

JUDGMENT OF THE COURT (FIRST CHAMBER)
24 NOVEMBER 1983 ¹

Lily Schuerer
v Commission of the European Communities

(Invalidity pension — Revision of a judgment)

Case 107/79 Rev.

*Procedure — Exceptional review procedures — Revision — Conditions for the
admissibility of the application — Fact justifying revision — Concept
(Protocol on the Statute of the Court of Justice of the EEC, Art. 41)*

In Case 107/79 Rev.

LILY SCHUERER, a former official of the Commission of the European Communities, residing at 11 Avenue Ernestine, Brussels, represented by Jean-Noël Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Nicolas Becker, 16 Avenue Marie-Thérèse,
applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by D. Gouloussis, a member of its Legal Department, acting as Agent, assisted by R. Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of O. Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Plateau de Kirchberg,
defendant,

APPLICATION for the revision of the judgment of 12 June 1980 of the First Chamber of the Court dismissing the applicant's application for a declaration that her pension should be awarded on the basis of the second paragraph of Article 78 of the Staff Regulations of Officials.

¹ — Language of the Case: French.

Facts and Issues

The applicant entered the service of the Commission on 7 July 1958. She had a post in Grade B 3 in Directorate General XII when, on 1 September 1978, she was retired prematurely on grounds of total invalidity.

On 26 October 1976 the applicant sustained a fall on the stairway in the Commission building. The Commission's medical service detected an auricular fibrillation and ordered her to cease work.

The applicant worked part-time from 3 December 1976. Subsequently she was granted sick leave, which was renewed regularly for three-month periods throughout 1977.

In January 1978 the Commission, on its own initiative, commenced the invalidity procedure. The applicant claimed that her invalidity was caused by the accident of 26 October 1976 or by the dust which she had inhaled since October 1975 as a result of the faulty air-conditioning in her office or by a combination of those factors.

The Invalidity Committee was composed of Dr Callebaut, appointed by the Commission, Professor S'Jongers, appointed by the applicant, and Professor Verniory, appointed by agreement between the first two doctors. It reached its decision on 3 August 1978.

By decision of 14 August 1978, the Commission ordered the applicant to be retired compulsorily and awarded her a pension calculated on the basis of the third paragraph of Article 78 of the Staff Regulations.

The applicant's complaint of 5 October 1978 in which she sought the annulment of the Commission's decision and to have her pension calculated on the basis of the second paragraph of Article 78 of the Staff Regulations was rejected by decision of 3 April 1979.

On 2 July 1979 the applicant brought an action seeking to have the Commission's decisions of 14 August 1978 and 3 April 1979 set aside. By judgment of 12 June 1980, the Court (First Chamber) dismissed that application.

By an action lodged at the Court Registry on 5 April 1983, the applicant is seeking the revision of that judgment. In support of her request, she claims that, without her knowledge, Professor S'Jongers sent to Dr Callebaut, a doctor attached to the Commission, two reports dated 22 November 1976 and 14 February 1977 respectively. She maintains that Professor S'Jongers, who, in the absence of her regular doctor, was the doctor treating her, thereby committed a breach of medical confidentiality. If she had been aware of the fact that he had committed such a breach, she would not have appointed him a member of the Invalidity Committee. She considers that neither Professor S'Jongers, who sent the report, nor Dr Callebaut, who received it, ought to have been members of the Invalidity Committee. In consequence, the conclusions of the Invalidity Committee cannot be relied on. It is therefore necessary to disregard those conclusions and to order that a new Invalidity Committee be convened.

The applicant claims that Dr Godhes did not give her the photocopies of the

above-mentioned reports of 22 November 1976 and 14 February 1977 drawn up by Professor S'Jongers until 2 March 1983, after he had informed her of their existence. Dr Godhes received those reports from Dr Siddons, Head of the Commission's medical service, in February 1983.

The Commission submitted its written observations regarding the application on 11 May 1983. It claims that the Court should dismiss the application as inadmissible and that the applicant should be ordered to pay the costs. On 12 October 1983 the Advocate General expressed his view that the application was inadmissible.

Decision

- 1 Under the Protocol on the Statute of the Court of Justice of the EEC, an application for revision of a judgment of the Court may be made only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.
- 2 Article 100 of the Rules of Procedure provides that, without prejudice to its decision on the merits, the Court sitting in the Deliberation Room, after hearing the Advocate General and having regard to the written observations of the parties, is to give in the form of a judgment its decision on the admissibility of the application.
- 3 It appears from the papers before the Court that, following an accident on 26 October 1976, the applicant was given emergency treatment by Dr Callebaut, a doctor attached to the Commission, who advised her to consult her own doctor. As her own doctor was abroad, Dr Callebaut advised her to consult Professor S'Jongers. In his letter of 22 November 1976, Professor S'Jongers communicated to the Commission doctor the result of the clinical examination which he had carried out and which led him to the conclusion that it was necessary for the patient to work part-time for a period of two months. In his second letter of 14 February 1977, he expressed his view that a further three months' leave was essential.
- 4 It is common ground that as from 3 December 1976 the applicant worked part-time and that, subsequently, she was granted leave of three months which was then renewed regularly for three-month periods throughout 1977.

- 5 In support of her application for revision the applicant claims that the fact that Professor S'Jongers had written the two above-mentioned letters to the Commission doctor, without her knowledge, is of such a nature as to be a decisive factor which, when the judgment was given, was unknown to the Court and to the applicant. The letters constituted a breach of medical confidentiality and that ought to have precluded Professor S'Jongers, who sent them, and Dr Callebaut, who received them, from sitting as members of the Invalidity Committee.
- 6 It is therefore necessary to consider the circumstances in which the letters were sent. After the applicant's accident, Dr Callebaut gave her all the emergency treatment which her condition required. However, as doctor attached to the Commission's medical service, he was obliged to advise her to consult another doctor. The applicant then consulted Professor S'Jongers because her regular doctor was absent. It was therefore his responsibility to take the measures which the patient's condition required. He considered it appropriate that, initially, the applicant should work part-time and subsequently he prescribed three months' sick leave. In sending the letters, Professor S'Jongers did not act against the patient's wishes. It is sound administrative practice for the institution with which the official is in service to receive information of a general nature concerning the health reasons for the official working part-time or being granted sick leave. The doctor treating the patient cannot therefore be accused of committing a breach of medical confidentiality by communicating such reasons to the institution.
- 7 In those circumstances, the Court considers that the facts put forward by the applicant are not of such a nature that they would have been a decisive factor in the result of the original action, if they had been known before the judgment was given. The application for revision is therefore inadmissible and must be dismissed.

Costs

- 8 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. The applicant has failed in her application. However, under Article 70 of the Rules of Procedure, in proceedings by servants of the Communities, institutions are to bear their own costs.

On those grounds,

THE COURT (First Chamber)

hereby:

- 1. Dismisses the application for revision as inadmissible;**
- 2. Orders the parties to bear their own costs.**

Koopmans

O'Keeffe

Bosco

Delivered in the Deliberation Room in Luxembourg on 24 November 1983.