JUDGMENT OF THE COURT (THIRD CHAMBER)
18 MARCH 1982 [1]

Liliane Chaumont-Barthel v European Parliament

(Official — Subrogation)

Case 103/81

Officials — Social security — Sickness and accident insurance — Subrogation of the Communities — Prevention of double compensation for same damage
(Staff Regulations of Officials, Art. 73)

Since the purpose of the right of subrogation enjoyed by the Communities under the Rules of the Insurance of Officials against the Risk of Accident and Occupational Disease is to prevent an official from being compensated twice in respect of the same damage, the institution is entitled to apply the rule of subrogation only to the extent to wich the allowance awarded by it relates to the same damage as the compensation obtained from the third party.

In Case 103/81

LILIANE CHAUMONT-BARTHEL, an official of the European Parliament, residing at Elvange, represented by Ernest Arendt of the Luxembourg Bar, with an address for service at the latter's Chambers, 34 B Rue Philippe-II,

applicant,

v

EUROPEAN PARLIAMENT, represented by Martin Schmidt, Director of Personnel and Social Affairs, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 22 B Côte d'Eich,

defendant,

APPLICATION for the annulment of a decision of the Head of the Social Affairs Division of 24 July 1980 by which he decided that a sum paid to the

1 — Language of the Case: French.

applicant by an insurance company was subject to subrogation in favour of the Communities in the context of insurance of officials of the European Communities against the risk of accident and occupational disease, and for an order that the defendant pay to the applicant the sum of BFR 50 000,

THE COURT (Third Chamber)

composed of: A. Touffait, President of Chamber, Lord Mackenzie Stuart and U. Everling, Judges,

Advocate General: G. Reischl
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts and the arguments put forward by the parties in the course of the written procedure may be summarized as follows:

I — Facts and written procedure

According to Article 73 of the Staff Regulations of Officials of the European Communities (Official Journal C 56, 4. 3. 1968) an official is insured against the risk of accident subject to rules drawn up by common agreement of the institutions (hereinafter referred to as "the Rules"). Paragraph (2)(c) of that article provides that an official is to receive an allowance in the event of partial permanent invalidity.

Article 8 of the Rules provides that this allowance is to be paid to an official only on condition that he subrogates the Communities to his rights and proceedings against any responsible third party up to the amount of the allowance. The official must provide the institution to which he belongs with any information or evidence available to him, in order to enable the institution, where appropriate, to take action against the responsible third party, and give the institution all assistance necessary to that end. The official must obtain the consent of the institution to which he belongs in order to seek an amicable settlement of his claims or to compound with the responsible third party.

The applicant was involved in a road-traffic accident which occurred on 25 May 1977. On 1 July 1977 she signed a

form of subrogation by which she subrogated the Communities to all her rights of action against the responsible third party both as regards the benefits, allowances and reimbursements paid to her under Articles 72, 73 and 75 of the Staff Regulations and as regards the salary paid during her period or periods of incapacity for work.

She undertook to give eight days' advance notice to her institution of any amicable settlement, and the compounding or withdrawal of any action against the third party.

In the context of criminal proceedings against the third party before the Luxembourg courts, the applicant, who had joined the proceedings as civil party, was examined by the medical expert appointed by the court. In his opinion the expert assessed non-material damages in respect of pain and suffering at BFR 15 000. As regards the sequelae of the accident he said:

"There is now no longer any objective evidence of discomfort in the left elbow joint. There is still a slight neuralgia of the right occipital region caused by the distortion of the cervical vertebra, as well as three scars, sensitive to the weather and slightly disfiguring, in the patellar region of the left knee: in the absence of functional consequences properly so called, there is however no partial permanent invalidity.

Taking into account the temporary traumatic consequences and minor long-term sequelae I propose that the injured party be awarded compensation of BFR 50 000 for the adverse effect on her bodily health."

On the basis of that report the applicant was awarded the two sums mentioned in it.

The Parliament's medical officer, for his part, concluded in his report of 16 October 1979 that there was a degree of partial permanent invalidity of 6%.

By letter of 16 January 1980 the Head of the Social Affairs Division asked the applicant if she was in agreement with the Parliament's proposal to grant her an allowance of BFR 292 582 calculated on the basis of the finding of a degree of invalidity of 6%. The applicant was also asked to inform the Parliament of the amount of any payment by way of compensation received from the insurers of the responsible third party.

By letter of 4 February 1980 the applicant notified her agreement to the proposed sum and indicated that she had not received anything in respect of "invalidity" from the opposite party but only damages for pain and suffering and the adverse effect on her bodily health.

By letter of 24 July 1980 the Head of the Social Affairs Division informed the applicant that her bank account would be credited with the sum of BFR 242 582, namely the amount of the allowance in respect of partial permanent invalidity less the sum of BFR 50 000 which she had received from the responsible third party for the adverse effect on her bodily health.

On 2 October 1980 the applicant lodged a complaint against that decision which was rejected by a decision of the Secretary-General dated 29 January 1981.

By application lodged at the Court Registry on 28 April 1981 the applicant brought an action under Article 91 of the Staff Regulations.

The procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

(1) Declare the action to be admissible;

(2) Declare it to be well founded, and accordingly:

Annul the decision of the Head of the Social Affairs Division of 24 July 1980;

As a result, order the defendant to pay the applicant the sum of BFR 50 000, being the amount of the damages for the adverse effect on her bodily health, which was wrongly deducted from the allowance in respect of partial permanent invalidity originally awarded to her, together with interest at the rate of 6% per annum as from 24 July 1980, the date of the unlawful deduction of the sum of BFR 50 000;

Order the defendant to pay the costs.

The *defendant* contends that the Court should:

Take formal note that the defendant does not contest the admissibility of the action;

Declare the action unfounded and dismiss it;

Make an order as to costs in conformity with the relevant provisions of the Staff Regulations.

III — Submissions and arguments of the parties

The *applicant* has put forward two submissions.

First submission: Infringement of Article 73 of the Staff Regulations

According to the applicant the benefits paid under the Staff Regulations in respect of partial permanent incapacity for work cover, in the case of accident, only physical injury which has financial consequences for the victim on the one hand and for the institution which employs him on the other.

In respect of matters not covered by subrogation, for example *pretium doloris*, non-material damage, damage caused to a vehicle or to clothing, victims may obtain compensation directly from the person responsible.

In this case the sum awarded in respect of the adverse effect on bodily health comes under *pretium doloris* to which subrogation does not apply, as is shown by the diagnosis of the doctor who, in his report, speaks of "temporary traumatic consequences and minor long-term sequelae" in the form of "discomfort in the knee ... infrequent occipital pain ... and stabbing pains in the region of the scars on the knee", and thus draws a distinction between incapacity for work (which he did not find) and the adverse effect on bodily health.

Thus, in reducing the allowance awarded in respect of partial permanent invalidity, the decision of 24 July 1980 infringed Article 73 of the Staff Regulations and the Community rules relating to it.

The *Parliament* replies that according to Article 2 of the Rules, "An accident means any occurrence or external factor of a sudden, violent or abnormal nature adversely affecting an official's bodily or mental health". The Court, too, interpreted invalidity for the purposes of Article 73 as referring to an impairment of the official's bodily health, irrespective of the degree of any incapacity for work resulting from the accident (judgment of 2 October 1979, Case 152/77 *Miss B* v *Commission* [1979] ECR 2819).

The Parliament emphasizes that notwithstanding the applicant's references to an "incapacity for work" the allowance in question is awarded whatever may be the capacity of the person concerned for continuing to perform his duties.

On the other hand, as regards the expert's report, the doctor considered that in the absence of functional consequences, properly so called, the accident did not lead to any incapacity for work, properly so called. Further, he was careful to make a distinction between non-material damage in respect of pain and suffering on the one hand, and adverse effect on bodily health on the other.

Although the Parliament's medical officer found there was partial permanent invalidity of 6% he used, in his opinion, terms similar to those employed by the expert. For his part he did not find there was any incapacity for work.

The *applicant* considers that the principles stated in Case 152/77 should not apply in this case. The judgment cited by the Commission relates solely to the concept of partial permanent invalidity whereas the applicant is not contesting the degree of partial permanent invalidity determined by the Parliament.

Subrogation relates to benefits payable under the Staff Regulations in case of accident which are in the nature of compensation for purely financial loss, to the exclusion of any damage which is not of that nature. The purpose of subrogation is to prevent a victim of an accident from receiving compensation twice in respect of the same damage.

In Luxembourg law there is an adverse effect on bodily health only where there is a finding of partial permanent invalidity and that invalidity is not reflected in a loss of income. In the absence of those two conditions there is no adverse effect on bodily health, but non-material damage in the broad sense of the term which may be defined as encompassing cosmetic damage, detriment to leisure activities, general sequelae and inconveniences in daily life resulting from the consequences of the accident. It follows that what the expert had described, no doubt improperly, as adverse effect on bodily health constitutes non-material damage under Luxembourg law.

That non-material damage was not covered by the institutions since it is not covered by the benefits payable under the Staff Regulations and the institutions cannot be subrogated in law by virtue of a payment which they have not made.

The *Parliament* explains that it is not maintaining that this case should be dealt with by analogy with Case 152/77. It cited that case in order to refute the applicant's argument to the effect that Article 73 (2) of the Staff Regulations covers incapacity for work, that the benefits payable under the Staff Regu-

lations do not provide for an allowance for adverse effect on bodily health and that the content of that article should be construed in the light of the national laws of the Member States.

According to the Parliament the issue between the parties is governed by Community law and not by Luxembourg law. In Case 152/77 the Court dismissed any reference to comparable provisions contained in national laws. The Parliament is unable to accept the definition of non-material damage which is now propounded by the applicant, and in particular it cannot agree that damage covers "adverse effect on bodily health" recognized as the sequelae of an accident which has no effect upon capacity to work.

Second submission: Infringement of the principles common to the laws of the Member States and underlying the Community Rules

According to the *applicant* the concepts of incapacity for work and adverse effect on bodily health are known to the domestic laws of most of the Member States, and are distinguished on the basis of a single test — the existence or absence of financial consequences. Damage resulting from adverse effect on bodily health, which consists in any physical suffering, any infirmity or sequela resulting from any injury and which has no effect either of a financial nature or in regard to capacity for work falls within the principle of compensation for non-material damage.

Thus there can be no link between the allowance paid under the Staff Regulations and damages awarded for "traumatic consequences and ... long-term sequelae" and the contested decision was adopted in breach of the principles common to the laws of Member States which probably provided the basis for the Community Rules.

According to the *Parliament* Article 73 is a self-sufficient provision which must be applied and interpreted as such, without reference to comparable but different rules which may exist in the Member States. Such was the Court's judgment in Case 152/77, referred to above.

IV — Oral procedure

At the sitting on 28 January 1982 the applicant, represented by Ernest Arendt and Marvonne Lannon of the Luxembourg Bar, and the Parliament, represented by Martin Schmidt, assisted by Alex Bonn of the Luxembourg Bar, presented oral argument and answered questions put to them by the Court.

The Advocate General delivered his opinion at the sitting on 4 March 1982.

Decision

1 By application lodged at the Court Registry on 28 April 1981 Mrs Chaumont-Barthel, an official of the European Parliament, brought an action, on the one hand, for the annulment of a decision of the Head of the

Social Affairs Division of the Parliament of 24 July 1980 declaring that damages paid to her in respect of adverse effect on bodily health by an insurance company were covered by subrogation in favour of the Communities against the risk of accident and occupational disease and, on the other hand, for an order that the defendant pay to her the sum of BFR 50 000, being the amount of those damages.

2 The applicant was involved in a road-traffic accident on 25 May 1977. She suffered injuries in respect of which she received compensation from two sources.

3 First, after becoming a civil party to criminal proceedings against the responsible third party, she was awarded, on the basis of the report of an expert appointed by the court, damages and interest in the sum of BFR 65 000, namely BFR 15 000 for the non-material damage in respect of pain and suffering and BFR 50 000 for adverse effect on her bodily health, having regard to temporary traumatic consequences and minor long-term sequelae. The court was of the opinion that there were no grounds for a finding of partial permanent invalidity.

4 Secondly, in the context of the insurance of officials against the risk of accident provided for by Article 73 of the Staff Regulations of Officials (Official Journal L 56, 4. 3. 1968), the applicant agreed to the proposal made by the Head of the Social Affairs Division and contained in a letter dated 16 January 1980 that she should be paid an allowance in respect of partial permanent invalidity in the sum of BFR 292 582, calculated on the basis of a degree of invalidity of 6% determined by the Parliament's medical officer.

5 However, the Parliament subsequently deducted from that allowance the sum of BFR 50 000 which the applicant had received from the insurers of the responsible third party for adverse effect on her bodily health, claiming that the sum was covered by the subrogation in favour of the Communities.

6 The applicant lodged a complaint against that decision of 2 October 1980. The Secretary-General rejected the complaint on 29 January 1981. The applicant brought an action under Article 91 of the Staff Regulations on 28 April 1981.

7 According to the applicant the two payments refer to two different kinds of damage, one non-material and the other material, and the Communities' right of subrogation should not apply in the case of the former. On the other hand, the Parliament maintains that the two payments compensate the applicant for adverse effects on her bodily health and that it was therefore entitled to deduct the sum of BFR 50 000 in order to prevent the applicant from being compensated twice in respect of the same damage.

8 In order to be able to decide the issue between the parties, it is necessary to place it on the context of the provisions of the Staff Regulations which are relevant in this case.

9 The Rules of the Insurance of Officials of the European Communities against the Risk of Accident and Occupational Disease (hereinafter referred to as "the Rules"), adopted pursuant to Article 73 of the Staff Regulations, state the benefits which may be awarded to officials in the event of accident. Article 12 (2) of the Rules provides for the payment of a lump sum to an official in the event of partial permanent invalidity. Article 14 of the Rules provides for an allowance, determined by analogy with the rates laid down in the invalidity scale referred to in Article 11, "in respect of any injury or permanent disfigurement which although not affecting his capacity for work, constitutes a physical defect and has an adverse effect on his social relations".

10 As regards subrogation, the relevant provision at the time of the accident was Article 8 of the Rules according to which the benefits and allowances provided for are to be paid to an official or to those entitled under him only on condition that they subrogate the Communities to their rights and proceedings against any responsible third party. On 1 July 1977 the applicant signed a form of subrogation by which she subrogated the Communities to all her rights of redress against the responsible third party both as regards the benefits, allowances and reimbursements paid to her under Articles 72, 73 and 75 of the Staff Regulations and as regards the salary paid to her during her periods of incapacity for work.

11 The parties are agreed that the purpose of the right of subrogation enjoyed by the Communities is to prevent an official from being compensated twice in respect of the same damage.

12 It is therefore necessary to examine the two payments received by the applicant in order to determine whether or not they cover the same damage. It is apparent from the letter from the Head of the Social Affairs Division of 16 January 1980 that, as was confirmed at the hearing, the allowance paid by the Parliament related only to the partial permanent invalidity determined by the institution's medical officer. That allowance comes under Article 12 of the Rules.

13 The compensation awarded to the applicant by the national court is based on the findings of the expert whom it had commissioned and who expressly ruled out any partial permanent invalidity but, on the other hand, proposed compensation of BFR 50 000 for adverse effect on bodily health. That compensation comes under Article 14 of the Rules.

14 In these circumstances and in the light of the foregoing it is apparent that the Parliament did not award an allowance in respect of the same damage as that in respect of which compensation was awarded by the court. In these circumstances the Parliament was not entitled to apply the rule of subrogation and ought therefore to have paid the allowance awarded without deduction. The contested decision must therefore be annulled and the Parliament must be ordered to pay to the applicant the sum of BFR 50 000.

15 Interest on this sum at the rate of 6% per annum should also be paid as from 24 July 1980.

Costs

16 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

17 As the Parliament has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the decision of the Head of the Social Affairs Division of the Parliament of 24 July 1980;**

2. **Orders the Parliament to pay to the applicant the sum of BFR 50 000 together with interest at the rate of 6% per annum as from 24 July 1980 until the date of actual payment;**

3. **Orders the Parliament to pay the costs.**

Touffait Mackenzie Stuart Everling

Delivered in open court in Luxembourg on 18 March 1982.

P. Heim
Registrar

A. Touffait
President of the Third Chamber

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 4 MARCH 1982 [1]

Mr President,
Members of the Court,

The applicant in the proceedings with which we are concerned today is an official of the European Parliament. On 25 May 1977 she was the victim of a road-traffic accident as a result of which she suffered various injuries (contusions and lacerations of the knees, contusions of the left elbow and left hip, sub-luxation of the cervical vertebra and loss of part of a tooth). She was unfit for work for three weeks.

1 — Translated from the German.