On those grounds,

THE COURT (First Chamber)

hereby:

1. **Dismisses the application.**

2. **Orders the parties to bear their own costs.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 12 June 1980.

J. A. Pompe
Deputy Registrar

A. O'Keeffe
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL WARNER DELIVERED ON 20 MARCH 1980

My Lords,

I do not think it necessary in this case to take time to consider my opinion.

Your Lordships have the facts of the case well in mind, so that I need not rehearse them.

I propose to leave aside for the moment the issues raised as to the adequacy of the reasons given by the Director of Personnel of the Commission for his decision of 14 August 1978; as to the admissibility of the action in so far as it relates to the decision of 3 April 1979;

and as to the adequacy of the reasons given for that latter decision.

The essential issue between Miss Schuerer and the Commission is whether, as she contends, her invalidity was caused by the accident she sustained on 26 October 1976, or by the dust she breathed in as a result of the faulty air-conditioning in her office, or by a combination of those factors, or whether, as the Commission contends it was due to what Article 78 of the Staff Regulations calls "some other cause".

In my opinion that issue is not justifiable in this Court. That is because in my opinion the relevant provisions of the Staff Regulations (in particular Article 78 and Article 13 of Annex VIII) make the Invalidity Committee the judge of the cause or causes of an official's invalidity in so far as that is a medical question. That that is so seems to me to be necessarily implicit in the way in which those Articles are framed and, moreover, seems to me to follow from what was said by the Court in Case 29/71 *Vellozzi* v *Commission* [1972] 2 ECR 513, particularly in paragraphs 8 and 15 of the judgment. Furthermore, the judgment of the Court in Cases 42 & 62/74 the second *Vellozzi* case [1975] 1 ECR 871 shows that, where an Invalidity Committee has validly decided a question submitted to it, its decision is final unless some new factor comes to light. I do not think that opinions expressed by other doctors, however eminent, that the Committee was or may have been wrong, such as the opinions of Doctors Stein, Lequime and Schußler put in on behalf of Miss Schuerer in this case, amount to such a new factor.

Thus, in my opinion this Court could only interfere in the present case if it were shown, either that the Director of Personnel's decision, as appointing authority, awarding Miss Schuerer an invalidity pension at the lower rate, was incompatible with the conclusions of the Invalidity Committee, or that those conclusions themselves were for some reason unreliable. In the latter event the correct course, in my opinion, would be for the Court to set those conclusions aside and direct that a new Invalidity Committee be convened. It would not be for the Court to appoint a "super" or "appellate" medical board of the kind suggested on behalf of Miss Schuerer. There is no basis for that, either in the Staff Regulations or elsewhere. It could not in my opinion be done in exercise of the Court's power to order measures of inquiry, because the purpose of measures of inquiry is to enable the Court to decide disputed questions of fact, and, as I have already said, it is not, in my opinion, for the Court to decide the question of fact that is in dispute here. If it were to do so it would be acting as a court of appeal from the Invalidity Committee, which certainly it is not.

Was the decision then of the Director of Personnel incompatible with the conclusions of the Invalidity Committee? On behalf of Miss Schuerer it was submitted that it was, because the Invalidity Committee had said that her invalidity might have been caused by her accident and she should have been given the benefit of the doubt. I do not think

that that is right as a matter of law. In my opinion, for an official to be entitled to an invalidity pension at the higher rate, there must, in so far as that depends on medical facts, be a positive finding by the Invalidity Committee that his invalidity is due to one of the causes mentioned in the second paragraph of Article 78. The Invalidity Committee need not, in my opinion, be satisfied as to such facts beyond all possible doubt, but it must be satisfied as to them at least on a balance of the probabilities. There again the judgment of the Court in the first *Vellozzi* case is in point.

As to the reliability of the conclusions of the Invalidity Committee, it is conceded on behalf of Miss Schuerer that the Invalidity Committee went about its task with care. What is challenged on her behalf is the way in which the conclusions of the Committee were expressed. This is the point in the case that has occasioned me the most concern. I have no doubt that, in their original version, those conclusions were excessively brief and, for that reason, obscure. It would have been better if the Director of Personnel had sought clarification of their meaning at once, before making his decision, instead of creating the situation in which clarification of them had to be sought later in order to enable Miss Schuerer's formal complaint to be dealt with. It seems to me manifest, however, that, if the Director of Personnel had had in front of him the explanation that was later given by the Invalidity Committee of its conclusions, his decision would have been the same.

I have also been troubled by the fact that the way in which the Invalidity Committee expressed its conclusions involved the Committee taking a view as to what Article 78 means by an "occupational disease". That is not a medical question but a question of law. It would have been better if the Invalidity Committee had confined itself to saying that Miss Schuerer's invalidity was not attributable to her having breathed in the dust. The wording of the Committee's conclusions is consistent with its having taken the view that her invalidity was due to a disease resulting from her having breathed in the dust, but that such a disease was not an "occupational" one. It seems to me clear, however, in the light of the Committee's subsequent explanation, that that was not the view it took.

I would therefore hold that the conclusions of the Invalidity Committee were not so defective as to invalidate the decisions that were based on them. In saying this I do not overlook the issue that was raised as to whether Miss Schuerer's fall on 26 October 1976 did or did not result in her hitting her chest against the edge of the step. That is of course an issue of fact which this Court could decide after hearing the evidence of witnesses, including that of Miss Schuerer herself, of anyone who was present when she fell and of those she spoke to immediately afterwards. But I do not see that the determination by the Court of that issue could lead to the conclusions of the Invalidity Committee being set aside, if only because she had

complete and ample opportunity to describe her fall to the members of the Committee, at a time, moreover, when the events were much fresher in her mind.

I turn to the minor issues.

The ground on which it is said, on behalf of Miss Schuerer that the decision of the Director of Personnel was inadequately reasoned, is essentially that he did not say why he considered the second paragraph of Article 78 to be inapplicable to the case. That seems to me misconceived. An authority making a decision is not in general bound to give its reasons for not making a different decision. Moreover the conclusions of the Invalidity Committee afforded no basis for holding that the second paragraph of Article 78 applied, and Miss Schuerer was sent a copy of those conclusions at the same time as she was sent the formal decision.

I will not take up Your Lordships' time with a discussion of the issue raised by the Commission as to the admissibility of the action in so far as it relates to the decision of 3 April 1979. I will say only that it would seem to me difficult to hold that that decision was merely confirmatory when in fact it was based on the explanation given by the Invalidity Committee of its original conclusions.

The reasoning in that decision was criticized on behalf of Miss Schuerer on grounds through which there ran a common thread, viz. that the Commission was under an obligation to state what was in its opinion the cause of her invalidity. I do not think that the Commission was under any such obligation. On the contrary, it was entitled — and indeed bound — to accept the views of the Invalidity Committee as to that. Miss Schuerer already had a copy of the original conclusions of the Committee, and a copy of its explanation of those conclusions was annexed to the decision.

In the result I am of the opinion that this action should be dismissed, with the usual consequences as to costs.