JUDGMENT OF THE COURT (Fourth Chamber)
8 April 1992 *

In Case C-346/90 P,

F., represented by François Jongen, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

appellant,

v

Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, acting as Agent, assisted by Claude Verbraeken and Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

respondent and cross-appellant,

supported by **Société Anonyme Royale Belge**, represented by François van der Mensbrugghe, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Albert Wildgen, 6 Rue Zithe,

APPEALS against the judgment of the Court of First Instance of the European Communities of 26 September 1990 in Case T-122/89 *F.* v *Commission of the European Communities*,

* Language of the case: French.

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris and M. Diez de Velasco, Judges,

Advocate General: G. Tesauro,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 24 October 1991,

after hearing the Opinion of the Advocate General at the sitting on 13 December 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 November 1990, F. brought an appeal under Article 49 of the EEC Statute and the corresponding provisions of the Statutes of the Court of Justice of the ECSC and EAEC against the judgment of 26 September 1990 in Case T-122/89 *F.* v *Commission* [1990] ECR II-517, in which the Court of First Instance annulled the Commission's decision of 15 July 1988 in so far as it defined F."s degree of permanent invalidity as 50%, and dismissed his claim for damages.

2 In his appeal, which seeks to have that judgment set aside in so far as it declared the plea based on the Commission's breach of Article 78 of the Staff Regulations inadmissible because it was out of time and dismissed his claim for damages, F. asks the Court of Justice to declare that he is entitled to an invalidity pension in accordance with that provision and to compensation for the damage suffered by him, estimated at 24 months' salary for an official in Grade A 5/A 6, or, in the alternative, an amount to be fixed on an equitable basis.

3 In support of his appeal, F. puts forward two pleas in law concerning the lack of foundation for the part of the judgment relating to the inadmissibility of the plea based on the infringement of Article 78 of the Staff Regulations and to the dismissal of his claim for damages.

4 The Commission in its response appealed against the same judgment. In accordance with the second paragraph of Article 116(1) of the Rules of Procedure of the Court of Justice, the response seeks the same forms of order as those sought by the Commission at first instance. The Commission requests that the judgment be set aside in so far as it annulled the Commission's decision of 15 July 1988 inasmuch as it set the degree of F."s invalidity at 50%.

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

6 It should be noted, *in limine*, that according to Article 168a of the EEC Treaty and the corresponding provisions of the ECSC and EAEC Treaties, appeals are limited to points of law. That restriction is confirmed in the first paragraph of Article 51 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the Statutes of the Court of Justice of the ECSC and the EAEC which go on to set out the grounds on which an appeal may lie, namely lack of competence of the Court of First Instance, a breach of procedure before it which adversely affects the interests of the appellant and the infringement of Community law by the Court of First Instance.

7 It should also be noted that the appeal may only be founded on grounds relating to the infringement of rules of law to the exclusion of any appraisal of the facts, and, accordingly, the appeal is therefore admissible only in so far as it is claimed that the decision of the Court of First Instance is incompatible with the rules of law the application of which it had to ensure (*Vidrányi* v *Commission* [1991] ECR I-4339, paragraphs 12 and 13).

The applicant's appeal

The first plea in law

8 In paragraph 22 of the judgment of 26 September 1990 appealed against the Court of First Instance noted that the Commission informed the applicant by letter of 11 June 1985 of its decision to bring to an end the invalidity procedure pursuant to Article 78, which amounted to a dismissal of his application under that provision. It also noted that the decision of 15 July 1988 was adopted as part of the procedure for the application of Article 73 of the Staff Regulations. On the basis of those observations, the Court of First Instance concluded that the time-limits laid down in Articles 90 and 91 of the Staff Regulations, for the purposes of contesting the decision of 11 June 1985, had expired when the proceedings were instigated.

9 F. argues that, contrary to what is stated by the Court of First Instance in paragraph 23 of its judgment, the Director-General's letter of 11 June 1985 informing him that there was no purpose in continuing the invalidity procedure did not constitute a decision rejecting his application for an invalidity pension. F. also states that the letter he wrote to the Director-General on 26 June 1985 should therefore be regarded not as a complaint within the meaning of Article 90 of the Staff Regulations, but as merely a letter of clarification. Lastly, he argues that the first clear refusal to grant an invalidity pension was contained in the decision of 15 July 1988.

10 In so far as the applicant seeks, by the plea, to contest the findings of fact made by the Court of First Instance following its appraisal of the aforementioned letters, it must be stated that such a complaint is not capable of forming the subject-matter of an appeal.

11 Accordingly, that plea must be dismissed as inadmissible without it being necessary to consider the other arguments relied upon.

The second plea in law

12 In paragraph 34 of the contested judgment, the Court of First Instance stated that the annulment of the decision and the subsequent determination by the Commission of the applicant's degree of permanent invalidity resulting from his occupation, in implementation of that judgment, would be sufficient to restore the applicant's rights.

13 In his second plea, F. contests that conclusion. He repeats, in substance, the arguments which he had relied upon in that connection before the Court of First Instance. The decision of 15 July 1988 and the length of the procedure preceding it contributed to the deterioration in his health and reduced his chances of reinstatement. That unjust decision also led him to incur legal expenses. In any event, the annulment of the decision gave him no compensation for the vexations he suffered in order to achieve recognition of his right.

14 It must be noted that there is nothing in that plea capable of being relied upon in an appeal. Without claiming that a rule of law has been breached, F. merely contests the Court of First Instance's appraisal of the facts (paragraph 16 of the contested judgment) by claiming that he has clearly suffered harm for which he should be compensated.

15 Accordingly, the applicant's second plea must also be dismissed as inadmissible.

The cross-appeal

16 The Court of First Instance states (at paragraph 15 of the contested judgment) that the Medical Committee confined itself to drawing the appropriate medical conclusions from its findings relating to the cause of the applicant's disease and did not make appraisals of a legal nature.

17 The Commission states that by considering that it was not appropriate to deduct the 18% from the compensation granted to the applicant the Medical Committee had exceeded its powers, which are limited to making assessments of a medical nature. It points out that it is for the administration alone to determine the legal consequences that are to be drawn from the medical findings and, in particular, to ascertain whether the official's invalidity arose from conduct inconsistent with his obligations under the Staff Regulations.

18 The cross-appellant's plea thus merely contests the Court of First Instance's finding that the Medical Committee's appraisal was of a medical nature, and must accordingly be dismissed as inadmissible.

Costs

19 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Article 70 of those Rules provides that in proceedings brought by servants of the Communities, the institutions are to bear their own costs. However, by virtue of Article 122 of the Rules, Article 70 does not apply to appeals brought by officials or other servants of the institutions.

20 It follows, however, from the first paragraph of Article 69(3) and from the second indent of the second paragraph of Article 122 of the Rules of Procedure that the Court may order that the costs be shared in whole or in part where each party succeeds on some and fails on other heads, where the circumstances are exceptional or where equity so requires. Since both parties failed in their actions, each party, including the intervener, shall bear its own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Dismisses the appeals;

2. Orders each party, including the intervener, to pay its own costs.

Kapteyn Kakouris Díez de Velasco

Delivered in open court in Luxembourg on 8 April 1992.

J.-G. Giraud
Registrar

P. J. G. Kapteyn
President of the Fourth Chamber