personal file of her deceased husband.

2 It is apparent from the documents before the Court that on 9 September 1970 Gerhard Strack was exposed to radioactive contamination. That incident caused the Head of the Commission's Medical Service to declare that he suspected the presence of an occupational disease within the meaning of Article 3 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (hereinafter referred to as 'the Rules'). Following that declaration, Mr Strack commenced in September 1980 the procedure provided for by Articles 16 *et seq.* of the Rules for recognition of the existence of an occupational disease. Mr Strack died in February 1981 and his widow continued the abovementioned procedure which has not yet culminated in a decision.

3 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure, and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 In essence the applicant criticizes the Commission's refusal to allow her a personal and direct right of access to all the documents which should appear in the personal file of her deceased husband. Article 26 of the Staff Regulations requires the

administration to draw up in respect of every official a single and complete personal file which contains all the documents concerning the administrative status of the official. The records of Mr Strack's regular routine medical examinations, the records concerning the accident at work in 1970 and the medical findings by the Commission's doctors and experts appointed by the Commission should, she claims, be accessible through consultation of that file, since those documents have an intrinsic link with the official's duties.

5 The Commission contends that the personal file provided for in Article 26 must only contain documents concerning the official's administrative career. Because of the necessity to respect medical confidentiality it is possible to allow access to documents of a medical nature only by following the special procedure provided for in the Rules which provides for the communication of the full medical report to a doctor appointed by the official.

6 In order to determine whether the applicant's arguments are well founded it is appropriate to recall that Article 26 of the Staff Regulations provides for the establishment of a personal file for every official which contains all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct as well as any comments by the official on such documents. In order to give the official every guarantee as to his administrative status Article 26 also provides that there is to be only one personal file for each official and that that official has the right, even after leaving the service, to acquaint himself with all the documents in his file and that documents may not be used or cited by the institution against an official unless they were communicated to him before they were filed.

7 The purpose of those provisions, as the Court recognized in its judgment of 28 June 1972 in Case 88/71 *Brasseur* [1972] ECR 499, is to guarantee the official's right to defend himself by preventing decisions taken by the appointing authority and affecting his administrative status and career from being based on facts concerning his conduct which are not contained in his personal file.

8 It is apparent from the wording and the purpose of Article 26 that any document which might affect the administrative status of the official and his career must be placed in his personal file.

9 As regards access to documents of a medical nature in the context of a procedure for recognition of an occupational disease, the Rules established a special procedure for the transmission to a doctor appointed by the official of the full medical report on which the decision which the appointing authority proposes to take is based and for recourse to a medical committee of which that doctor is a member.

10 Respect for the official's rights, in particular the possibility which he must have of examining the reasons for the decision which the appointing authority proposes to adopt and to judge whether that decision is in conformity with the rules of the Staff Regulations, requires that he be granted a means of access to documents of a medical nature including the factual findings on which the proposed decision is based.

11 That possibility afforded to the official must, however, be reconciled with the requirements of medical confidentiality which make every doctor the judge of whether he can inform the persons whom he is treating or examining of the nature of the illnesses from which they may be suffering (see the judgment of 27 October 1977 in Case 121/76 *Moli* [1977] ECR 1971 and the judgment of 13 April 1978 in Case 75/77 *Mollet* [1978] ECR 897). That medical confidentiality must also apply *vis-à-vis* persons entitled under a deceased official, even if that official had, as in this case, released the doctors from their duty of confidentiality.

12 By providing for indirect access to documents of a medical nature through the interposition of a medical examiner appointed by the official, the Rules reconcile the rights of the official or those entitled under him with the requirements of medical confidentiality.

13 As regards the classification of the documents to which the applicant seeks access through consultation of the personal file, it should be stressed that the medical findings recorded by the doctors and experts are unquestionably of an exclusively medical nature. Documents relating to the findings of fact concerning an incident

at work which may serve as a basis for a procedure for the recognition of the existence of an accident at work or an occupational disease within the meaning of the Rules must also be recognized as being of a medical nature, which does not mean that such documents may not, in an appropriate case, affect the official's administrative status in so far as the facts which they recount form the basis of reports concerning the ability, efficiency or conduct of the official. If that is the case then those documents must appear in the personal file.

14 It must, however, be stated that in this case it has neither been proved nor even alleged that the factual findings with regard to the contamination had any influence on the administrative status or the administrative career of the late Mr Strack. Consequently, the Commission was right in not placing those documents in the personal file provided for by Article 26 of the Staff Regulations.

15 The documents which the Commission produced to the Court after the hearing and which did not appear either in the personal file or in the file presented to the Medical Committee essentially contain the findings concerning the incident in 1970 and its consequences. Since the Commission had no intention of using these documents for administrative purposes they assume importance solely in the context of the procedure for recognition of an occupational disease, and for this reason did not have to appear in the personal file provided for in Article 26. The fact that those documents were not part of the file sent to the Medical Committee may possibly have an effect on the regularity of that procedure but do not fall to be considered by the Court in this action.

16 In those circumstances it must be held that the Commission did allow the applicant access to the complete personal file of her deceased husband and that it was right in refusing her access to the documents of a medical nature outside the special procedure provided for that purpose.

17 The action must therefore be dismissed as unfounded.

Costs

18 Under the second subparagraph of Article 69 (3) of the Rules of Procedure the Court may order even a successful party to pay costs which the Court considers that party to have unreasonably or vexatiously caused the opposite party to incur. By confining itself to making, in response to the applicant's request, a purely formal and insufficiently precise reference to the provisions of Article 26 of the Staff Regulations and to the Rules and by allowing doubts to subsist as to the nature of the documents produced to the Court after the hearing, which did not appear in the personal file or in the. file sent to the Medical Committee, the Commission did not conduct itself in the manner called for by the extremely sensitive and complex nature of Mr Strack's case. In those circumstances it is proper to order the Commission to bear all the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the Commission to bear all the costs.

Bosco Joliet Schockweiler

Delivered in open court in Luxembourg on 7 October 1987.

P. Heim
Registrar

G. Bosco
President of the First Chamber