JUDGMENT OF THE COURT (FIRST CHAMBER)
16 JUNE 1971[1]

Anne Duraffour
v Council of the European Communities

Case 18/70

Summary

1. *Officials — Accident insurance — Obligation of the institution — Substitution of an insurer — Limits*
   (Staff Regulations of Officials of the European Communities, Article 73)

2. *Officials — Accident insurance — Suicide — Exclusion*
   (Staff Regulations of Officials of the European Communities, Article 73)

3. *Officials — Accident insurance — Death — Benefits — Materialization of the risk — Lack of witnesses — Accidental nature of the event — Circumstantial evidence — Cooperation of the institution in order to discover the truth*
   (Staff Regulations of Officials of the European Communities, Article 73)

1. Whilst, in the absence of the rules provided by Article 73 of the Staff Regulations, an institution is entitled, on a provisional basis, to take out a policy determining the risks covered, since the rights and obligations of the institution and of its servants are in this case provisionally determined by Article 73 in conjunction with the said policy, it cannot however be accepted that the obligation of an insurer may be substituted for the direct obligation of the institution under Article 73 of the Staff Regulations, thus depriving the beneficiaries of their particular legal rights guaranteed by the Staff Regulations.

2. The exclusion of suicide from cover against the risk of accident is compatible with the terms of Article 73 of the Staff Regulations.

3. So long as it is not established that the death is due to a cause ruling out suicide, the benefits are not payable. Where the death took place without witnesses, it is enough that the accidental nature of the event can be deduced from sufficiently weighty, clear and uncontradictory circumstantial evidence which is not contradicted by contrary circumstantial evidence. The appointing authority must cooperate with the servant insured or with those claiming under him in order to discover the truth.

In Case 18/70

ANNE DURAFFOUR, acting on her own behalf and as a legal guardian of her infant children, Sylvie, Pascale, Jean-Patrice, Renaud and Pierre Roland, widow of Paul Roland, in his lifetime an official of the Council of the

1 — Language of the Case: French.

European Communities, residing in Brussels, represented by Ernest Arendt, Advocate of the Luxembourg Bar, residing at 34b rue Philippe-II, Luxembourg,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by Jean Baugniet, assisted by Roger Dalcq, both Advocates of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Mr Baden, Advocate, of 45 boulevard Prince-Henri,

defendant,

Application for the annulment of the implied decision of the Council rejecting the complaint through official channels made by the applicant on 15 February 1970 and in so far as is necessary of the express decision of the Council of 10 April 1970 rejecting the application for the lump sum payable on the death of an official provided for by Article 73 of the Staff Regulations,

THE COURT (First Chamber)

composed of: A. M. Donner, President of Chamber, R. Monaco and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of facts and procedure

The facts and the procedure may be summarized as follows:

1. During his lifetime, the husband of the applicant was an official of the Secretariat of the Council of Ministers of the European Communities.

On 1 April 1969, his body was taken from the Rhône. Death from drowning had occurred several weeks previously. In the clothes of the deceased the police found a package of a sedative called 'Équanyl'. On 3 April 1969 the brother of the deceased made declaration recorded by the police at the Commissariat de Police, Lyon, as follows:

'I reported (the) disappearance (of my brother) . . . on 21 February 1969. My brother had disappeared twenty-four hours previously from the residence of my father at 60 rue Président-Herriot. I would mention that my brother had been receiving treatment at the Champert Clinic for some days. Yesterday he said that he was going to get some medicines. My father followed him to the staircase and from the time he reached the bottom of the stairs he has not seen him. I think that my brother was the victim of an irrational impulse.'

2. Article 73 of the Staff Regulations provides:

'An official is, from the date of his entry into the service, insured against the risk of occupational disease or accidents in the manner provided for in rules drawn up by common agreement of the Institutions of the Communities after consulting the Staff Regulations Committee. He shall contribute to the cost of insuring against non-occupational risks up to 0.1% of his basic salary.'

The second paragraph of Article 73(1) provides in particular that such rules shall *specify which risks are not covered.* The benefits payable in the event of death comprise the payment of a lump sum equal to five times the deceased's annual basic salary.

Since the rules provided for by the Staff Regulations have not yet been adopted, the Council of the European Communities has, as a provisional measure, taken out with a consortium of private insurance companies a so-called 'collective-individual' accident policy ('Individuelle-Collective'), which covers 'all accidents' which may happen to servants of the institution, but Article 4 B (d) of the General Conditions excludes suicide. Moreover Article 8 of these General Conditions provides:

'The person taking out the policy, the insured or those entitled thereunder shall be under an obligation to prove that the death, the illness or the temporary incapacity is the exclusive and direct result of an accident covered by this policy.'

3. On 15 January 1970, the applicant submitted a request for the lump sum payable in the event of death under Article 73 of the Staff Regulations to the General Secretariat of the Council of Ministers of the European Communities.

In a letter of 10 April 1970, the Secretary-General pointed out that the Council could not pay the lump sum requested since no proof had been given by the applicant that the death was of an accidental nature. According to that letter the insurers of the collective-individual policy had refused payment since, in their opinion, suicide was proved.

4. The applicant appealed to the Court of Justice on 14 May 1970. By a letter of 18 November 1970 the Court put to the parties three questions seeking their observations on the legal relationships between the parties and the insurer as they appear from the insurance policy taken out by the Council of the European Communities on 30 June 1961.

5. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the First Chamber of the Court decided that no preparatory inquiry was necessary.

Two questions were put to the defendant in a letter of 12 February 1971 to which it replied in a letter of 24 February 1971.

The parties presented oral argument at the hearing on 31 March 1971. The Advocate-General delivered his opinion at the hearing on 4 May 1971.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'1. Declare that the present application is admissible.

2. In the first place:

(a) declare the application to be well founded:

— vary the implied decision of rejection and, in so far as is necessary, the express decision of rejection of 10 April 1970;
— declare that the applicant has a right to the payment of the lump sum provided for cases of death by Article 73 (2)(a) of the Staff Regulations for herself and for her five infant children;
— order, in so far as it may be necessary, the General Secretariat of the Council of the European Communities to pay the abovementioned lump sum in the event of death together with interest as provided by law;

(b) order the defendant to bear all the costs.

3. Secondly:
Take notice that the applicant offers to prove by all legal means, in particular by witnesses or by expert opinion, that the death of her husband was due to accidental causes.'

The *defendant* contends that the Court should:

'1. Declare that the application is admissible.
2. Declare it to be unfounded.
3. Rule that the additional request to be permitted to offer proof is not admissible because it is too vague and, if appropriate, so far as is necessary, reserve to the defendant the right to formulate any appropriate request particularly as regards proof. In any event order the applicant to bear the costs.'

The *defendant* also contends in its rejoinder that the Court should:

In the first place

Declare the application to be unfounded and dismiss it;

Make an appropriate order as to costs;

Secondly

Before giving judgment, authorize the defendant to bring proof by all legal means, including witnesses, that:

1. Mr Roland had been on sick leave for some months at the time of his death,
2. Mr Roland had left a psychiatric institution a few days before his death,
3. The friends and relations of Mr Roland did not dare allow him out on his own.

In this case, reserve the costs.'

III — Summary of the arguments of the parties

The arguments and the submissions of the parties may be summarized as follows:

1. The foundation of the claim and the legal relationships between the defendant, the insurers and the applicant

The *applicant* maintains that the claim is based solely on Article 73 of the Staff Regulations and it is according to this provision alone that it must be decided. The insurance policy taken out by the defendant should not enter into the case and cannot govern the rights of servants arising under Article 73 of the Staff Regulations, because

— the risks covered by the policy and those covered by Article 73 are different;
— the staff insured are in no way parties to the contract signed by the Council. There is no legal connexion between the insurers and the staff since:
(a) the contract is made directly between the insurance companies and the Council without the participation of the staff insured;
(b) the premiums are payable by the Council to the insurers;
(c) the compensation is payable to the policyholder and not the insured (Special Conditions, Article 7);
(d) the individual contribution of the staff insured in respect of non-occupational accidents provided for by Article 73 of the Staff

Regulations is paid by the official directly to the Council and not to the insurance companies;

— the policy itself cannot create any obligations on the part of the insurer in respect of the applicant, since this policy is governed in all respects by contractual provisions and it is not possible to link it to any national law which would give direct rights to the beneficiary or which would allow him to bring an action before the national courts;

— the applicant observes that even if, for the interpretation of the policy, it were necessary to refer to a national law which in this case could only be Belgian law, it would have to be stated that since, in cases of accident, that law does not recognize a direct action by the victim against the insurer, what is concerned is a contractual stipulation by the policyholder for the benefit of its staff. Such a stipulation for the benefit of third parties—which, moreover, is not expressly provided for in the policy—could enable the beneficiary to bring an action against the insurer, but it would in no way exclude an action against the Council based on Article 73 of the Staff Regulations.

In fact the applicant further maintains that the insurance contract entered into by the institution was not an accident insurance policy in the true sense of the term but was rather within the category of group insurance which is to be found in relations between employers and employees: the employer thereby promises the wage-earner certain social security benefits in case of death or sickness, etc. and covers the financial obligations arising from this undertaking by an insurance policy for which he pays the premiums.

The applicant maintains that the only provision applicable and thus the only one to be interpreted is Article 73 of the Staff Regulations on which alone she based her claim and which alone establishes her rights against the Council.

In her oral observations, the applicant stated, moreover, that the lack of rules provided for in Article 73 does not have the effect of depriving officials of the right of action deriving from this provision.

The *defendant* replies that as it has not yet been possible to issue the rules provided for by Article 73, which must, *inter alia,* specify which risks are not covered, for lack of accord between the institutions, the Council of Ministers, in order none the less to comply with its obligations under Article 73, had covered the risk of accidents in respect of its officials by taking out an insurance policy for their benefit.

Thus whilst the Staff Regulations were incomplete for lack of the common rules, they were completed by resorting to provisions governed by private law. The method of completing staff regulations under public law in this way is quite legitimate and is practised in the administrative law of the Member States. Thus nothing prevents the defendant from having recourse to this on condition that in this way it ensures that the officials concerned are guaranteed rights equal to those provided by Article 73.

Article 73 of the Staff Regulations gives to officials and those deriving rights through them only those rights which arise from the insurance policy which the defendant took out. The reasons for this are as follows:

(i) Article 73 (2) of the Regulations indicates the extent of the benefits payable to members of the staff. The policy taken out by the defendant corresponds exactly to those benefits (Article 9 of the General Conditions) in respect of the sums payable in case of accident.

Article 73 (1) of the Regulations provides that this cover is granted under certain conditions. The special conditions of the policy were brought to the attention of the members of the staff by Staff Notices Nos 13/66 and 12/68 and

neither Mr Roland, nor for that matter any other servant, contested their content. Thus, for example, the restriction on the use of motorcycles of more than 125 c.c. referred to in the applicant's supplementary note (page 3) resulting from Article 2 (c) of the special conditions of the policy (page 16) had been brought to the notice of officials (page 7 *in fine* of Staff Notice No 12/68).

(ii) The policy conditions conform both to the general principles of law and to what should have been and what will, without doubt, be the rules issued in implementation of Article 73 of the Regulations.
Indeed the terms used in Article 73 are appropriate to insurance terminology and indicate that in order to assess the extent of the obligations insured by the Council, reference must be made to the general principles of insurance. In no country, however, does an accident insurance policy cover occurrences which are not of a fortuitous nature. Therefore in excluding suicide the policy conforms with the general principles of law and with Article 73 of the Regulations.

(iii) The policy conditions were brought to the attention of all servants by Staff Notices Nos 13/66 and 12/68 (Schedules 1 and 2 to the rejoinder) and so the defendant maintains that one may regard the conditions of the insurance policy taken out as being provisionally part of the Staff Regulations.

As to the manner in which the policy operates, the defendant states that it is not a group insurance but a collective insurance for the benefit of third parties which in the final analysis is a contract for the benefit of third parties made by the policyholder in favour of its staff.
If the policy is a part of the Staff Regulations as a temporary means of implementing Article 73 and if the contract for the benefit of third parties had been accepted by the applicant, as was shown above, it necessarily follows that:

(a) the applicant has no right of action for payment against the defendant but solely against the insurers; the application should therefore be dismissed;

(b) the applicant can have no rights over and above those conferred by the policy.

2. As to the concept of accident.

The *applicant* maintains that death was caused by drowning which of its nature constitutes an accident for the purpose of Article 73 of the Staff Regulations.
The *defendant* observes that its conclusions on this point are merely of a subsidiary nature and argues that even if one accepts the applicant's view that Article 73 alone is to be taken into consideration it does not follow that the action is well founded.
The aim of Article 73 is to cover the risk of accident. However, the word 'accident' implies an abnormal, fortuitous, or unforeseen event, that is to say, one which does not depend on the intention of the person who suffers the consequences. Suicide is an intentional and fraudulent act and is not an accident.
Moreover the definition of 'accident' given in the insurance policy may at least be taken into consideration in interpreting Article 73, an interpretation which is all the more necessary as it was given *in tempore non suspecto.*
The *applicant* replies that the concept of 'accident' should be defined in relation to Article 73 of the Staff Regulations and not with regard to Article 1 of the policy.
The applicant maintains that there is an accident when an *external and sudden* occurrence has the effect of either triggering off an illness or some sort of trouble, or of revealing or aggravating an illness which existed previously. Even if the victim's morbid predisposition was proved this would not constitute grounds for excluding or weakening the rules laid down by law.

Drowning is in essence an accidental cause of death, that is to say, due to the effects of an external force to which man is subject. In this respect Article 73 makes no distinction between *intended or fortuitous* accidental causes.

3. Burden of proof

The *applicant* observes that from its arguments and from the subsidiary arguments of the defendant arises the problem of the burden of proving suicide.

If the proposed definition of the concept of 'accident' is accepted, the sudden and violent action of an external force on the person who is subject to it (in this case submersion in water) would be the necessary and sufficient precondition giving rise to the right to the lump sum in case of death, irrespective of whether this sudden and violent action was intended or fortuitous.

In any case once the defendant maintains that the text of Article 73 of the Regulations excludes an intended cause of accident and only applies to a fortuitous cause of accident, it thereby becomes the applicant and must therefore bear the burden of proving its contention.

The *defendant* replies that both under the policy (Article 8) and under the general principles of law the insured or those claiming under him who claim the benefit of the insurance bear the burden of proof of accident, that is, that the occurrence was due to a violent, sudden and involuntary external cause which led to death. The case-law of many Member States confirms this.

It adds that, although one cannot extend the principle so as to demand the direct proof of the circumstances in which the drowning, which took place without witnesses, occurred, it is at least necessary that the circumstances required in the insurance contract may be deduced from weighty, unambiguous and uncontradictory evidence. If, apart from evidence on an accident, there is also evidence to the contrary, then a doubt exists and the burden of proof is not discharged.

This solution is in accordance with Belgian and French law and also conforms to the generally accepted principle relating to the burden of proof (*actori incumbit probatio*) and also insurance practice. In accident policies suicide is not an event which cancels the rights of an insured (if this was so the burden of proof would be on the insurer) but a case where the risk is not covered.

4. The circumstances of the death

The *applicant* maintains that the refusal to pay out the sum insured can only be supported by the declaration made to the police by the brother of the deceased on 3 April 1969. This declaration states that Mr Paul Roland had been receiving treatment for some days in a neurological clinic in Lyon. The applicant states that emotion probably caused the haste with which the brother of the deceased thought it possible to deduce that Mr Roland had been 'probably the victim of an irrational impulse' without giving details, however, whether this impulse had really led him to take his own life or merely to go for a dangerous walk on the banks of the Rhône from which he never returned.

Such a declaration is not sufficient to establish suicide. A stay of three days in a neurological clinic for the purposes of an examination cannot establish that the deceased was subject to an irresistible impulse to commit suicide: no request for reimbursement of substantial expenses for neurological treatment had been submitted to the Secretariat of the Council; only a mild sedative had been found in the pockets of the deceased; and finally the deceased left no message for his family or friends as one would normally expect the father of a family of five children to do.

In her reply the applicant gives further particulars of the circumstances of the accident known to her. She says that on the evening of 20 February 1969 the deceased left the home of his parents, asking his mother to prepare the evening meal; the night was very cold and the

banks of the Rhône were icy. Finally the deceased was an excellent swimmer and it is most improbable that a good swimmer would commit suicide in such a way.

The *defendant* answers that the evidence put forward by the applicant does not prove anything once it is known that for some months the victim had been on sick leave because of his psychological state and that for some weeks he had been under treatment in a psychiatric institution and that his wife had had no news from him.

5. *Offers of proof*

In her submissions, the *applicant* offers to prove by all legal means, particularly by witnesses or by expert opinion, that the death of her husband was due to accidental causes.

The *defendant* replies that such an offer of proof cannot be met by proof in rebuttal because it is too vague and is therefore not admissible.

The *applicant* in her reply states that as she is under an obligation to prove the unintentional nature of the death of her husband she asks to be allowed to establish by witnesses or by expert opinion the circumstances and particulars which she sets out in her reply if they are contested.

She adds that if the burden of proof is on the defendant it would be inadmissible for the defendant to make an offer of proof in its rejoinder since it had not made such an offer in its statement of defence.

The *defendant* rejoins that if the applicant is given the permission which she seeks to bring proof by means of witnesses the right to submit proof to the contrary should be granted to the defendant. It adds that, if the burden of proving the intentional nature of the death falls upon it, then it must be granted the right to supplement, by means of an inquiry, the circumstantial evidence appearing from the police file. Its offer of proof is perfectly admissible because, on the one hand, the statement of defence requested that the defendant's right to formulate, if appropriate, so far as is necessary, any offer of proof which seems appropriate, should be reserved and because, on the other hand, the delay in submitting offers of proof was caused by the fact that it was only in the applicant's reply that it was alleged that the burden of proving suicide was on the defendant.

Grounds of judgment

1 Mr Paul Roland, an official at the Secretariat of the Council of Ministers of the European Communities, died from drowning in the Rhône during the month of February 1969.

2 His widow, the applicant, acting on her own behalf and as legal guardian to her infant children, requested in a letter of 15 January 1970 to the Secretary General of the Council of Ministers, the grant of the benefits provided for by Article 73 of the Staff Regulations for those persons entitled upon the death of an official from a non-occupational accident.

3 Since the Council refused to grant this request, the applicant brought an action before the Court of Justice pursuant to Article 91 of the Staff Regulations for an order that the Council should pay the sums in question.

4 (a) Article 73 (1) provides:

'An official is, from the date of his entry into the service, insured against the risk of occupational disease or accidents in the manner provided for in rules drawn up by common agreement of the Institutions of the Communities after consulting the Staff Regulations Committee. He shall contribute to the cost of insuring against non-occupational risks up to 0.1% of his basic salary.'

Such rules shall specify which risks are not covered.'

5 In the following paragraphs, the article lays down the benefits payable.

6 However the rules provided for in paragraph 1, which were to determine the conditions subject to which servants are covered and in particular should specify which risks are not covered, have not up to now been issued for lack of agreement between the institutions.

7 In support of its rejection, the defendant argues in the first place that, in order to comply in the meantime with its part of the obligations imposed on institutions, it covered the risk of accident with regard to its servants by taking out an insurance policy for their benefit.

8 It claims that the policy is a contract in favour of third parties which benefits those insured and which was accepted by implication but none the less clearly by the applicant so that the latter has no rights other than those conferred by the said policy and under the terms thereof only has a right of action against the insurers.

9 It is said that the action should therefore be dismissed in so far as it is directed against the Council.

10 The applicant on the other hand maintains that her rights are granted directly by Article 73 and that therefore the Council is indebted to her.

11 Article 73 of the Staff Regulations concerns the social security of officials and lays down the reciprocal rights and obligations of the institutions and of their servants.

12 In order to ensure as far as possible the compliance with its obligations and in the absence of other possibilities the Council was entitled to resort to provisional measures and to take out a policy fixing the conditions under which risks are covered.

13 In addition by its Staff Notice of 11 July 1966 the defendant informed its staff of the provisions of this policy which provisionally laid down the conditions under which the benefits provided for in Article 73 would be guaranteed.

14 Thus the rights and obligations of the institution and of its servants are provisionally determined by Article 73 in conjunction with the policy.

15 In this respect, it cannot be accepted that the obligation of an insurer may be substituted for the direct obligation of the institution under the said article, thus depriving the beneficiaries of their particular legal rights guaranteed by the Staff Regulations.

16 (b) Secondarily the defendant maintains that the death was caused by suicide and was thus not an accident either under the terms of the policy nor under the terms of Article 73 of the Regulations and in any case the applicant supplied no proof of the accidental nature of the death.

17 It should be examined whether suicide comes within the concept of accident.

18 In the terms of the policy, accident means an event which happens without any intention on the part of the insured and the proven cause of which is the sudden and violent action of an external force which results in physical damage leading to either death or injury.

19 Suicide is irreconcilable with this definition and therefore Article 4(d) provides that the company is not liable for suicide or attempted suicide.

20 In addition the policy does not cover the risk of drowning unless it is involuntary.

21 The exclusion from the policy of suicide because of its non-accidental nature is in conformity with general practice as regards the cover against the risk of accident and is compatible with the terms of Article 73.

22 Therefore such an event does not give rise to the right to the benefits payable under this provision.

23 (c) The parties have not reached agreement on whether the death was caused by the suicide of the victim.

24 Therefore it should be decided how and by whom the circumstances of the death must be proved.

25 Article 73 is silent as to this.

26 Moreover Article 8 of the policy provides that 'the person taking out the policy, the insured or those entitled thereunder shall be under an obligation to show that the death, illness or temporary incapacity is the direct and exclusive result of an accident covered by this policy'.

27 Whilst this provision refers expressly only to the relationships with the insurers and not those between the servant and the institution it is justifiable to take the view that it governs the whole question of the burden of proof in the context of the implementation of Article 73 in conjunction with the policy.

28 In view of the connexion between this article and the policy it would be unacceptable to have two different methods of proof between the different parties concerned in respect of one event.

29 Although it is true that the benefits are not payable so long as it is not established that the death was due to a cause ruling out suicide, one cannot however require the beneficiaries under the guarantee to produce direct proof of the circumstances in which a death occurred when it took place in the absence of any witnesses.

30 It is enough that the accidental nature of the event can be deduced from sufficiently weighty, clear and uncontradictory circumstantial evidence is not contradicted by contrary circumstantial evidence.

31 In addition it is for the defendant institution, as the appointing authority, to cooperate with those claiming under one of its servants in order to discover the truth.

32 The applicant put forword a series of facts tending on the one hand to establish that suicide by drowning was improbable in view of the personality of her husband and on the other hand to prove that the deceased did not suffer from a grave psychiatric disorder such as to lead him to attempt to take his own life.

33 The defendant on the other hand offered to prove the psychiatric disorder of the deceased which would make the theory of his suicide highly probable and even certain.

34 By virtue of Article 21 of the Protocol on the Statute of the Court of Justice and of Articles 47, 49 and 60 of the Rules of Procedure the Court may require the parties to provide information or may order the verification of certain facts.

[35] Therefore, before the Court makes any further decision, the applicant should be allowed to give particulars in writing of the facts which she intends to establish and the means of proving them, whilst reserving the right of the defendant to produce evidence in support of its own contentions with the right for both parties to bring contrary evidence being reserved.

Costs

[36] The costs are reserved until the final judgment.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 179;
Having regard to the Staff Regulations of Officials of the European Communities, especially Articles 73, 90 and 91;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT (First Chamber),

before delivering its final judgment, hereby declares and rules:

1. **The date on which the applicant will give particulars of the facts which she offers to prove and indicate for each one the method of proof on which she intends to rely shall be fixed as 15 July 1971;**

2. **The Court will give a ruling fixing the date by which the defendant shall produce the evidence to be supplied by it;**

3. **The costs are reserved.**

Donner Monaco Mertens de Wilmars

Delivered in open court in Luxembourg on 16 June 1971.

A. M. Donner
President of the First Chamber

A. Van Houtte
Registrar