

JUDGMENT OF THE COURT (First Chamber)
23 April 1986 *

In Case 150/84

Giorgio Bernardi, a retired official of the European Parliament, represented by L. Fortuna, of the Rome Bar, with an address for service in Luxembourg at the Chambers of H. Reiner, 15 rue F.-Clément,

applicant,

v

European Parliament, represented by its Secretary General, H.-J. Opitz, acting as Agent, assisted by F. Herbert, of the Brussels Bar, and by B. Moutrier of the Luxembourg Bar, with an address for service in Luxembourg at the latter's Chambers, 16 avenue de la Porte-Neuve, BP 135,

defendant,

APPLICATION for the annulment of letter No 521 of 10 November 1983 from the European Parliament and related measures of the Parliament concerning the implementation of Article 73 of the Staff Regulations and Articles 17 to 23 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease,

THE COURT (First Chamber)

composed of R. Joliet, President of Chamber, G. Bosco and T. F. O'Higgins, Judges,

Advocate General: M. Darmon

Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 23 January 1986,

* Language of the Case: Italian.

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

- 1 By an application which was lodged at the Court Registry on 18 June 1984, Georgio Bernardi, an official of the European Parliament granted early retirement on the grounds of invalidity, brought an action first for the annulment of a decision of the European Parliament of 4 October 1983 holding that he was not suffering from an occupational disease and therefore refusing to pay him the benefits provided for in Article 73 of the Staff Regulations in the event of permanent partial invalidity as a result of an occupational disease, and secondly for the annulment of a decision of Parliament of 10 November 1983 refusing to repay him various sums.
- 2 Between 1979 and 1983 two medical inquiry procedures were carried out with respect to the applicant, a translator in Grade L/A 5 in the Translation Division of Parliament.
- 3 The first procedure was initiated by Parliament of its own motion on the basis of the fourth subparagraph of Article 59 (1) of the Staff Regulations. Since Mr Bernardi's sick-leave had totalled more than 12 months in a period of three years, Parliament decided, on 8 October 1979, to refer the case to the Invalidity Committee provided for in the said Article 59. On 1 December 1981 the Invalidity Committee held that the applicant was suffering from total permanent invalidity which made it impossible for him to carry out the duties attaching to a post in his career bracket. By decision of 5 March 1982, Parliament authorized the applicant to take early retirement and granted him, with effect from 1 March 1982, an invalidity pension amounting to 70% of his last basic salary. The applicant does not contest the lawfulness of that procedure.

- 4 In the course of that first procedure, Parliament ordered that two medical examinations be carried out on Mr Bernardi, one by Dr Cis on 5 December 1979, the other by Dr Lieschke on 23 April 1981. Parliament contends that those two medical examinations were part of an informal inquiry carried out by the administration into the reason for Mr Bernardi's repeated absences. For his part, the applicant claims that Dr Cis and Dr Lieschke were appointed in connection with the second procedure, which will be discussed hereafter.

- 5 The second procedure, which was carried out on the basis of Article 73 of the Staff Regulations and Articles 17 to 23 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease ('the Rules'), was commenced on the applicant's initiative. On 27 March 1979, the applicant submitted to Parliament the statement referred to in Article 17 (1) of the Rules with a view to obtaining the benefits provided for in Article 73 (2) (b) of the Staff Regulations. Under Article 73 officials suffering from total permanent invalidity caused by an occupational disease are to be paid a lump sum or an annuity in addition to the invalidity pension referred to in Article 78 of the Staff Regulations.

- 6 The grant of the benefits in question is conditional on the prior finding that the official concerned is suffering from an occupational disease. In this case, the medical findings of the investigation carried out to that end were negative and the applicant was refused the benefits by decision of Parliament of 4 October 1983. In support of his appeal, the applicant contests the legality of the procedure which led to the medical finding on the basis of which Parliament took its decision.

- 7 The first phase of the procedure for establishing whether or not the person concerned is suffering from an occupational disease consists in the inquiry provided for in Article 17 (2) of the Rules. For the purposes of that inquiry Parliament appointed its medical officer, Dr De Meersman, to examine the applicant. Dr De Meersman asked for the applicant to be examined by Dr Stumper, an ear, nose and throat specialist.

- 8 After examining the applicant on 22 February 1980, Dr De Meersman submitted a provisional report to Parliament on 14 March 1980 in which he stated that, although duly called to attend for examination by Dr Stumper, the applicant had

not kept the appointment. Dr De Meersman concluded that 'until such time as fuller information was available it was impossible to recognize Mr Bernardi as suffering from an occupational disease'.

- 9 On 10 June 1980 the Head of Parliament's Social Affairs Division sent the applicant a letter informing him that the medical examination carried out on 22 February 1980 did not enable his illness to be recognized as an occupational disease, and that if he disagreed with that decision he was entitled to refer the matter to the Medical Committee, under Article 21 of the Rules.
- 10 By a letter dated 19 June 1980 the applicant intimated his disagreement with Dr De Meersman's findings and asked for the matter to be referred to the Medical Committee. He appointed Dr Fidotti to represent his interests on the Medical Committee and asked that Dr De Meersman's medical report of 14 March 1980 and Dr Cis's medical report of 22 November 1979 be forwarded to Dr Fidotti.
- 11 On 28 July 1980 the Head of the Social Affairs Division informed the applicant by letter that the Medical Committee could not meet until it had received the final report of Dr De Meersman, who, for his part, was awaiting the results of the examination to be carried out by Dr Stumper. Accordingly the applicant was asked to see Dr Stumper as soon as possible. Dr Stumper actually examined the applicant on 16 September 1980.
- 12 On 24 February 1981 Dr De Meersman drew up his final report in which he confirmed his initial finding that Mr Bernardi was not suffering from an occupational disease.
- 13 On 22 May 1981 the Head of the Social Affairs Division informed the applicant of the finding made in Dr De Meersman's final report. He stated that the Medical Committee procedure could be initiated as the applicant had requested in his letter of 19 June 1980. That notification constituted the draft decision of the European Parliament, pursuant to the first paragraph of Article 21 of the Rules, and concluded the first stage of the procedure for recognizing the existence of an occupational disease.

- 14 As a result of the request made by the applicant on 19 June 1980, the second stage of the procedure for looking into the existence of an occupational disease, the procedure before the Medical Committee, was initiated. The Medical Committee comprised Dr De Meersman, appointed by Parliament, Dr Fidotti, appointed by the applicant, and Dr Van Den Eeckhaut, appointed by agreement between the other two doctors. The Medical Committee examined the applicant on 15 December 1981 in the presence of Dr Castrica who was not a member of the Medical Committee but had been authorized to attend its proceedings at the applicant's request. Following that examination, the Medical Committee instructed Dr Van Den Eeckhaut to draw up a provisional report.
- 15 On 29 December 1981 Dr Van Den Eeckhaut submitted to his two colleagues a draft report stating that the applicant was not suffering from a disease, merely from a deficiency in vocal technique which could be rehabilitated provided that he was sufficiently willing and motivated. The draft report was approved by Dr De Meersman but not by Dr Fidotti, who, by letter of 8 March 1982, stated that he would not make his final decision until he had received the medical reports drawn up by Dr Cis on 5 December 1979 and by Dr Lieschke on 23 April 1981. Those reports were submitted to him in April 1982.
- 16 Subsequently Dr Van Den Eeckhaut revised his draft report three times, first on 19 April 1982, after he himself had read the reports of Dr Cis and Dr Lieschke, a second time on 25 August 1982 when he had received Dr Fidotti's comments and finally on 2 March 1983 after having received a draft report from Dr Fidotti and Dr Castrica's comments, both of which came down in favour of recognizing that the applicant suffered from an occupational disease, and observations from Dr De Meersman contending that no occupational disease was present. In the successive versions of his draft Dr Van Den Eeckhaut concluded that the applicant was not suffering from an occupational disease.
- 17 Dr De Meersman signed and approved the draft report of 2 March 1983. Dr Fidotti did not sign that draft and stated by telegram of 21 April 1983 that he would be forwarding observations. Since he had not received those observations by the beginning of June 1983, Dr Van Den Eeckhaut submitted to Parliament on 3 June 1983 the findings of the Medical Committee, signed by himself and by Dr De Meersman.

- 18 On the basis of the Medical Committee's findings, the Head of Parliament's Social Affairs Division informed the applicant on 4 October 1983 that he had not been found to be suffering from an occupational disease. Parliament then asked the applicant to pay the sum of BFR 43 050, this being half the fees of Dr Van Den Eeckhaut, as is provided in the third subparagraph of Article 23 (2) of the Rules where, as in this case, the opinion of the Medical Committee is in accordance with the draft decision of the appointing authority. The applicant did not comply with this request and so the sum of BFR 43 050 was withheld from his invalidity pension.
- 19 In a letter dated 19 October 1983 the applicant expressed strong reservations about the legality of the procedure followed and asked for the repayment of the sums which he had incurred in connection with the examinations carried out by Dr Cis and Dr Lieschke and for the translation, for the Medical Committee, of the reports issued following those examinations. Repayment of those sums was refused by a letter dated 10 November 1983 from the Head of the Social Affairs Division.
- 20 On 19 November 1983 the applicant submitted a complaint pursuant to Article 90 (2) of the Staff Regulations against Parliament's decisions of 4 October and 10 November 1983. That complaint was rejected by implication on 19 March 1984. This application was received at the Court Registry on 18 June 1984.
- 21 The object of the application is essentially as follows:
- (i) the proceedings and the final report of the Medical Committee should be declared unlawful and, as a result, the decisions notified to the applicant by letters of 4 October and 10 November 1983 from the Head of the Social Affairs Division finding that the applicant was not suffering from an occupational disease should be annulled;
 - (ii) it should be declared that the decisions relating to the recognition of a occupational disease must be adopted by the authority competent to apply the

Rules and in accordance with the requirements laid down in those Rules and that that did not occur in this case;

- (iii) that authority should be ordered to recognize the occupational origin of the applicant's invalidity and to pay him the benefits payable under Article 73 of the Staff Regulations;
 - (iv) Parliament should be ordered to pay to the applicant the following sums:
 - (a) the sum of BFR 43 050 withheld from his pension which corresponded to half of the fees of Dr Van Den Eeckhaut and was charged to the applicant under the third subparagraph of Article 23 (2) of the Rules; (b) the sum of BFR 38 820 incurred by the applicant in attending for medical examination by Dr Cis and Dr Lieschke as ordered by the European Parliament; (c) the sum of BFR 5 350 incurred by the applicant for the translation, for the members of the Medical Committee, of the medical reports of Dr Cis and Dr Lieschke.
- 22 In his reply, the applicant sets out several further claims. Those must be dismissed in so far as they have a different object from that of the application as defined above.

Admissibility

- 23 The European Parliament contends that a number of claims are inadmissible since the Court is asked to give a declaratory judgment and to issue injunctions to the administration.
- 24 Without it being necessary to consider whether the Court has jurisdiction to deliver declaratory judgments and to issue injunctions to the administration, it suffices to state that the claims in question can be regarded as constituting arguments in support of the action brought against the decisions of 4 October and 10 November 1983, it being understood that in the event that the decisions are annulled, the European Parliament will be bound to take such measures, as are necessary to give effect to the judgment.

Substance

A — *The procedure prior to the appointment of the Medical Committee*

- 25 The applicant challenges the legality of the draft decision notified to him by Parliament under Article 21 (1) of the Rules, following which he asked for the Medical Committee to be convened.
- 26 The applicant argues in the first place that the draft decision concluding the administrative inquiry referred to in Articles 16, 17 and 18 of the Rules was not notified to him in the proper manner because the notification was made by an official who had not been delegated so to act.
- 27 Parliament considers that the procedure was properly conducted since the final decision of 4 October 1983 was adopted by the competent authority. It has produced various decisions concerning delegation of powers from which it appears that the powers to implement Article 73 of the Staff Regulations are vested in the Secretary General, who, by decision of 1 March 1982, validly delegated those powers to the Head of the Social Affairs Division. Consequently, the final decision was taken in a proper manner and the procedure is not open to criticism.
- 28 The applicant's claim that there was a procedural irregularity in so far as the draft decision closing the administrative inquiry was not notified to him by an official authorized so to act must be upheld. However, it should be observed that the final decision of 4 October 1983 was issued by the Head of the Social Affairs Division, who, at that date, was validly authorized to adopt that decision on behalf of the appointing authority. Furthermore, the draft decision did not affect the final outcome of the procedure, since the applicant had asked for the matter to be referred to the Medical Committee. In principle a procedural irregularity will entail the annulment of a decision in whole or in part only if it is shown that in the absence of such irregularity the contested decision might have been substantively different (judgment of 29 October 1980 in Joined Cases 209 to 215 and 218/78

Van Landewyck SARL and Others v Commission [1980] ECR 3125). Since that was not so in this case, the objection that the draft was not notified to the applicant by the competent authority cannot be upheld.

- 29 The applicant further criticizes the draft decision on the ground that it concluded that he was not suffering from an occupational disease. He considers that the circumstances of the case should necessarily have led Parliament to conclude at that stage that he was suffering from an occupational disease. The applicant bases that claim on three arguments.
- 30 Firstly, the applicant considers that Parliament should not have based its draft decision solely on Dr De Meersman's medical report of 24 February 1981 but should also have taken into consideration the medical reports of Dr Cis and of Dr Lieschke, of 5 December 1979 and 23 April 1981 respectively, which, in the applicant's view, held that he was suffering from an occupational disease.
- 31 In reply, Parliament contends that Dr Cis and Dr Lieschke drew up their reports not in connection with the procedure to determine whether he is suffering from an occupational disease which is the subject of this action, but as part of an informal inquiry parallel to the procedure for determining invalidity. To corroborate that contention Parliament refers to its internal memorandum of 8 January 1980 and its letter to the applicant of 25 May 1981.
- 32 It must be observed that the applicant provides no evidence connecting the reports of Dr Cis and Dr Lieschke to the procedure to determine whether he is suffering from an occupational disease. On the contrary, it appears from the documents provided by the European Parliament that those reports related to the diagnosis of the applicant's invalidity. Consequently, Parliament was under no duty to take account of those two medical reports when drawing up its draft decision, since the procedures leading to the implementation of Articles 73 and 78 of the Staff Regulations are distinct and give rise to separate decisions independent of each other (judgment of 15 January 1981 in Case 731/79 *B. v European Parliament* [1981] ECR 107).

- 33 Secondly, the applicant claims that in view of the substance of Dr De Meersman's report of 24 February 1981 Parliament's draft decision notified to him should have been in his favour.
- 34 Parliament argues in reply that, by asking for the matter to be referred to the Medical Committee, the applicant had implicitly acknowledged that the procedure followed up to that point had been properly conducted.
- 35 The applicant's second argument is also without foundation. It is appropriate to observe that Dr De Meersman's report states categorically that the applicant is not suffering from an occupational disease. Consequently, the draft decision is in accordance with the conclusions of that report. In any event, as can be seen from the judgment in Case 265/83 *Suss v Commission* [1984] ECR 4029), at that stage in the procedure the administration is not bound by the opinion issued by a doctor appointed by it.
- 36 Thirdly, the applicant argues that Parliament had already implicitly acknowledged that his invalidity was occupational in origin by setting the rate of his invalidity pension at 70% of his basic salary. That decision was taken on the basis of the second paragraph of Article 78 of the Staff Regulations, which applies to cases of invalidity due to occupational disease. In order to be consistent Parliament should have confirmed that implicit recognition of the occupational origin of the disease at issue in these proceedings and issued a draft decision to that effect to the applicant.
- 37 The third argument must also be dismissed. Parliament correctly points out that in fact the applicant's invalidity pension was set at 70% of his basic salary on the basis of the third paragraph of Article 78 and the second paragraph of Article 77 of the Staff Regulations. It is clear from those provisions that setting the invalidity pension at that rate in no way implies recognition that the invalidity is occupational in origin. Consequently, there is no contradiction between the decision concerning the invalidity pension and the decision which is at issue in this action.

- 38 It appears from the foregoing that the draft decision provided for in the first paragraph of Article 21 of the Rules is not vitiated by any irregularity capable of affecting the validity of the final decision.

B — *The procedure followed by the Medical Committee*

- 39 The applicant also criticizes the legality of the procedure followed by the Medical Committee in so far as the Committee's report does not bear the signature of Dr Fidotti, who was appointed to represent the applicant's interests, and in so far as the collegiate nature of the decision was disregarded, since Dr Fidotti's observations were not taken into account.
- 40 For its part the European Parliament considers that the absence of Dr Fidotti's signature at the foot of the Medical Committee's report merely reflects the disagreement between that doctor and his colleagues as to the findings of the Medical Committee. The applicant is not entitled to complain that the arguments of the doctors representing his interests were not taken into account: as a result of the observations made by Dr Fidotti and Dr Castrica, Dr Van Den Eeckhaut revised his draft report several times; furthermore, Dr Van Den Eeckhaut waited for six weeks in vain for Dr Vidotti's observations which he had been told to expect in a telegram of 21 April 1983, before submitting to the European Parliament the report of 3 June 1983, signed by Dr Van Den Eeckhaut himself and by Dr De Meersman.
- 41 The applicant's argument must be dismissed. In the first place, the complaint that Dr Fidotti's signature was missing is without foundation in so far as the Medical Committee can validly adopt its opinion by a majority decision (judgment of 21 May 1981 in Case 156/80 *Morbelli v Commission* [1981] ECR 1357). In the second place, there has been no failure to observe the principle of a collegiate decision. It appears from the documents before the Court that Dr Van Den Eeckhaut revised his draft report when he received the observations submitted by Dr Fidotti and Dr Castrica and that he waited for six weeks for Dr Fidotti's supplementary observations before forwarding his report to Parliament.
- 42 It appears from the foregoing that the proceedings of the Medical Committee were not vitiated by any irregularity.

C — The repayment of half of Dr Van Den Eeckhaut's fees.

- 43 Under the third subparagraph of Article 23 (2) of the Rules, where the opinion of the Medical Committee is in accordance with the appointing authority's draft decision, the official must pay the fee and incidental expenses of the doctor appointed by him and half the fee and incidental expenses of the third doctor.
- 44 It is by virtue of that provision that Parliament withheld from the applicant's invalidity pension the sum of BFR 43 050, representing half the fees of the third member of the Medical Committee, Dr Van Den Eeckhaut.
- 45 It must be observed that the opinion of the Medical Committee is in accordance with the draft decision and that the procedure was properly conducted. Consequently, the refusal to repay the applicant half of Dr Van Den Eeckhaut's fee, which was withheld from the applicant's invalidity pension, was justified.

D — The repayment of the expenses incurred by the applicant in undergoing medical examinations by Dr Cis and Dr Lieschke

- 46 The Court has already stated earlier in this judgment that the medical examinations carried out by Dr Cis and Dr Lieschke were ordered as part of the procedure concerning the applicant's invalidity, which is not in issue in these proceedings.
- 47 The refusal to repay the applicant the expenses he incurred in undergoing the above-mentioned medical examinations, notified to him by letter of 10 November 1983, was therefore justified.

E — Repayment of the expenses incurred by the applicant for the translation of the medical reports of Dr Cis and Dr Lieschke

- 48 It should be noted that the applicant took the initiative of having those documents translated without being in any way obliged to do so.

49 As a result, the refusal to repay the applicant the expenses he incurred for the translation of the aforementioned medical reports, notified to him by letter of 10 November 1983, was justified.

Conclusion

50 In view of all the above considerations, the application must be dismissed.

Costs

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

52 However, under Article 70 of the Rules of Procedure the institutions are to bear their own costs in proceedings brought by servants of the Communities.

53 However, in this case the irregular notification of the draft decision by an official lacking the authority to do so may have played a part in the applicant's decision to bring an action. Consequently, half the applicant's costs should be borne by the European Parliament under the first subparagraph of Article 69 (3) of the Rules of Procedure, which provides that the Court may order the parties to bear their own costs in whole or in part in exceptional circumstances.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application.

(2) Orders the European Parliament to pay half the applicant's costs in addition to its own costs.

Joliet

Bosco

O'Higgins

Delivered in open court in Luxembourg on 23 April 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber