committees provided for in the Community rules on insurance against the risk of accident and of occupational disease. The Court's review may not extend to medical appraisals properly so-called.

2. Nothing prohibits the medical committee provided for in the Community rules on insurance against the risk of accident and occupational disease, lawfully constituted, from consulting, by common agreement, other doctors if it considers it is necessary to do so.

3. There is no provision in the Community rules on insurance against the risk of accident and occupational disease which requires the medical committee, lawfully constituted under those rules, to consider as definitive the contents of medical reports or other opinions previously adopted.

4. The appointing authority may not depart, to the detriment of the official or those entitled under him, from the conclusions which it reached in its draft decision notified in accordance with the Community rules on insurance against the risk of accident and occupational disease when it adopts its final decision under those rules. However, that principle applies only to the draft decision itself, fixing an aggregate invalidity rate and an allowance calculated on that basis; it does not apply to the various components of the report of the doctor appointed by the institution.

In Case 265/83

BENOÎT SUSS, a retired official of the Commission of the European Communities, represented by Jacques Guinard, of the Paris Bar, with an address for service in Luxembourg at the Chambers of L. Schiltz, 83 Boulevard Grande-Duchesse-Charlotte,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Dimitrios Gouloussis, an adviser in the Legal Department, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION concerning the benefits payable under Article 73 of the Staff Regulations of Officials in the event of permanent partial invalidity resulting from an accident,

THE COURT (Third Chamber)

composed of: C. Kakouris, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: C. O. Lenz
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts

1. In 1977 the applicant was the victim of an assault. The resulting injuries, namely an eye injury and injuries to the head and to the left knee, led to permanent partial invalidity, which made it impossible for him to carry out his duties. The applicant was granted an invalidity pension as from 1 December 1979.

In order to determine the benefits which, pursuant to Article 73 of the Staff Regulations of Officials, were payable in the event of invalidity under the accident insurance scheme the Commission appointed Dr de Meersman to draw up a report on the consequences of the assault, in accordance with the first indent of Article 19 of the Rules on the Insurance of Officials against the Risk of Accident and of Occupational Disease (hereinafter referred to as "the Rules"). In his report of 25 May 1979 the doctor concluded that the various degrees of invalidity were as follows:

25% for the eye injury;
10% for the neurological symptoms;
2.25% for the knee injury.

By applying a proportionate method of calculation, the report therefore established an aggregate permanent partial invalidity rate of 34%.

On 24 July 1979, in accordance with Article 21 of the Rules, the Commission sent to the applicant a draft decision based on Dr de Meersman's conclusions.

It proposed that the applicant be awarded compensation for 34% invalidity, which corresponded to a lump sum of BFR 3 187 129.

On 7 September 1979, in accordance with Article 21 of the Rules, the applicant requested the opinion of the Medical Committee provided for in Article 23 of the Rules, because the doctors whom he had consulted had established higher degrees of invalidity. At the same time the applicant requested payment of the lump sum of BFR 3 187 129 as a provisional allowance pursuant to Article 20 of the Rules.

By a letter dated 22 October 1979, the Commission replied that the aggregate permanent partial invalidity rate of 34% could not be regarded as the undisputed proportion of the permanent invalidity rate, since that figure covered three separate sequelae, in respect of which, with the exception of the eye injury (25%), a definitive degree had yet to be fixed. Consequently a lump sum of BFR 2 343 478 corresponding to 25 % invalidity was paid to the applicant as a provisional allowance.

Subsequently the applicant brought an action in connection with, *inter alia*, the composition of the Medical Committee, the payment of an additional provisional allowance corresponding to 12% and the delay in the payment of the allowance. After that action had been brought, the Commission paid him an additional provisional allowance of 12%. In its judgment of 14 July 1981 (Case 186/80, [1981] ECR 2041), the Court noted that that payment had been made, and dismissed the other claims.

2. The Medical Committee was composed of Dr Jacques de Meersman, a surgeon practising in Arlon, who was appointed by the appointing authority, Dr Jules Weber, a general practitioner in Luxembourg, who was appointed by the applicant, and Dr Norbert Ketter, an eye specialist practising in Luxembourg, who was appointed by agreement between the other two doctors. The three doctors unanimously agreed to consult Dr François Daro, a surgeon practising in Luxembourg.

On 13 July 1982 those four doctors met to examine the applicant. On the same day they drew up a report which they sent to the Commission.

In that report it is stated that the Medical Committee was composed of Dr de Meersman, Dr Weber and Dr Ketter and that Dr Daro was called in as a consultant. All four doctors signed the report. The report states that they examined the applicant and studied the various reports and certificates contained in the file. They concluded that the date of the consolidation of the injuries was 1 April 1979 and that the degree of permanent invalidity which resulted from the injuries was as follows:

for the loss of vision in the left eye, 25%;

for the sequelae in relation to the left knee, 8%;

for the disfigurement, 1%.

On the other hand they found that there were no neurological sequelae. There was no need for special treatment, prolonged massage, electrotherapeutic treatment and thermal cures. No subsequent therapy was liable to bring about a clear and appreciable improvement. Consequently the applicant's aggregate invalidity rate was fixed "with the

unanimous agreement of the four doctors present" at 34%.

On 3 February 1983, the Commission informed the applicant that it accepted the conclusions of that report. As a result:

The applicant was requested to repay a sum of BFR 281 218, corresponding to the difference between the lump sum of BFR 3 468 347, the total amount paid as a provisional allowance for a degree of invalidity of 37%, and the allowance payable for the degree of invalidity of 34% which was finally settled upon.

The applicant was informed that the reimbursement at 100% of the costs of treatment under Article 73 (3) of the Staff Regulations was not justified after 1 April 1979, and that a sum of BFR 24 922 had been paid unduly. That sum was therefore carried forward to be deducted from future claims for reimbursement of medical expenses.

The applicant was informed that since the Medical Committee's opinion was not in accordance with the appointing authority's draft decision which had initially accorded him a permanent partial invalidity rate of 37 %, he did not have to pay the fees of the doctor whose duty it was to represent him or half the fees of the third doctor.

3. By a letter which reached the Commission on 25 April 1983, the applicant submitted a complaint pursuant to Article 90 (2) of the Staff Regulations of Officials seeking the annulment of the above-mentioned decision of the appointing authority and of the medical report on which that decision was based.

By a letter dated 3 October 1983, that complaint was rejected on the grounds that the medical report could not be the subject of a complaint and that the applicant's criticisms concerning the constitution and the procedure of the Medical Committee and the contents of its report were unfounded.

III — Written procedure and conclusions

1. The applicant brought this action by an application registered at the Court on 28 November 1983.

In his application Mr Suss claims that the Court should:

Declare the Medical Committee's report void;

Annul the contested decisions, namely the decision of 3 February 1983 and in so far as is necessary the implied decision of 25 August 1983;

Declare that the applicant is entitled to invalidity benefit calculated at a rate of 56%;

Fix as the date of consolidation 1 April 1979 in respect of the neurological and ophthalmic sequelae, and 4 May 1982 in respect of the meniscal sequelae;

In any event declare the rates of incapacity fixed for the payment of the provisional allowance definitive and order a new expert opinion to be given

in respect of the sequelae still under discussion;

Declare that thermal cures are necessary in order to stop, or at least to slow down, the development of arthritis and meniscitis,

Order the Commission to pay all the costs.

In his reply, the applicant claimed in addition that the Court should:

Order the Commission to pay him BFR 50 000 under Article 73 of the Rules of the Procedure;

Award him interest on the amount of the allowance owed to him because of the Commission's improper delay in paying it to him.

2. The Commission contends that the Court should:

Dismiss the application as inadmissible in part and unfounded for the rest;

Decide as to the costs in accordance with the relevant provisions.

3. The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties

A — Admissibility

The *Commission* contends that the application is admissible only in so far as it seeks the annulment of the Medical Committee's opinion and the appointing authority's decision which endorses it, and in so far as it seeks a declaration that the permanent partial invalidity rate cannot be lower than 34%. For the rest, the application is inadmissible because the Court cannot arrogate to itself the powers of the Medical Committee and the appointing authority by issuing opinions of a medical character on the nature and the seriousness of the applicant's injuries, the degree of invalidity which results therefrom and the date of the consolidation of such injuries, or by prescribing treatment and determining the administrative consequences of such an opinion. The Commission refers in particular to the judgment of the Court of 21 May 1981 (Case 156/80, *Morbelli,* [1981] ECR 1357) and emphasizes that the Court's review of the findings of the Medical Committee must be confined to questions relating to its constitution and its proper functioning.

The *applicant* considers that, in the interests of the proper administration of justice, any court must at least have the power to consider whether there are any manifest errors in the medical assessments which are before it and which affect the outcome of the dispute. A court with jurisdiction to hear an action for damages must fix the amount of the damages payable to the applicant, short of refusing to consider the case at all. In this instance it is therefore for the Court to determine the permanent partial

invalidity rate and the necessary financial consequences which result therefrom.

B — The substance

1. The composition of the Medical Committee

The *applicant* submits that both the Medical Committee's report and the decision of 3 February 1983 are vitiated by a procedural defect inasmuch as the Medical Committee's report is signed by four doctors and in particular by Dr Daro, who was called in as a consultant. Article 23 of the Rules not only restricts the number of doctors entitled to make up the medical committee but also establishes the exclusive authority of those doctors to draw up the report. A fourth doctor called in as a consultant cannot sign the report without overstepping his role as a consultant. The actual and active participation in the final decision and in the report of a doctor called in as a consultant is not permissible.

The *Commission* contends that the Medical Committee was properly constituted in accordance with Article 23 (1) of the Rules. The fact that the doctor called in as a consultant entered his agreement on the Medical Committee's report and signed that report cannot be regarded as a procedural defect. Far from adversely affecting the applicant, the signed agreement of the consultant represents an additional guarantee for him. The Commission points out in addition that the Medical Committee is not a court of law and that rules concerning the composition and the functioning of courts are not applicable to it.

2. The failure to abide by the invalidity rates which had already been accepted as definitive

The *applicant* claims that the Commission was under an obligation, in any event, to abide by the invalidity rates which had already been accepted as definitive.

The Commission paid him a provisional allowance based on an invalidity of 37%. It thus acknowledged that he qualified for that rate. A subsequent reduction of the degree of invalidity represents an infringement of the third paragraph of Article 20 of the Rules, according to which a provisional allowance is granted by the appointing authority in respect of the "undisputed proportion of the permanent invalidity rate". It follows from that provision that the Medical Committee must confine its examination to the disputed proportion alone and that the institution cannot reduce the rate which it has accepted by paying the provisional allowance. In failing to respect those limits, the Medical Committee acted irregularly. The Court therefore has grounds for carrying out a complete review of the findings established in that way.

It follows that the Medical Committee should have accepted as definitive at least the degrees fixed in the report of 25 May 1979, namely 25% for the loss of vision in the left eye and 10% for the neurological symptoms. If the 8% recognized by the Medical Committee in respect of the sequelae in relation to the left knee and the 1% in respect of the

disfigurement are added to those, it may be concluded that the minimum degree of invalidity which the Medical Committee could fix was 44%.

The *Commission* considers that the applicant has misunderstood the effect of the third paragraph of Article 20 of the Rules. It provides for the grant of a provisional allowance pending the consolidation of the injuries only where the doctors are not yet in a position to fix definitively the degree of invalidity but are of the opinion that it will be at least 20%.

In this instance the doctor designated assessed the rate of permanent partial invalidity at 34%. The draft decision pursuant to Article 21 of the Rules, which was sent by the appointing authority to the applicant on that basis, expressly stated that it was subject to the acceptance of that offer by the official concerned. Since the applicant did not accept it, it became null and void. From that moment it was possible to regard as the undisputed proportion only a rate of 25%.

It is incorrect to claim that a Medical Committee is bound by the conclusions submitted by the doctors appointed by the institution inasmuch as it can amend them only in favour of the official. The Medical Committee has complete freedom of assessment and is in no way bound by the conclusions of the doctor appointed by the institution. In its judgment of 21 May 1981 *(Morbelli,* cited above), the Court attached considerable importance to the medical independance of the members of the Medical Committee.

Although, in the course of the previous action before the Court between the parties the Commission had agreed to pay the applicant an additional provisional allowance equivalent to 12%, that was done in a spirit of conciliation, entirely without prejudice to the Commission's position in any way and, in particular, without prejudice to the Medical Committee's report and the appointing authority's decision in the light of that report. In the circumstances it is a distortion of the truth to claim that the Commission had decided that the applicant suffered from at least 34% permanent partial invalidity and, on that basis, was entitled to a corresponding provisional allowance.

In connection with the additional payment of 12%, the *applicant* points out that it was made following the proceedings instituted by him before the Court in that matter. In its judgment of 14 July 1981, the Court expressly noted that the applicant had obtained satisfaction on that point. In so doing, the Court must be taken to have recognized the definitive character of the provisional allowance paid and of the undisputed degree of invalidity on the basis of which that payment had been made.

3. The assessment by the Medical Committee of the degree of invalidity resulting from the sequelae in relation to the knees

The *applicant* then contests the findings made by the Medical Committee in respect of the sequelae in relation to the knees. He considers that the assertion that those sequelae represented only 8% invalidity for the left knee and were non-existent for the right knee cannot be supported. The examination on which that assertion was based was extremely

brief; the doctors merely made the applicant sit down, took two measurements of the circumference of the knees and asked him to roll up the lower part of his trousers. That "examination" shows that the doctors had not acted with the minimum of thoroughness required. The applicant seeks to refute the Medical Committee's report by citing two expert opinions drawn up at his request by Professor Chaumont, the Director of the Institute of Legal Medicine at the University of Strasbourg, and by Professor Schmitt of the Medical Faculty of the University of Nancy. Professor Chaumont certified that the applicant's degree of invalidity was 12% for the sequelae in relation to the left knee and 8% in respect of the sequelae to the right knee. Professor Schmitt first fixed the degree of invalidity at 15% in respect of the left knee and then concluded in a second report that the sequelae in respect of both knees should be assessed at 20%, in accordance with the scale of invalidity under the insurance scheme for European officials against the risk of accident and of occupational disease. In view of the serious omissions and inadequacies of the Medical Committee's report, the Court might consider it appropriate to rely on the conclusions of those two doctors whose moral integrity and high level of skill cannot be contested.

Therefore the aggregate degree of invalidity must be 56%, that is, 25% for the loss of vision, 10% for the neurological symptoms, 20% for the sequelae in relation to the knees and 1% for the disfigurement. Moreover, the Luxembourg national authorities have acknowledged that as the applicant's degree of invalidity.

In the light of such irregularities, the Medical Committee's report cannot, in any event, be used as the basis for the decision.

The *Commission* stresses the limits of the Court's power of review as regards medical appraisals properly so-called, which must be regarded as definitive when they are adopted in accordance with the correct procedure. In this case the Medical Committee was properly constituted. Its report is signed by four eminent doctors who issued their opinion after having heard the patient's views, after having examined his eyes and his locomotor system and after having considered and discussed all the medical evidence produced, including the reports of Dr Schmitt and Dr Chaumont whom the applicant had consulted on his own initiative. The doctor appointed by the applicant participated in all the Medical Committee's deliberations and noted his agreement with the conclusions of that Committee. There are no grounds for calling in question the conscientiousness of those deliberations and for attaching more weight to the reports of the doctors consulted by the applicant on his own initiative.

IV — Oral procedure

At the sitting on 27 September 1984, the Commission, represented by R. Andersen, presented oral argument and replied to questions put by the Court. The applicant was not represented at that sitting.

The Advocate General delivered his opinion at the sitting on 25 October 1984.

Decision

1 By an application which was lodged at the Court Registry on 28 November 1983, Benoît Suss, a retired official of the Commission of the European Communities, brought an action for, *inter alia*, the annulment of the Medical Committee's report of 13 July 1982, a declaration that the Commission's letter of 3 February 1983 concerning the applicant's permanent partial invalidity is void and a ruling to determine the benefits which are payable to him, pursuant to Article 73 of the Staff Regulations of Officials, as a result of that invalidity.

2 In 1977 the applicant was the victim of an assault. The sequelae of that assault resulted in permanent partial invalidity which made it impossible for him to carry out his duties. These proceedings concern the degree of that permanent partial invalidity. On the basis of that invalidity the applicant receives an invalidity pension. Under Article 73 of the Staff Regulations of Officials he is also entitled to an allowance in the form of a lump sum calculated on the basis of the degree of invalidity, and to the reimbursement at 100% of the costs of medical treatment made necessary by the accident.

3 In a report of 25 May 1979 the doctor appointed by the Commission for the purpose of determining the benefits payable to the applicant under Article 73 of the Staff Regulations of Officials estimated the degree of invalidity at 25% for the eye injury, 10% for the neurological symptoms and 2.25% for the sequelae in relation to the knee. According to a proportionate calculation known as the "Balthazar rule", which was applied in that report, those rates resulted in an aggregate invalidity rate of 34 %. On that basis, on 24 July 1979, the Commission addressed to the applicant a draft decision in accordance with Article 21 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease (hereinafter referred to as "the Rules").

4 The applicant did not accept that draft and contested the medical findings of the doctor and the application of the "Balthazar Rule". He requested that the Medical Committee provided for in Article 23 of the Rules deliver an opinion. At the same time, he asked to be granted a provisional allowance, pursuant to Article 20 of the Rules, in respect of the undisputed proportion of the invalidity rate. The Commission granted the allowance but only in

respect of an invalidity rate of 25%. Subsequently, the Commission accepted in a letter dated 30 January 1980 that the provisions of the Rules excluded any reduction under the "Balthazar Rule" and that the aggregate rate of permanent partial invalidity should be obtained by adding up the various partial rates.

5 The composition of the Medical Committee and the grant of an additional provisional allowance of 12% were the subject of the action brought before the Court in Case 186/80. After that action had been brought, the Commission paid the applicant, as an additional provisional allowance, a sum corresponding to a degree of invalidity of 12 %, in addition to the sum already paid at the rate of 25%. It is clear from the declarations made by the Commission on that occasion that the payment was made "pending the conclusions of the Medical Committee" and in order to render the claim in question devoid of purpose, "in a spirit of conciliation ... entirely without prejudice to the Commissions position in any way and, in particular, without prejudice to the Medical Committee's report". In its judgment of 14 July 1981 ([1981] ECR 2041) the Court noted that the claim in question had become devoid of purpose.

6 The Medical Committee, composed of three doctors, met on 13 July 1982 in the presence of a fourth doctor, Dr Daro, a surgeon practising in Luxembourg, who was called in for consultation by the unanimous agreement of the three members of the Medical Committee. According to the report drawn up by the Committee, after having examined the applicant and having studied the various reports and certificates contained in the file, the Committee estimated the aggregate invalidity rate at 34%, that is, 25% for the loss of vision in the left eye, 8% for the sequelae in relation to the left knee and 1% for disfigurement. In addition it took 1 April 1979 as the date of the consolidation of the injuries and considered that there was no need for further treatment or therapy. According to the report that conclusion was reached "with the unanimous agreement of the four doctors present, duly constituting the Medical Committee". The report bears the signatures of the three members of the Medical Committee and that of Dr Daro.

7 On 3 February 1983 the Commission informed the applicant that it accepted the conclusions of that report, and that consequently the applicant should repay a sum of BFR 281 219 corresponding to the difference between the

provisional allowance received by him on the basis of a degree of invalidity of 37% and the lump sum to which he was entitled in respect of a degree of invalidity fixed at 34 %. In addition it stated that the reimbursement at 100% of the costs of treatment, under Article 73 (3) of the Staff Regulations, was not justified after 1 April 1979, and that a sum of BFR 24 922 had been paid unduly. That amount was therefore carried forward to be deducted from future claims for reimbursement of medical expenses.

8 The complaint against the Medical Committee's report and against that decision of the Commission, submitted by the applicant on 25 April 1983 under Article 90 (2) of the Staff Regulations of Officials, was rejected by a decision of 3 October 1983. The applicant has now brought this action, whereby he seeks:

The annulment of the Medical Committee's Report and the Commission's decision of 3 February 1983;

The grant of an allowance corresponding to a degree of invalidity of 56%;

The fixing of the date of consolidation as 1 April 1979 for the neurological and ophthalmic sequelae and 4 May 1982 for the meniscal sequelae and a declaration that thermal cures are necessary;

In any event a declaration that the degree of incapacity on which the payment of the provisional allowance was based is definitive, and a new expert opinion in respect of the sequelae still under discussion;

The award of an additional sum of BFR 50 000 and interest on the amount of the allowance because of the improper delay in paying that allowance.

The Medical Committee's report

9 In support of his application, the applicant claims that the Medical Committee's report is vitiated by a procedural defect inasmuch as a doctor who was not a member of the Committee participated in its deliberations and

signed its report. The Medical Committee ought to have accepted at least the degree of invalidity previously established by the doctor appointed by the Commission, and by the Commission when it paid the provisional allowance. Moreover, the Medical Committee failed to assess correctly the sequelae in relation to the applicant's knees, because its examination was too cursory. Those sequelae should have been assessed at 20%, as they had been by two eminent doctors consulted by him.

10 The Commission considers that the application is inadmissible in so far as the applicant asks the Court to substitute its own assessment for the findings of the Medical Committee and the appointing authority. It maintains moreover that the agreement of a fourth doctor does not constitute an irregularity in the Medical Committee's report. The Medical Committee's freedom of medical appraisal cannot be restricted by previous findings. There is nothing to suggest that it is possible to call in question the conscientiousness of the deliberations of the Medical Committee, which took into account in its report the medical certificates submitted by the applicant.

11 The Court would point out, first, that as it held in its judgment of 21 May 1981 (Case 156/80, *Morbelli* v *Commission,* [1981] ECR 1357), Articles 19 to 23 of the Rules are intended to confer upon medical experts the task of appraising in their entirety medical questions which are relevant to the operation of the insurance scheme set up by the Rules. The organization of that complaints procedure and the care with which the provisions quoted strive to ensure the balance and objectivity of medical committees are evidence of a desire to settle definitively at that stage, in case of dispute, all questions of a medical nature. In those circumstances the remedies provided for by the Staff Regulations may in principle be employed only in order to obtain a review by the Court confined to questions concerning the constitution and proper functioning of the medical committees. The Court's review may not extend to medical appraisals properly so-called.

12 In the light of those considerations it should be noted that in this case the Medical Committee was correctly constituted, in accordance with Article 23 of the Rules, by two doctors appointed by the two parties and by a third

doctor appointed by agreement between those two doctors. Nothing prohibits the Medical Committee from consulting, by common agreement, other doctors if it considers it is necessary to do so, since the nature of the injuries to be assessed may require the opinion of a specialist. The fact that the doctor called in as a consultant was present in that capacity during the Committee's deliberations and that he added his signature to the Medical Committee's report cannot therefore be regarded as a procedural irregularity.

13 There is no provision in the Rules which requires the Medical Committee to consider as definitive the contents of medical reports or other opinions previously adopted. The Committee's task, which consists in considering entirely objectively and independently medical questions, requires that it be allowed complete freedom of appraisal. No complaint may be levelled at the Medical Committee on the ground that, in relation to certain aspects of the applicant's injuries, it reached conclusions different to those of the doctor previously appointed by the Commission and those of the Commission itself in its draft decision, or those of other doctors consulted by the applicant.

14 As regards the sequelae in relation to the knees, it is clear from the Medical Committee's report that it considered the relevant medical certificates submitted by the applicant. Moreover, there is nothing to suggest that the conclusions which it reached on that point result from an irregularity capable of vitiating its decisions.

15 It follows from the foregoing that the action is unfounded in so far as it seeks the annulment of the medical findings made by the Medical Committee and in so far as it asks the Court to rule on the medical questions examined by the Committee and to order a new expert opinion.

The Commission's decision on the degree of invalidity and the date of consolidation

16 The applicant also claims that the degree of invalidity previously established by the doctor appointed by the Commission, and by the Commission itself in its draft decision of 24 July 1979 and when it paid the additional provisional allowance of 12 %, is binding on the Commission. It was not entitled to alter

its original finding to the detriment of the applicant, following the complaint and the referral of the matter to the Medical Committee. That is true not only for the aggregate rates but also for each of the various components. By adding up the most favourable partial rates established in the first place in the medical report of 25 May 1979 and secondly by the Medical Committee, the applicant is entitled to a rate of at least 44%. In any event the Commission may not demand the repayment of the sum paid as a provisional allowance.

17 The Commission objects that when it adopts a decision it is not in any way bound by earlier findings. Its draft decision, which the applicant did not accept, and the payment of the provisional allowance subject to subsequent decisions were in no way definitive. Neither the decision nor the payment can therefore bind the Commission as to its final decision.

18 Under the Rules, in particular Articles 16 and 18 thereof, it is for the administration, initially, to conduct an inquiry and, *inter alia,* to obtain any expert medical opinion necessary for the implementation of the Rules. At that stage in the procedure the administration is not bound by the opinion issued by a doctor appointed by it. It is free to decide whether or not to follow such an opinion or to obtain further expert opinions. The official or those entitled under him cannot influence the course of that inquiry and insist on obtaining expert opinions. At the end of that first stage in the procedure, the administration adopts the position which it considers objectively justified and sets out its conclusions in a draft decision notified to the official or those entitled under him, in accordance with Article 21 of the Rules.

19 Following that notification, under the second paragraph of Article 21 of the Rules, the official or those entitled under him may lodge a complaint against the conclusions reached by the administration in its draft decision. Under that procedure he may refer the matter to the Medical Committee provided for in Article 23 of the Rules. The procedure is intended to safeguard the interests of the official and those entitled under him and to allow them to put

forward their views on the medical findings. The administration, for its part, may not refer to the Medical Committee.

20 In follows from the foregoing that, in accordance with a principle widely recognized in the legal orders of the Member States with regard to procedures of complaint or appeal of a judicial or administrative nature, the appointing authority may not depart, to the detriment of the official, from the conclusions which it reached in its draft decision notified in accordance with the first paragraph of Article 21 of the Rules when it adopts the final decision. However, that principle applies only to the draft decision itself, fixing an aggregate invalidity rate and an allowance calculated on that basis; it does not apply to the various components of the report of the doctor appointed by the institution. That report merely represents an opinion which is not binding on the appointing authority and which is not part of the decision adopted by that authority.

21 In this instance the report of the doctor appointed by the Commission and the Commission's draft decision had fixed an aggregate rate of 34%, arrived at by applying the proportional calculation known as the "Balthazar" rule to partial degrees which added up in themselves to 37.25%. The Commission expressly acknowledged in its letter dated 30 January 1980 that the total of the partial rates could not be reduced on the basis of the "Balthazar" rule, since that rule was not applicable under the relevant Community provisions. The Commission thus increased to 37.25% the aggregate permanent partial invalidity rate which it had established in its draft decision. Moreover, that is why in the course of the proceedings in Case 186/80 the Commission paid an additional provisional allowance, thereby acknowledging that the rate in question represented "the undisputed proportion of the permanent invalidity rate" within the meaning of the third paragraph of Article 20. In its definitive decision the Commission was therefore not entitled to depart from the rate of 37.25%, which it had previously accepted, to the detriment of the applicant.

22 The applicant also contests the fixing of the date of the consolidation of the sequelae as 1 April 1979. In that connection it must be noted that the Commission's draft decision of 24 July 1979, on the basis of the opinion of the doctor appointed by the Commission, took as the date of consolidation

the date of that opinion, namely 18 May 1979. For the reasons which have been set out above, the Commission was not entitled to fix a date of consolidation earlier than that in its final decision.

23 It follows that, by fixing a permanent partial invalidity rate of less than 37.25% and by taking as the date of consolidation of the sequelae of the accident a date earlier than 18 May 1979, the Commission exceeded the limits of its discretion under the Rules, having regard to the conclusions which it reached in its draft decision. The decision of 3 February 1983 must be annulled in so far as it oversteps those limits.

The claims for the award of an additional allowance and interest

24 In support of his claim that the Court should order the Commission to pay him an additional allowance of BFR 50 000 the applicant merely referred to Article 73 of the Rules of Procedure and cited no other circumstance of fact or of law capable of supporting such a claim. It is sufficient to note in that respect that provision relates to recoverable costs and those are the subject of the decision as to costs.

25 As regards the payment of interest, it is sufficient to note that that claim has become devoid of purpose since the allowance definitively awarded scarcely differs from that paid on a provisional basis and that a claim for damages in the form of interest was already dismissed in the judgment of 14 July 1981, cited above.

26 It follows from all the above-mentioned considerations that the application is well-founded in so far as, in its decision of 3 February 1983, the Commission established an aggregate permanent partial invalidity rate of less than 37.25% and fixed a date earlier than 18 May 1979 as that of the consolidation of the sequelae of the accident, and in so far as the Commission claimed the repayment of the benefits relating thereto, but that the remainder of the application must be dismissed as unfounded.

Costs

27 Under the first subparagraph of Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading.

28 Since the Commission has failed in the main part of its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the Commission's decision of 3 February 1983 in so far as it establishes an aggregate permanent partial invalidity rate of less than 37.25%, in so far as it fixes a date earlier than 18 May 1979 as that of the consolidation of the sequelae of the accident and in so far as it claims the repayment of the benefits relating thereto;**

2. **Dismisses the remainder of the application;**

3. **Orders the Commission to pay the costs.**

Kakouris Everling Galmot

Delivered in open court in Luxembourg on 29 November 1984.

For the Registrar

H. A. Rühl

Principal Administrator

C. Kakouris

President of the Third Chamber