

1. Annuls the decision of the Secretary General of the Council of 19 October 1981 refusing to recognize the disease which caused the death of René Seingry as an occupational disease and the decision of the Secretary General of the Council of 14 May 1982 rejecting the applicants' complaint;
2. Dismisses the remainder of the application;
3. Orders the Council to pay the costs, apart from those of the intervener.

Koopmans

O'Keeffe

Bosco

Delivered in open court in Luxembourg on 26 January 1984.

For the Registrar

H. A. Rühl

Principal Administrator

T. Koopmans

President of the First Chamber

OPINION OF MRS ADVOCATE GENERAL ROZÈS
DELIVERED ON 24 NOVEMBER 1983 ¹

*Mr President,
Members of the Court,*

This is an application lodged by Mrs Georgette Seingry (née Seiler), widow of

René Seingry, and their two children, Florence and Georges-Francis, for the annulment of a decision refusing to recognize the disease of her late husband and their father respectively as an occupational disease.

¹ — Translated from the French.

I — The facts are as follows:

In 1954, at 31 years of age, René Seingry entered the service of the Special Council of Ministers of the European Coal and Steel Community. By virtue of the Merger Treaty of 6 April 1965 a single Council took the place of the Councils of the three existing Communities with effect from 1 July 1967, but before that date a single secretariat general was responsible for coordination. Mr Seingry undertook the duties of Director of the Private Office of the Secretary General with effect from 1965.

At the beginning of 1977, Mr Seingry "suffered chest pains at work". After he had had several months' rest, the doctors permitted him to return to duty, advising him to avoid over-work. In April 1978 he once again suffered "chest discomfort".

It should be noted that every year the official concerned followed a cure with the agreement of his doctors and that in reply to a question put by the Court the Council stated that during his medical examinations the institution's medical officer had never made any recommendation as to his work.

On 23 July 1979 Mr Seingry died of myocardial infarction at his place of work.

Acting in the name of all of the dependants entitled under the deceased, his son on 10 October 1979 submitted to the Secretary General of the Council an application requesting recognition that his father had died as a result of a disease which had arisen in the course of or in connection with the performance of his duties with the European Communities.

After an interim reply and in accordance with the first paragraph of Article 21 of the rules [hereinafter referred to as "the Joint Rules"] referred to in Article 73

of the Staff Regulations of Officials,¹ the Secretary General notified the dependants that, in accordance with the findings of the doctor appointed by the institution, who had to be consulted in pursuance of the first indent of Article 19² of the Joint Rules, it was impossible for him to "recognize the occupational nature of the disease which caused the death".

Referring expressly to the second paragraph of Article 21 of the Joint Rules, the dependants then requested that the Medical Committee provided for in Article 23³ of the Joint Rules should be consulted.

The constitution of that medical committee apparently did not give rise to any special difficulty and on 7 September 1981 it reached the following conclusion:

"It appears that the particularly exacting working life led by Mr Seingry may have

1 — Article 73 of the Staff Regulations:

"(1) An official is insured, from the date of his entering the service, against the risk of occupational disease and of accident subject to rules drawn up by common agreement of the Institutions of the Communities after consulting the Staff Regulations Committee. He shall contribute to the cost of insuring against non-occupational risks up to 0.1% of his basic salary.

Such rules shall specify which risks are not covered."

Article 21 of those rules provides that:

"Before taking a decision pursuant to Article 19, the appointing authority shall notify the official or those entitled under him of the draft decision and of the findings of the doctor(s) appointed by the institution. The official or those entitled under him may request that the full medical report be communicated to a doctor chosen by them.

Within a period of 60 days the official or those entitled under him may request that the Medical Committee provided for in Article 23 deliver its opinion."

2 — "Decisions recognizing the accidental cause of an occurrence including a decision as to whether the occurrence is to be attributed to occupational or non-occupational risks, or decisions recognizing the occupational nature of a disease and assessing the degree of permanent invalidity shall be taken by the appointing authority in accordance with the procedure laid down in Article 21:

On the basis of the findings of the doctor(s) appointed by the institutions; and

Where the official so requests, after consulting the Medical Committee referred to in Article 23."

3 — "(1) The Medical Committee shall consist of three doctors:

One appointed by the appointing authority;

One appointed by the official concerned or those entitled under him;

One appointed by agreement between the first two doctors."

been a factor which aggravated his coronary disease, but there are in his case other significant risk factors, of such disease, especially the nicotinism. In our opinion, this cannot be regarded as an occupational disease in the strict sense. Indeed, the fact of 'occupational stress' is only one of the components of the pathogenesis and, as Dr Denolin¹ has stated, it may be questioned whether there was not, in addition to the demanding nature of his duties at work, an element of perfectionism and hyperactivity inherent in his psychology".²

On 19 October 1981, the Secretary General informed Mr Seingry's son that, in view of the results of that expert opinion, he regretted to have to inform him that it was impossible for him to recognize Mr Seingry's illness as having been caused by his occupation.

In addition to the annulment of that decision and of the rejection of their complaint through official channels, the dependants request the Court to declare that the disease of which Mr Seingry died was an occupational disease and to award them the benefits provided for in those circumstances by Article 73 of the Staff Regulations of Officials.

SA Royale Belge, acting in its own name and on behalf of 14 other insurance companies with which the Community institutions, represented by the Commission, concluded a collective insurance agreement, intervened in support of the conclusions of the Council of the European Communities.

1 — Dr H. Denolin had been asked for an opinion on the file by the doctor originally appointed by the institution. He had been consulted by Mr Seingry in 1961 and 1969.

2 — In his opinion of 14 March 1980, Dr Denolin cited in relation to the problem of "occupational stress", Silber and Katz, "Heart Disease" (1975): "Research has, as yet, failed to conclusively establish a relationship between personality and coronary artery disease".

II — It should be observed at once that the Court certainly does not have jurisdiction to adjudicate upon the last two heads of claim. Indeed, although it is undoubtedly for the Court to assess the legality of the appointing authority's refusal, the Court could not substitute itself for the competent authorities so as to declare whether or not there is a link of cause and effect between the performance of duties and the death.

III — In support of their application for annulment, the applicants claim essentially that the report of the Medical Committee on which the contested decision is based is ambiguous, inasmuch as it concludes that the disease from which Mr Seingry suffered was not an occupational disease "in the strict sense"; in any event, that report by no means excluded the possibility that the occupational factor might have constituted an aggravating factor in relation to the complaint which proved fatal, and the appointing authority's refusal did not, they claim, contain a proper statement of the grounds on which it was based.

In this case it is for the Court to review the means by which the doctor appointed by the institution and the Medical Committee reached their conclusions.

In those circumstances, it is necessary to examine carefully the terms of the instructions given to the doctor appointed by the administration and to the Medical Committee. Here it should be stressed that the doctor "appointed" by all the institutions of the European Communities for purposes of Articles 19 and 23 of the Joint Rules is in fact always the doctor "proposed" by the insurance company. Indeed, according to Article 5 of the collective insurance agreement, the company's waiver of the right to

bring the matter before the Court of Justice of the European Communities¹ is subject to the condition that the appointing authority's decision is "in conformity with the opinion previously given by the insurance companies' expert or with the opinion given by the Medical Committee provided for in Article 23 of the Rules ... where the insurance companies' expert was a member of that committee; in such a case the insurers will repay to the Communities the whole of the amounts paid by them to the victim or to those entitled under him, in implementation of the decision ... of the appointing authority".

1. At the Court's request, the Council has submitted a memorandum of 3 December 1979 from its Director of Administration, concerning an interview which he had with that doctor.

From that memorandum, it may be seen that the Director of Administration "forwarded to that doctor the results of the inquiry undertaken by the administration" (which do not appear in the file) and "confirmed the information obtained from that inquiry". The doctor "did not ask to consult the medical file. On the other hand, he did ask for the electrocardiograms contained in that file to be sent to him". He had also informed the Director "that he would submit the whole of the file to a university professor who was a specialist in cardiology or even, if necessary, to a body of professors". That information does not enable a conclusion to be drawn as to whether clearly-defined instructions were given.

2. As to the instructions given to the Medical Committee, it appears from a memorandum from the Secretary General of 29 September 1980 — also

provided at the Court's request — that "the medical experts will have to decide whether the disease which caused Mr Seingry's death should be regarded as an occupational disease".

According to Article 3 (1) of the Rules: "The diseases contained in the 'European List of Occupational Diseases' annexed to the Commission's recommendation of 23 July 1962² and to any supplements thereto shall be considered occupational diseases to the extent to which the Official has been exposed to the risk of contracting them in the performance of his duties with the European Communities".

By virtue of the "presumption" as to cause", the inclusion of a disease in the "European List" gives the person concerned a virtually automatic right to compensation, by relieving him of the burden of proof.

It is common ground that ischaemic disorders of the heart (coronary diseases) are not at present contained in the European List;³ therefore the instructions given to the Medical Committee seem to have no purpose in that regard.

The fact that the Medical Committee refers in its opinion to an occupational

2 — *Journal Officiel* of 31 August 1962, 80, p. 2188. The conditions for the grant of special benefits for occupational diseases was the subject of a Commission recommendation of 20 July 1966 (*Journal Officiel* of 9 August 1966, 147, p. 2696 et seq.).

3 — However, Dr. Denolin, who was consulted by the doctor appointed by the administration, cites the following passage from the work by Hurst entitled "The Heart" (1978) "Compensation for occupational cardiovascular disease has been introduced by statute in approximately 18 States. Such statutes have been written to provide that in the absence of adequate rebuttal, the development of a cardiovascular disorder is presumed to be the result of the occupation peculiar to the categories of employees such as firemen and policemen, but other occupational groups have also been included. Such legislation has been without proper scientific evidence that any of these occupations is truly more prone to injure or unfavourably affect the cardiovascular system than any other occupation, and the motivation of these laws appears to have been political" (p. 1998).

1 — Entrusted by an arbitration clause with determining any "medical" dispute concerning the implementation of the insurance contract.

disease in the strict sense, “which is not pertinent to this case, gives rise to doubt whether the ... committee had a sufficiently clear idea of its function”, to adopt the words used in the judgment of the Third Chamber of 12 January 1983.¹

3. However it, follows from the written oral observations submitted by the Council and the insurance company that the Medical Committee, of which the company’s medical expert was also a member, took into account the possibility referred to in Article 3 (2), which provides that: “Any disease or aggravation of a pre-existing disease not included in the List referred to in paragraph (1) shall also be considered an occupational disease if it is sufficiently established that such disease or aggravation arose in the course of or in connection with the performance by the official of his duties with the Communities”.²

Thus diseases contracted in the course of or in connection with the performance of duties are also regarded as occupational diseases as well as the *aggravation* — provided that it is sufficiently established that such aggravation results from the performance of duties — of *any* earlier pathological complaint, even if the latter is not strictly occupational in origin.

The Medical Committee considered that aggravation of a preexisting disease, which may be assimilated to an “occupational disease”, meant the aggravation as a result of the official’s occupation of a disease *existing* at the time when the official took up his duties.

I do not regard that interpretation as sufficiently justified.

Moreover, that interpretation would limit the application of the provision solely to the aggravation of the diseases recorded *before the official took up his duties*. If the compulsory medical examination which precedes the recruitment of every official is properly carried out, the official ought not to be recruited if he is suffering from a serious disease or ought at least to be assigned only to duties compatible with that disease.

That view thus seems to me to be directly opposed to the Recommendation made by the Commission to the Member States in 1962, that they should:

“also introduce in their laws, regulations and administrative provisions a right to compensation under the legislation on occupational diseases, where the worker concerned provides sufficient proof that, *by reason of his work*, he contracted a disease not contained in the national list”.

In order to qualify as an “aggravation of a pre-existing disease” within the meaning of Article 3 (2) of the Rules, it is sufficient for the complaint in question to have been contracted and medically recorded during the career of the person concerned. Obviously it must then be ascertained whether such aggravation arose in the course of or in connection with the performance of his duties.

In its report, the Medical Committee does not clearly adopt a position as to whether Mr Seingry’s performance of his duties might have been an aggravating factor in relation to the disease which had been medically recorded at least as from 1977.³ This may be explained by the lack of precision in the instructions given by the Secretary General. But it follows from that that the decision of the Secretary General of the Council

1 — Case 257/81, *K. v Council*, [1983] ECR I, at paragraph 18.

2 — The Italian version of that provision is inaccurate.

3 — Certificate of Dr. J. Duqué of 26 September 1979 and of Dr Jaumotte of 25 September 1979. Expert report of 7 September 1981.

dismissing the dependants' complaint is "tainted by procedural illegality" within the meaning of paragraph 19 of the judgment of 12 January 1983; it must therefore be annulled.

It will be for the appointing authority to repeat the procedure provided for in

Article 19 et seq. of the Rules, clearly instructing the doctor appointed by the institution or, where appropriate, the Medical Committee to examine whether there is a causal link between the performance of the duties and the aggravation of the disease medically recorded at an earlier stage.

My opinion is that the decisions notified to the applicants by letters of 19 October 1981 and of 14 May 1982 should be annulled and that the Council should pay the whole of the costs, apart from those of the intervener which must be borne by it.