JUDGMENT OF THE COURT (First Chamber)

9 September 1999 *

In Case C-257/98 P,

Arnaldo Lucaccioni, a former official of the Commission of the European Communities, residing in Paris, represented by Georges Vandersanden, Laure Levi and Olivier Eben, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 14 May 1998 in Case T-165/95 *Lucaccioni* v *Commission* [1998] ECR-SC I-A-203 and II-627, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Julian Currall, Legal Adviser, acting as Agent, assisted by Jean-Luc Fagnart, of the Brussels Bar, with

* Language of the case: French.

an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant at first instance,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: S. Alber,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 4 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 20 April 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 15 July 1998, Mr Lucaccioni brought an appeal under Article 49 of the EC Statute and the corresponding provisions of the ECSC and EAEC Statutes of the Court of Justice against the judgment of the Court of First Instance of 14 May 1998 in Case T-165/95 *Lucaccioni* v *Commission* [1998] ECR-SC I-A-203 and II-627 ('the judgment under appeal'), by which the Court of First Instance dismissed the action for damages which he had brought against the Commission.

2 According to the judgment under appeal, the appellant submitted in 1990 a request to be recognised as suffering from an occupational disease. The Commission first of all referred his case to the Invalidity Committee provided for in Article 78 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and then initiated the procedure for recognition of an occupational disease provided for in Article 73 of the Staff Regulations.

3 The procedure under Article 78 of the Staff Regulations led to the appellant's being retired and granted an invalidity pension equal to 70% of his basic salary.

4 The procedure under Article 73 of the Staff Regulations, which was conducted at the same time as the procedure under Article 78, resulted, on the one hand, in the appellant's being recognised as suffering from an occupational disease and, on the other hand, in the determination of a rate of permanent total invalidity of 130%, including 30% by way of compensation, *inter alia*, for the serious psychological disturbances he had experienced. In accordance with Article 73 of the Staff Regulations, the Commission paid to the appellant a sum of BEF 25 794 194.

5 The appellant took the view, however, that that sum was not sufficient to make good all the harm which he had suffered, having regard to the conditions in which

he had had to work. He therefore brought an action for damages before the Court of First Instance.

6 In the judgment under appeal, the Court of First Instance held that the appellant had failed to establish that the harm he had suffered had not been made good by the grant of the sum paid under Article 73 of the Staff Regulations, and accordingly dismissed the application.

7 The appeal is based on a single plea in law alleging that Community law has been infringed. That plea is divided into four limbs. The first limb claims that the principles of fault liability have been incorrectly applied, inasmuch as the Court of First Instance failed to examine the factors giving rise to liability and, more specifically, the fault on the part of the Commission. The second limb also claims that the principles of fault liability have been incorrectly applied, inasmuch as the Court of First Instance did not correctly assess the material and non-material damage suffered by the appellant. The third limb claims that the judgment under appeal did not state the grounds on which it was based, inasmuch as the Court of First Instance took it upon itself, without stating any appropriate reasons therefor, to include the material and non-material harm suffered by the appellant in the capital sum which was paid to him under the social security scheme for Community officials. The fourth limb claims that the Court of First Instance wrongly held that the Commission was not to be criticised for the way in which it had exercised its discretion when it failed to ask the Invalidity Committee to deliver an opinion on the occupational origin of the appellant's disease.

The first limb of the plea

8 In the first part of the first limb of the plea, the appellant claims that, in paragraph 57 of the judgment under appeal, the Court of First Instance misapplied the rules on fault liability inasmuch as it confined itself to examining

the harm caused to him, on the ground that 'even if fault on the part of the Commission were established, the Community would not incur liability unless the [appellant] could show that he had actually suffered harm'.

9 According to the appellant, the Court of First Instance disregarded the principle established by the Court of Justice in Joined Cases 169/83 and 136/84 *Leussink and Others* v *Commission* [1986] ECR 2801, paragraphs 18 to 20, which lays down the obligation to give a ruling first on the liability of the institution and then on the other elements of an action for damages, in particular on whether the alleged harm has been made good by the benefits paid under Article 73 of the Staff Regulations.

10 The Commission's reply is essentially that the three conditions giving rise to liability on the part of the Community under the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) are cumulative, so that an institution does not incur liability if one of the three conditions has not been satisfied. The Court of Justice, it submits, did not depart from that rule in *Leussink and Others* v *Commission*, cited above, but examined the three factors giving rise to liability only because, in that case, the compensation provided for by the Staff Regulations was not sufficient to afford full redress to an official involved in an accident or suffering from an occupational disease.

11 It should be pointed out in this respect that, in paragraph 56 of the judgment under appeal, the Court of First Instance drew attention to the settled case-law which states that the Community can be held liable only if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered (see, *inter alia*, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 42, and Case T-36/93 *Ojha* v *Commission* [1995] ECR-SC I-A-161 and II-497, paragraph 130).

12 In paragraph 57, the Court of First Instance held that it followed that, even if fault on the part of the Commission were established, the Community would

not incur liability unless the appellant could show that he had actually suffered harm.

13 As the Advocate General has noted in point 41 of his Opinion, neither the case-law of the Court of Justice nor that of the Court of First Instance supports the conclusion that the conditions giving rise to the liability of an institution must be examined in a particular order.

14 In so far as those three conditions must be satisfied cumulatively, the fact that one of them has not been satisfied is a sufficient basis on which to dismiss an action for damages.

15 The judgment in *Leussink and Others* v *Commission* cannot be regarded as establishing the principle that the condition relating to fault must be examined as a matter of priority. The fact that that condition was examined first in *Leussink and Others* v *Commission* was not attributable to any legal requirement.

16 The Court of First Instance was therefore correct in holding that it could consider first of all whether the appellant had established the existence of harm not yet made good by the compensation which had been granted him pursuant to Article 73 of the Staff Regulations.

17 In the second part of the first limb of the plea, the appellant criticises the Court of First Instance for having confused two totally independent compensation schemes subject to different criteria and governed by different systems of reparation: on the one hand, a lump-sum assessment scheme (Article 73 of the Staff Regulations) and, on the other, a scheme based on liability under ordinary law whereby

compensation for damage is commensurate with the faults committed by the authority responsible. Comparison of the damage in question under those two schemes is possible only if the factors underlying it, namely permanent total invalidity in the case of Article 73 of the Staff Regulations and the examination of the faults which the Commission is accused of having committed in the case of the scheme based on liability, have been established at the outset. It is, after all, by reference to the faults committed by the Commission that the causal link and the damage suffered by the victim are measured.

18 The Commission submits that the appeal is inconsistent inasmuch as it claims that the Court of First Instance, on the one hand, disregarded the principles laid down in *Leussink and Others* v *Commission*, which prescribes compensation under ordinary law in addition to that payable under the staff insurance scheme, and, on the other hand, compared two totally different compensation schemes. The Commission also disputes the principles of liability under ordinary law as the appellant describes them.

19 It should be pointed out in this respect that the insurance cover against occupational disease and accident provided for in Article 73 of the Staff Regulations and in the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease ('the Insurance Rules') allows an injured official to be paid lump-sum compensation by the institution by which he is employed. That compensation is calculated on the basis of the rate of invalidity and the basic salary of the official, without any regard to the liability of the person responsible for the accident or that of the institution which laid down the working conditions that may have contributed towards the onset of the occupational disease.

20 Such lump-sum compensation cannot, however, lead to double compensation for the harm suffered. It is to that end, moreover, that, where an accident or sickness is caused by a third party, Article 85a of the Staff Regulations provides that the

Communities are to stand subrogated to the official's rights and rights of action, *inter alia* in respect of the benefits paid under Article 73 of the Staff Regulations.

21 Similarly, if an accident or sickness is attributable to the institution by which the official is employed, he cannot claim double compensation for the harm suffered, once under Article 73 of the Staff Regulations and again under Article 215 of the Treaty. In this sense, the two compensation schemes are not, contrary to the appellant's claim, independent.

22 It was with regard to the need for full, not double, compensation that the Court of Justice, in paragraph 13 of the judgment in *Leussink and Others* v *Commission*, recognised the right of an official to seek additional compensation where the institution is responsible for the accident according to ordinary law and the benefits payable under the staff insurance scheme are insufficient to provide full compensation for the injury suffered.

23 It follows that, in holding in paragraph 72 of the judgment under appeal that, in accordance with the principle established in *Leussink and Others* v *Commission*, the benefits received under Article 73 of the Staff Regulations following an accident or the onset of an occupational disease must be taken into account by the Court of First Instance for the purposes of assessing the harm eligible for reparation in an action for damages brought by an official on the basis of a fault capable of rendering the institution by which he was employed liable, the Court of First Instance correctly applied Article 215 of the Treaty and Article 73 of the Staff Regulations.

24 It follows that the first limb of the plea must be dismissed.

The second limb of the plea

25 In the first part of the second limb of the plea, Mr Lucaccioni takes issue with the finding of the Court of First Instance in paragraph 73 et seq. of the judgment under appeal that the amount paid under Article 73 of the Staff Regulations was appropriate compensation for the harm suffered. The request made by Mr Lucaccioni was not the same as a request under Article 73 of the Staff Regulations. It was an additional request for compensation based on different grounds and subject to different compensation criteria. The Court of First Instance was therefore wrong to hold in paragraph 74 of the judgment under appeal that the judgment in Case 152/77 *B* v *Commission* [1979] ECR 2819 concerned a different issue and could not be relied on in order to limit the scope of *Leussink and Others* v *Commission*, whereas, in *B* v *Commission*, the Court of Justice defined, in principle, the scope and purpose of the benefits authorised by Article 73 of the Staff Regulations as being benefits intended exclusively to compensate for the impairment of an official's bodily or mental health, but not the material harm for which he claims compensation.

26 The Commission submits that the judgment in *Leussink and Others* v *Commission* censures the cumulative award of the capital sum paid under Article 73 of the Staff Regulations and of damages sought by way of an action for reparation of a fault under ordinary law. This limb of the plea, it contends, has no basis in law inasmuch as the appellant maintains that the Court of First Instance disregarded the principle laid down in *Leussink and Others* v *Commission*.

27 It should be pointed out in this respect that, inasmuch as the appellant is criticising the Court of First Instance for having confused his request with a request for compensation based on Article 73 of the Staff Regulations, the first part of the second limb of the plea is essentially the same as the second part of the first limb of the plea, which has already been examined.

28 As the Court has stated in paragraph 22 of this judgment, the judgment in *Leussink and Others* v *Commission* applies the principle that an official who has suffered harm following a fault committed by an institution must receive full, but

not double, compensation. The judgment in *B* v *Commission*, which relates to assessment of the rate of invalidity to be awarded to an official, does indeed concern a different issue and does not in any way invalidate the principle applied by the Court of Justice in *Leussink and Others* v *Commission*.

29 The Court of First Instance was therefore right to hold in paragraph 74 of the judgment under appeal that there was no valid reason not to take into account the benefits received under Article 73 of the Staff Regulations when assessing the material damage eligible for compensation in circumstances similar to those of this case, such as loss of earnings.

30 In the second part of the second limb of the plea, the appellant disputes the assessment by the Court of First Instance of the harm which he incurred. In his view, the material damage arising from the difference between his invalidity pension and his salary as an official (had he subsequently been reinstated) is not made good by the 100% awarded on grounds of total permanent invalidity.

31 It should be observed in this respect that, according to the settled case-law of the Court, by virtue of Article 168a of the EC Treaty (now Article 225 EC) and the first paragraph of Article 51 of the EC Statute of the Court of Justice, an appeal may be based only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts (see, *inter alia*, Case C-283/90 P *Vidrányi* v *Commission* [1991] ECR I-4339, paragraph 12, and Case C-19/95 P *San Marco* v *Commission* [1996] ECR I-4435, paragraph 39).

32 Furthermore, the Court of Justice has no more jurisdiction, on principle, to examine the evidence which the Court of First Instance accepted in support of those facts than to find the facts themselves (*Commission* v *Brazzelli Lualdi and Others*, paragraph 66).

33 Provided that that evidence has been properly obtained and the general principles of law and the rules of procedure in relation to the burden of proof and the taking

of evidence have been observed, it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced to it. The appraisal by the Court of First Instance of the evidence put before it does not therefore constitute, save where the evidence has been fundamentally misconstrued, a point of law which is subject, as such, to review by the Court of Justice (Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraph 22).

34 For the same reasons, once the Court of First Instance has found the existence of damage, it alone has jurisdiction to assess, within the confines of the claim, the method and extent of compensation for the damage (see *Commission* v *Brazzelli Lualdi and Others*, paragraph 66, and Case C-259/96 P *Council* v *De Nil and Impens* [1998] ECR I-2915, paragraph 32).

35 However, in order for the Court to be able to review the judgments of the Court of First Instance, those judgments must be sufficiently reasoned and, as regards the assessment of the damage, indicate the criteria taken into account for the purposes of determining the amount decided upon (see *Council* v *De Nil and Impens*, cited above, paragraphs 32 and 33).

36 In order to be rendered meaningful, the second part of the second limb of the plea must be construed as alleging that the judgment under appeal fails to state the grounds on which it is based as regards the criteria for determining the amount regarded by the Court of First Instance as making good the material damage suffered by the appellant.

37 In paragraph 76 of the judgment under appeal, the Court of First Instance referred to BEF 8 400 000 as the figure arrived at by way of the actuarial calculation carried out by the appellant and described in paragraphs 59 and 60 of that judgment, which represents the capital sum that would be required to cover

the loss of regular income resulting from the difference between the invalidity pension and his salary as an official up to the age of retirement, assuming he were to retire at 65.

38 It follows that, by referring to that precise calculation by the appellant himself, and by holding in paragraph 77 of the judgment under appeal that, even on the basis of an invalidity assessment of only 100%, the amount of BEF 19 841 688 paid to Mr Lucaccioni was on its own sufficient to compensate for the harm suffered, the Court stated the reasons on which its decision was based.

39 In the third part of the second limb of the plea, the appellant calls into question the fact that the Court of First Instance took into account the additional 30% awarded under Article 14 of the Insurance Rules. In his submission, that 30% provides compensation for only physical harm and does not therefore constitute appropriate compensation for the non-material damage, sexual injury and loss of amenity which he claims to have suffered.

40 Mr Lucaccioni also contests the judgment under appeal in so far as it states in paragraph 88 that he 'has produced no evidence that an amount of that order might be awarded, by way of compensation for comparable non-material damage, by the courts of the Member States', notwithstanding that he referred to a judgment of the French Court of Cassation and, after the close of the written procedure, offered to produce other decisions.

41 With regard to the assessment of the non-material harm, the Commission submits that the Court of First Instance was right to have regard to Article 14 of the Insurance Rules in assessing the extent of the non-material harm which Mr Lucaccioni claimed to have suffered, since the second paragraph of that article refers expressly to Article 12 of the Insurance Rules, which, for the purposes of

assessing injuries not resulting in total invalidity, refers to a scale of rates the first line of which mentions psychological disturbances. This limb of the plea is therefore unfounded inasmuch as the appellant claims that the judgment under appeal misapplied Article 14 of the Insurance Rules.

42 Furthermore, the Commission states that Mr Lucaccioni is claiming compensation for non-economic damage the actual existence and extent of which he has never demonstrated.

43 With regard, finally, to the criticism of paragraph 88 of the judgment under appeal, the Commission submits that it is directed against a ground included only for the sake of completeness and is therefore inadmissible. Even if it were admissible, it would still be unfounded since none of the decisions cited by Mr Lucaccioni contained an assessment of non-material damage.

44 For reasons similar to those given in connection with the second part of the second limb of the plea, the third part of the second limb should be construed as alleging that the judgment under appeal does not state the grounds on which it is based as regards the criteria adopted for assessing the non-material harm suffered by Mr Lucaccioni.

45 Before examining the criteria adopted by the Court of First Instance, however, it is appropriate to consider whether, in holding that the appellant had not produced any evidence that an amount of the order of BEF 5 950 000 might be awarded to him, by way of compensation for comparable non-material damage, by the courts of the Member States, the Court of First Instance misconstrued the evidence properly adduced by the appellant.

46 It should be pointed out in this respect that the decisions of national courts to which the appellant refers in his appeal were sent by him to the Court of First

Instance by letter of 1 April 1998, and thus after the oral procedure had taken place on 9 October 1997.

47 The Court of First Instance was therefore right not to take account of those decisions.

48 It follows that the Court of First Instance was right to hold in paragraph 88 of the judgment under appeal that the appellant had adduced no evidence that an amount of the order of BEF 5 950 000 might have been awarded by the courts of the Member States by way of compensation for non-material harm comparable to that suffered by the appellant.

49 As regards the criteria used by the Court of First Instance in determining whether appropriate compensation had been made for the non-material harm suffered by the appellant, that Court took into consideration, in paragraph 85 of the judgment under appeal, the sum of BEF 5 950 000 which had been paid to him under Article 14 of the Insurance Rules, and which, according the Medical Committee, was awarded 'having regard to the permanent signs (scars, deformation of the left breast, reduced muscle strength in the left arm) and the serious psychological disturbances which Mr Lucaccioni [was] experiencing'.

50 In paragraph 88 of the judgment under appeal, the Court of First Instance held that there was no evidence that an amount of that order might be awarded, by way of compensation for comparable non-material harm, by the courts of the Member States.

51 For the sake of completeness, in paragraph 90, the Court of First Instance calculated the amount of compensation for the non-material harm incurred which the appellant would receive if the sum of BEF 8 400 000, which, on the

basis of a precise actuarial calculation, he regarded as representing compensation for the material harm suffered by him, were deducted from the BEF 25 800 000 paid to him by the Commission.

52 It must be held that, by using several different criteria in order to determine whether the amount received by Mr Lucaccioni afforded him appropriate compensation for the non-material harm suffered, the Court of First Instance provided sufficient grounds for the judgment under appeal.

53 It follows that the second limb of the plea must also be dismissed.

The third limb of the plea

54 In the third limb of the plea, Mr Lucaccioni takes issue with paragraphs 76, 77 and 87 of the judgment under appeal inasmuch as the Court of First Instance failed, other than by way of an 'equitable' and entirely subjective assessment, to give any objective and verifiable explanation, or to state any reasons, for including the damage suffered in the benefits paid under Article 73 of the Staff Regulations and Article 14 of the Insurance Rules.

55 It should be pointed out, however, that this limb of the plea, alleging that the judgment under appeal fails to provide reasons for the assessment of the damage, is essentially the same as the second and third parts of the second limb of the plea as construed and already dealt with by the Court.

56 In those circumstances, the third limb of the plea must be dismissed for the same reasons.

The fourth limb of the plea

57 In the fourth limb of the plea, entitled 'failure to award compensatory interest on the capital sum paid under Article 73 of the Staff Regulations by way of reparation for the delay in dealing with the appellant's case', Mr Lucaccioni takes issue with the conclusion of the Court of First Instance in paragraph 144 that the Commission '[was] not to be criticised for the way in which it exercised its discretion when it failed to ask the Invalidity Committee to deliver an opinion on the occupational origin of the [appellant's] disease' and, in paragraph 147, that it '[had] not overstepped that discretion in the present case'.

58 According to the appellant, taking into account his request that a procedure be initiated for him to be recognised as suffering from an occupational disease, the only proper way for the Commission to define the task of the Invalidity Committee was for it to ask it to deliver an opinion on the possible origin of his invalidity, in accordance with the second paragraph of Article 78 of the Staff Regulations.

59 The Commission submits that this limb of the plea is inadmissible, in so far as it specifies neither the contested aspects of the judgment which it seeks to have set aside nor the legal arguments in support of that request. Mr Lucaccioni, it contends, merely reproduces the pleas in law and arguments already put before the Court of First Instance.

60 It should first of all be pointed out that no link can be established between the title and the content of the fourth limb of the plea other than by reference to

paragraph 112 of the judgment under appeal, in which the Court of First Instance summarised the argument put forward by Mr Lucaccioni to the effect that the procedure would have been completed more quickly if his case had been referred to the Invalidity Committee on the basis of the second paragraph of Article 78 of the Staff Regulations.

61 With regard to the content of the plea, it follows from the first paragraph of Article 51 of the EC Statute of the Court of Justice and Article 112(1)(c) of the Rules of Procedure that an appeal must indicate precisely the contested elements of the judgment which it is requested to have set aside and the legal arguments in support of that request (see, *inter alia*, Case C-303/96 P *Bernardi* v *Parliament* [1997] ECR I-1239, paragraph 37, and Case C-317/97 P *Smanor and Others* v *Commission* [1998] ECR I-4269, paragraph 20).

62 Inasmuch as the fourth limb of the plea alleges that the Court of First Instance held that the Commission had not disregarded the procedures set out in Articles 73 and 78 of the Staff Regulations, but does not specify the legal basis on which the Court of First Instance ought to have formed the view that the Commission had infringed those provisions by failing to ask the Invalidity Committee, set up in 1991 on the basis of Article 78 of the Staff Regulations, to deliver an opinion on the possible occupational origin of the appellant's disease, it must be declared inadmissible.

63 Furthermore, even if this limb were declared admissible, it would still be irrelevant. In order to obtain compensation for the damage attributable to a delay in conducting proceedings for which the Commission can be held responsible, the onus is on the applicant to adduce proof of fault on the part of the institution, of the damage suffered, and of a causal link between the two, these three conditions being cumulative.

64 The appellant does not dispute the finding by the Court of First Instance in paragraph 143 of the judgment under appeal that the fact that the Invalidity

Committee was not asked to deliver an opinion on the occupational origin of the disease did not cause him any harm since he was already entitled to the maximum pension rate referred to in the second paragraph of Article 78 of the Staff Regulations.

65 This limb of the plea must therefore be declared inadmissible.

66 It follows from all the foregoing that the plea in law is, in part, inadmissible and, in part, unfounded, and the appeal must therefore be dismissed.

Costs

67 Under Article 69(2) of the Rules of Procedure, which is applicable to appeal proceedings by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under Article 70 of those Rules, in proceedings between the Communities and their servants, the institutions are to bear their own costs. However, by virtue of the second paragraph of Article 122 of the Rules of Procedure, Article 70 does not apply to appeals brought by officials or other servants of an institution against the latter. Since the appellant has been unsuccessful in his appeal, he must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

1. Dismisses the appeal;

2. Orders Mr Lucaccioni to pay the costs.

Jann Edward Sevón

Delivered in open court in Luxembourg on 9 September 1999.

R. Grass P. Jann

Registrar President of the First Chamber