JUDGMENT OF THE COURT (Second Chamber)

8 October 1986 *

In Joined Cases 169/83 and 136/84

(1) **Gerhardus Leussink,** an official of the Commission of the European Communities, residing in Brussels,

(2) **Maria Brummelhuis,** wife of Gerhardus Leussink, residing in Brussels,

(3) **Monica Leussink,** daughter of Gerhardus Leussink, residing in Brussels,

(4) **Maria Brummelhuis** and **Gerhardus Leussink,** mentioned above, acting as the legal representative of their children, namely

(a) **Mirjam Leussink,** born on 14 December 1966,

(b) **Mechteld Leussink,** born on 12 December 1968, and

(c) **Maud Leussink,** born on 15 March 1971,

all residing in Brussels,

represented by Benoît Humblet and Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Tony Biever, 83 boulevard Grande-Duchesse Charlotte,

applicants,

v

Commission of the European Communities, represented by Hendrik van Lier, a member of its Legal Department, acting as Agent, assisted by Piet Vercruysse, of the Brussels Bar, with an address for service in Luxembourg at the office of Giorgios Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATIONS for:

* Language of the Case: Dutch.

(i) the annulment of the implied decision rejecting the request submitted by the applicants, Maria Brummelhuis and her children Monica, Mirjam, Mechteld and Maud Leussink, for compensation of BFR 3 000 000 in the case of Mrs Brummelhuis and BFR 1 000 000 in the case of each of the children (in each case subject to modification) for the non-material damage suffered as a result of an accident at work involving Gerhardus Leussink, together with interest thereon at the rate of 12% per annum from 5 April 1983 to the date of payment (Case 169/83);

(ii) the annulment of the implied decision rejecting the request submitted by the applicant, Gerhardus Leussink, for compensation of BFR 5 000 000 (subject to modification) for the non-material damage suffered as a result of the same accident, together with interest thereon at the rate of 12% per annum from 5 April 1983 to the date of payment (Case 136/84); and

(iii) in both cases, an order requiring the Commission to pay the sums mentioned above,

THE COURT (Second Chamber)

composed of: T. F. O'Higgins, President of the Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: Sir Gordon Slynn
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 29 May 1986,

after hearing the Opinion of the Advocate General delivered at the sitting of 26 June 1986,

gives the following

JUDGMENT

1 By an application lodged at the Court Registry on 23 May 1984 (Case 136/84), Mr Leussink, an official of the Commission of the European Communities in Grade B 1, brought an action under Article 179 of the EEC Treaty for an award of BFR 5 000 000, together with interest thereon at the rate of 12% per annum from 5 April 1983 to the date of payment, as compensation for the non-material damage which he has allegedly suffered as a result of an accident at work.

2 By an application lodged at the Court Registry on 2 August 1983 (Case 169/83), Mrs Brummelhuis, the wife of Mr Leussink, and their four children, Monica, Mirjam, Mechteld and Maud Leussink (the last three being legally represented by their parents) brought an action under Article 178 and the second paragraph of Article 215 of the EEC Treaty for an award of BFR 3 000 000 for Mrs Brummelhuis and BFR 1 000 000 for each of the children, together with interest thereon at the rate of 12% per annum from 5 April 1983 to the date of payment, as compensation for the non-material damage which they allegedly suffered as a result of Mr Leussink's accident.

3 The Court ordered the joinder of the two cases for the purposes of the oral procedure and the judgment.

4 On 7 April 1978 Mr Leussink was involved in a road accident in the Federal Republic of Germany while travelling on mission in a car belonging to the Commission driven by a Commission official. Mr Leussink was seriously hurt and suffers from a number of permanent sequelae. He was nevertheless able to resume work at the Commission.

5 The Medical Committee, set up under Articles 21 to 23 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 Insurance Rules'), found that the permanent invalidity caused by the accident had to be assessed at 75%, 10% of which was for psychological and non-material damage. In accordance with that finding Mr Leussink received the sum of BFR 7 254 042 under the accident insurance provided for by Article 73 of the Staff Regulations and by the Insurance Rules.

6 Mr Leussink maintains that that sum covers only the economic consequences of the accident and not the non-material damage. In that connection he points out that, as far as his career is concerned, he has given up all hope of promotion and lives in permanent fear of not being able to cope with his duties. In his private life, his relations with his wife, children and friends have been irreversibly disrupted. Lastly, he can no longer practise sport or enjoy the pleasures of everyday life.

7 Mrs Brummelhuis and the four children seek compensation for the non-material damage which they have suffered owing to the change of character and personality undergone by their husband and father as a result of the accident, which has profoundly disturbed relations within the family.

8 The Commission contends, in the first place, that the accident insurance provided for in Article 73 of the Staff Regulations and the Insurance Rules covers all injury and excludes any claim based on general law. In the second place, the Commission disclaims all liability for the accident and questions the extent of the alleged injury and the existence of a causal link between the accident and the injury.

9 Reference is made to the Report for the Hearing for the facts of the case and the detailed arguments of the parties.

The relationship between the insurance cover provided under the Staff Regulations and the claim for additional compensation based on general law

10 The first matter which must be considered is whether the accident insurance provided for in Article 73 of the Staff Regulations and the Insurance Rules constitutes an exhaustive compensation scheme which, in the event of an accident at work, has the effect, as the Commission maintains, of preventing any other claim for damages based on general law.

11 The insurance cover in question is based on a general contributory scheme of insurance against risks of accident during or outside working hours. Entitlement to benefit does not depend on who caused the accident or on whether that person is liable. Benefits take the form of a lump sum, calculated according to the degree of invalidity and the official's basic salary. The Insurance Rules contain provisions on

proceedings against a third part responsible for the accident. They provide that the official is to subrogate the Communities to his rights and proceedings against such a third party but give the official a prior claim to the sums which may need to be added to the benefits paid by the Communities in order to ensure, where necessary, that he obtains full compensation for the damage suffered by him. On the other hand, the Insurance Rules contain no provision regarding additional claims against the institution.

12 The fact that the official has a prior claim when a third party is responsible for the accident demonstrates that the benefits payable under the scheme are not to be regarded as providing full compensation in all cases. That is clear, moreover, from the nature of the benefits which take the form of a lump sum calculated by reference *inter alia* to the official's salary. That method of calculation is manifestly unsuitable where the injury is unrelated to the victim's professional life.

13 In those circumstances and in the absence of any express provision in the Insurance Rules, no argument may be derived from those rules for the purpose of denying to the official and the members of his family the right to seek additional compensation where the institution is responsible for the accident according to general law and the benefits payable under the staff insurance scheme are insufficient to provide full compensation for the injury suffered.

14 The matter which must therefore be examined next is whether the Commission must be held liable for the accident and, if so, whether the benefits payable under the insurance scheme are insufficient to provide full compensation for the injury and whether the existence of a causal link is sufficiently proved.

The Commission's liability

15 The Commission's argument that the question of its liability must be examined with regard to German law on road-traffic accidents, as the *lex loci delicti commissi*, cannot be accepted since the applicant was on a mission authorized by the Commission and was travelling in a car belonging to the Commission driven by a chauffeur who was also an official of the Commission. It was therefore an accident at work and the question to be considered is whether the Commission

failed to exercise the diligence required of it *qua* employer as regards the inspection, maintenance and use of the official car.

16 According to a technical expert's report drawn up at the request of the German Public Prosecutor's Office, the accident occurred because the tread came away from a tyre. The report mentions a number of possible causes, some of which could be attributable to poor maintenance or inadequate inspection of the vehicle or to negligent use. The Commission has not furnished any evidence enabling the Court to establish to which of those factors the detachment of the tread must be attributed.

17 As the Commission was best placed to provide evidence in that respect, such uncertainty must be construed against it. The applicants' contention that the accident was due to negligence for which the Commission is liable must therefore be accepted.

The injury suffered and the causal link

18 The information provided to the Court justifies the finding that the extremely serious injuries sustained by Mr Leussink have had consequences which were not only economic, particularly as far as his family and social relationships are concerned. Such consequences constitute non-material damage giving rise to entitlement to compensation. None of the documents laid before the Court cast doubt on the existence of a causal link between the accident and that injury. As far as Mr Leussink's application is concerned, it therefore merely remains to consider whether, and if so to what extent, the benefits paid under the insurance scheme provided for by the Staff Regulations constitute appropriate compensation.

19 As the Court has held in its judgment of 2 October 1979 in Case 152/77 *Miss B* v *Commission* [1979] ECR 2819, psychological and non-physical consequences must be taken into account when determining the rate of invalidity under the insurance scheme provided for by the Staff Regulations. A breakdown of the rate of invalidity (75%) shows that this was indeed done in this case. Besides the percentages adopted for the impairment of Mr Leussink's hearing, sense of smell and sense of taste, a rate of 10% was fixed for psychological and non-physical injury. That rate corresponds to compensation of almost BFR 1 000 000.

20 However, in view of the extreme gravity of the non-economic consequences which the accident has had for Mr Leussink, the Court considers it equitable to award him additional compensation of BFR 2 000 000 together with interest thereon at the rate of 8% per annum from the commencement of the action on 23 May 1984.

21 As regards the claims by Mr Leussink's wife and children for compensation for the effects of the accident on their family life, it must be recognized that the family, too, has suffered on account of the accident and its sequelae, particularly of a psychological nature, for Mr Leussink. That is clear *inter alia* from the medical certificates and school reports submitted on behalf of the children.

22 Although there can be no doubt about the reality of those effects or about the existence of a link with the accident, they are nevertheless the indirect result of the injury suffered by Mr Leussink and do not constitute part of the harm for which the Commission may be held liable in its capacity as employer. This is borne out by the fact that the legal systems of most Member States make no provision for compensating such effects.

23 It follows that the application lodged by Mrs Brummelhuis and Monica, Mirjam, Mechteld and Maud Leussink must be dismissed.

Costs

24 According to Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. Since the Commission has been largely unsuccessful in Case 136/84, it should be ordered to pay the costs in that case.

25 As far as Case 169/83 is concerned, according to the first paragraph of Article 69 (3) of the Rules of Procedure, the Court may order that the parties bear their own costs in whole or in part where the circumstances are exceptional. Although this action was brought under Article 178 of the EEC Treaty, the dispute arises from the relationship between an official and his institution. The principle laid down in

Article 70 of the Rules of Procedure, according to which costs incurred by institutions in staff cases are to be borne by them, should therefore be applied. Consequently, the parties must bear their own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Orders the Commission to pay Gerhardus Leussink the sum of BFR 2 000 000 together with interest thereon at 8% per annum from 23 May 1984;

(2) Dismisses the applications presented by Maria Brummelhuis, the wife of Mr Leussink, and by Monica, Mirjam, Mechteld and Maud Leussink;

(3) Orders the Commission to pay the costs in Case 136/84;

(4) Orders the parties to bear their own costs in Case 169/83.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 8 October 1986.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber