OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 19 September 1991 *

My Lords,

1. In this case the Commission appeals from a judgment of the Court of First Instance of 6 April 1990. That judgment annulled a decision of the Commission of 20 May 1988 relating to the determination of the respondent's invalidity pension and ordered the Commission to pay the costs. The case also raises a question of general importance on the disposal of appeals before the the Court of Justice.

2. The Commission's decision which is at the origin of these proceedings refused Mr Gill the benefit of the second paragraph of Article 78 of the Staff Regulations (hereafter 'the Regulations'), fixing his pension instead on the basis of the third paragraph of that article. Mr Gill claims he is entitled to the more favourable terms laid down by the second paragraph, on the grounds that his invalidity arose from an 'occupational disease' within the meaning of that paragraph.

3. Mr Gill has spent a great deal of his working life going down coal mines. Between 1948 and 1971 he did so five to seven times a week, and between 1971 and 1974, several times a month. Until 1974 he was employed in Great Britain, but in 1974 he was recruited by the Commission as a Principal Administrator, and assigned to duties relating to health and safety in mines. Between 1974 and 1979, in the service of the Communities, he was called upon to descend coal mines a total of 20 to 30 times. As a result of an accident which occurred in 1979, however, he descended only once or twice between 1979 and 1981. On 11 June 1981 he requested retirement on grounds of total and permanent invalidity. It is not disputed that Mr Gill was by then suffering from an illness, namely chronic bronchial pneumonopathy, which rendered him totally unfit to perform his duties. It also appears that in 1974, at the time of Mr Gill's compulsory medical examination on entry into service with the Commission, he was already suffering from a degree of bronchial pneumonopathy, although he was certified then as fit to take up his duties. After a period of procedural confusion and delays, an Invalidity Committee met in March 1987 in order to determine the nature and extent of Mr Gill's incapacity, although Mr Gill had in the meantime provisionally been granted an invalidity pension under the third paragraph of Article 78. In its report of 31 March 1987, the Committee concluded that Mr Gill's incapacity was indeed total, and was the result of an aggravation of the bronchial pneumonopathy diagnosed in 1974, but it also found that the aggravation was not attributable to Mr Gill's service with the Communities. It was on the basis of that report that the Commission concluded that Mr Gill's invalidity did not arise from an 'occupational disease' within the meaning of Article 78 of the Regulations. Whether the Commission

* Original language: English.

was right in so concluding is the central issue in these proceedings.

4. Before turning to the Commission's four grounds of appeal, it may be helpful to set out the relevant legislation. Chapter 3 (Articles 77 to 84) of Title V of the Regulations is headed 'Pensions'. Article 78 provides as follows:

'An official shall be entitled, in [the] manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity pension in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket.

Where the invalidity arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity pension shall be 70% of the basic salary of the official.

Where the invalidity is due to some other cause, the invalidity pension shall be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age.

...'

Annex VIII to the Regulations is headed 'Pension Scheme', and Chapter 3 (Articles 13 to 16) is headed 'Invalidity Pension'. Article 13 provides that:

'Subject to the provisions of Article 1(1), an official aged less than sixty-five years who at any time during the period in which he is acquiring pension rights is recognized by the Invalidity Committee to be suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket... shall be entitled... to invalidity pension as provided for in Article 78 of the Staff Regulations.

...'

Article 1(1) of Annex VIII allows the appointing authority, where the medical examination made before the official takes up his duties shows that he is suffering from sickness or invalidity, to decide, so far as risks relating to such sickness or invalidity are concerned, to admit the official to benefits in respect of invalidity or death only after five years from the date of his entering into service.

5. The composition and proceedings of the Invalidity Committee referred to in Annex VIII to the Regulations are dealt with in Articles 7 to 9 of Annex II. The Committee consists of three doctors, appointed respectively by the official, the employing institution, and by agreement between the first two. By the first paragraph of Article 9, the official may submit to the Committee

any reports or certificates from his own doctors.

6. It is to be noted that Article 13 of Annex VIII does not state expressly that it is for the Invalidity Committee to decide whether an invalidity 'arises from an occupational disease' for the purposes of Article 78 of the Regulations. Since however the Committee is entrusted with the task of deciding whether an official is suffering from total permanent invalidity, its competence can be taken to extend to all questions of medical assessment: see Case 76/84 *Rienzi* v *Commission* [1987] ECR 315, paragraph 9 of the judgment.

7. Article 78 neither contains nor refers to any definition of 'occupational disease'. Article 78 is however not the only provision of the Regulations which makes use of that concept. Chapter 2 (Articles 72 to 76) of Title V of the Regulations is headed 'Social Security Benefits'. By Article 73(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 . . . '

The benefits payable under that insurance scheme include, in particular, a lump sum or annuity payable in the event of total permanent invalidity. Such a benefit may be paid in addition to the benefits provided for in Chapter 3 of Title V of the Regulations, and hence in addition to any invalidity benefit payable under Article 78.

8. Rules were duly drawn up, pursuant to Article 73, by common agreement of the Institutions, and entitled 'Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease' (hereafter 'the Insurance Rules'). Article 3 of the Insurance Rules contains the following definition of 'occupational disease':

'1. The diseases contained in the "European List of Occupational Diseases" annexed to the Commission Recommendation of 23 July 1962 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.

2. 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.'

It is common ground that bronchial pneumonopathy is not included in the European List.

9. It may be noted, finally, that Article 25 of the Insurance Rules provides that:

'Recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff

Regulations and to these Rules shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa.'

10. The Court of First Instance annulled the Commission's decision of 20 May 1988 on two grounds. First, the Commission was wrong in its assumption that, in order for a disease to be classified as an 'occupational disease', a causal link had to be established between the disease, or its aggravation, and the performance of the official's duties with the Communities; in particular, the definition of 'occupational disease' in Article 3 of the Insurance Rules could not be used for the purposes of Article 78 of the Regulations. Secondly, even if such a causal link had to be established, it could be found to exist in the circumstances of the case.

11. In contesting the judgment of the Court of First Instance, the Commission has relied upon four grounds of appeal. In my view, the first two grounds are sufficient to dispose of this appeal.

The first ground of appeal

12. The first of the Commission's grounds is that the Court of First Instance misinterpreted the concept of 'occupational disease' occurring in Article 78, second paragraph, of the Regulations. The Commission divides this ground into two branches: (1) Contrary to the view of the Court of First Instance, the concept of 'occupational disease' cannot vary as between Article 73 and Article 78 of the Regulations. (2) The concept of occupational disease in Article 78 is to be interpreted as covering any disease, or aggravation of a disease, the principal or predominant cause of which is found in the exercise of the official's duties with the Communities, and as excluding diseases which arise from the exercise of professional activities preceding his entry into service.

13. As the Court of First Instance points out in paragraph 19 of its judgment, the benefits available under Article 73 and 78 of the Regulations are distinct benefits awarded as a result of separate and independent procedures: see Article 25 of the Insurance Rules (cited above in paragraph 9), and see Case 731/79 *B.* v *Parliament* [1981] ECR 107 and Case 257/81 *K.* v *Council* [1983] ECR 1. The definition of 'occupational disease' contained in Article 3 of the Insurance Rules was made for the purposes of applying Article 73, rather than Article 78. If therefore there were some sufficient reason for interpreting the concept differently in the two provisions, it would in principle be permissible to do so.

14. It does not seem to me however that there is any reason for interpreting 'occupational disease' more widely in Article 78 than in Article 73. On the contrary, where the same term is used in the same regulations, one would expect its meaning to be the same. Furthermore, the view of the Court of First Instance is not supported by the jurisprudence of the Court of Justice, which suggests, in particular, that in order to establish the existence of an 'occupational disease' for the purposes of Article 78, it is necessary to demonstrate a causal link

between the disease, or its aggravation, and the performance of the official's duties with the Communities.

15. Thus, in Case 257/81 *K.* v *Council*, cited above in paragraph 13, the Court annulled a decision of the Council refusing the applicant the benefit of the second paragraph of Article 78, on the ground that certain reports of the Invalidity Committee were inadequately reasoned. In paragraph 17 of its judgment, the Court made the following criticisms of the reports:

'Whilst the report dated 21 December 1981 does not use the term "occupational disease", it does recognize the existence of a causal relationship between the work or working conditions and the deterioration in the applicant's state of health, as does, moreover, the first version of the report of 25 January 1982. Although, on the other hand, the definitive version of the latter report indicates that two doctors, that is to say a majority, concluded that the applicant's invalidity did not result from an occupational disease, it remains to be said that that version contains no reasons enabling the reader to assess the considerations on which that conclusion was based nor any explanation as to the inconsistency between that conclusion and the conclusion set out in the second report [i.e. of 21 December 1981] and in the first version of the third report [i.e. of 25 January 1982].'

It seems to me that in the above passage, the Court was assuming that an 'occupational disease' was marked by a causal relationship between the applicant's work or working conditions and the deterioration in the applicant's state of health. Furthermore, from the Opinion of Advocate General Sir Gordon Slynn, at page 17, it appears that it was common ground between the parties that the concept of 'occupational disease' figuring in Articles 73 and 78 of the Regulations was the same, a proposition which appears moreover to have been accepted by the Advocate General himself. Accordingly, as he observed at page 18, for a disease not included in the European List of Occupational Diseases to be classified as an occupational disease,

'the performance of the applicant's duties must have given rise to the disease or its aggravation; it is not sufficient if the two merely coexist in time ... In my view, the occupation must be a cause of the origin or the aggravation of the disease which leads to the invalidity.'

In the result, the Council's decision was annulled, and the question whether 'the applicant's pathological condition has a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed' was to be referred back to the Invalidity Committee: see paragraph 20 of the judgment. Although the Court did not expressly refer in that paragraph to the need to establish a causal relationship with the duties performed, it seems to me that if the Court had disagreed with the assumption that such a relationship had to be established by the Invalidity Committee, it would have taken the opportunity to correct the error before the matter was referred back to the Committee for a new determination.

16. In my opinion, therefore, Case 257/81 *K.* v *Council* does not support the proposition that 'occupational disease' differs in its meaning as between Articles 73 and 78; it leads rather to the opposite conclusion. It does not seem to me, on the other hand, that the test to be derived from the Court's

judgment is whether the performance of the official's duties is the principal or predominant cause of his condition, as the Commission suggests. In my view, the issue the Invalidity Committee has to decide is simply whether the applicant's condition would have arisen if he had not performed the duties in question. That, it seems to me, is the test which emerges from the analysis of Advocate General Sir Gordon Slynn, and in my view it is to be preferred to the first of Advocate General Roemer's two alternative formulations in the *Vellozzi* case (Case 29/71 *Vellozzi* v *Commission* [1972] ECR 513, cited by Advocate General Slynn in *K.* v *Council* at page 18), which is the formulation that appears to have been adopted by the Commission.

17. The interpretation of Case 257/81 *K.* v *Council* suggested above is supported by *Rienzi* v *Commission*, cited at paragraph 6, where the Court stated, at paragraphs 9 to 12 of its judgment:

'It is clear from the actual composition of the Invalidity Committee, and from the nature of its tasks, that it has exclusive powers regarding medical assessment. Its powers do not extend to any cases in which a legal classification is called for.

The Court has held (judgment of 12 January 1983 in Case 257/81 *K.* v *Council* [1983] ECR 1) that the powers of the Invalidity Committee are limited to determining the cause of the applicant's incapacity for work and to verifying whether his pathological condition has "a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed". However, that risk can only be that inherent in the lawful performance of those duties.

...

In so far as those are the limits of the Invalidity Committee's powers, the committee in this case cannot be deemed to have expressed an opinion going beyond the finding that there is a causal connection between the applicant's invalidity and an illness arising from certain events which the committee was not, however, empowered to classify for legal purposes ...'

Thus, the invalidity committee has the task of investigating which events gave rise to the official's illness, whereas it is for the appointing authority to decide whether those events took place in the course of the performance of the official's duties. The existence of an occupational disease has only been established where both conditions are satisfied, namely where there has been found to be a *causal* connection with the *lawful* performance of the official's duties with the Communities: see also paragraph 33 of the Opinion of Advocate General Lenz.

18. In paragraph 19 of its judgment, the Court of First Instance refers to Case 242/85 *Geist* v *Commission* [1987] ECR 2181. In that case, the applicant attempted to bring an action for annulment against a decision granting him an invalidity pension on the basis of the third, rather than the second, paragraph of Article 78, notwithstanding that his rate of pension would have been the same in either case. The Court

held that the applicant had an insufficient interest in bringing the action. A finding that his illness was not an occupational disease for the purposes of a decision under Article 78 would not prejudice any decision which might be taken under Article 73, since

'the procedure under Article 73 of the Staff Regulations and the [Insurance] Rules and that under Article 78 of the Staff Regulations are two different procedures which may give rise to separate decisions independent of each other' (paragraph 13 of the judgment).

To say that the procedures under the two articles give rise to two independent decisions is not however to say that the concepts involved in the two decisions must differ. It is clear that the same criterion of 'occupational disease' can be applied to yield different results by two differently constituted committees. In my view, in Case 242/85 *Geist* the Court was merely pointing out that an adverse finding by an invalidity committee appointed for the purposes of Article 78 should not affect the findings of a medical committee appointed for the purposes of Article 73, and that Mr Geist accordingly had no interest in annulling the decision taken under Article 78.

19. The Court's case-law does not therefore support the proposition that an occupational disease can be established, for the purposes of Article 78 of the Regulations, without there being a causal relationship between the official's condition and his service with the Communities; it supports, rather, the contrary conclusion. This result is in my opinion confirmed by an examination of the wording of the second paragraph of Article 78. Thus, in the case where invalidity arises from an accident, for that paragraph to apply the accident must have occurred 'in the course of or in connection with the performance of' the official's duties. In the absence of express provision to the contrary, it seems to me that the same principle should obtain where the invalidity arises from a disease. As the Court pointed out in Case 342/82 *Cohen* v *Commission* [1983] ECR 3829, at paragraph 13, after referring to the history of the legislation:

'It is . . . necessary to regard the second paragraph of Article 78 of the Staff Regulations as an exceptional provision, which suggests that any extensive interpretation must be undertaken only with caution.'

Indeed, there does not seem to be any reason of principle why a Community institution should be liable to pay an increased pension in respect of an occupational disease, in the absence of any causal connection with the performance of the official's duties with the Communities.

20. The question arises, furthermore, of what other test could be applied if the causal criterion were to be abandoned. In the case of diseases contained in the European List mentioned in Article 3(1) of the Insurance Rules, it is sufficient, for the purposes of applying Article 73, that the applicant be exposed to the risk of contracting the disease; it is only in the case of diseases not included in the List that the more stringent requirement of Article 3(2) must be satisfied. I can see no objection to using the more liberal criterion, of exposure to the risk, in the case of diseases contained in the European List, for the purposes of

Article 78 as well as of Article 73. In paragraphs 22 to 24 of the judgment of the Court of First Instance, however, there is some suggestion that it was applying that criterion in the present case (where, it will be recalled, the disease is not included in the European List). In my view it cannot be appropriate to apply such a criterion for the purposes of a decision under Article 78, in circumstances where a causal connection would be required for a decision under Article 73.

21. The conclusion I have reached is in no way affected by the fact that Mr Gill's illness is attributable to a career in the mines prior to his service with the Commission, during which period he accumulated professional experience from which the Commission subsequently benefited (see paragraph 24 of the judgment of the Court of First Instance). It goes without saying that the Commission employed Mr Gill because he had knowledge and skills which made him useful to the Communities. It would however be contrary both to principle and to the case-law of the Court, to classify as an 'occupational disease' an illness attributable to the performance of professional duties prior to the official's entry into service with the Communities. Such professional experience does not amount to the performance of duties with the Communities, even if it is experience from which the Communities can subsequently be said to have benefited.

22. I conclude therefore that the first ground of appeal should be upheld; the Court of First Instance erred in concluding that a causal connection did not have to be established between Mr Gill's illness, or its aggravation, and the performance of his duties with the Commission.

The second ground of appeal

23. As I have already mentioned, the Court of First Instance also held that, even if it were necessary to establish a causal connection between Mr Gill's disease, or its aggravation, and his service with the Commission, such a connection could be found to exist in the circumstances of the present case. It is therefore necessary to consider the Commission's second ground of appeal, according to which the Court of First Instance was mistaken in deciding, contrary to the opinion of the Invalidity Committee, that a causal link of the required kind had been sufficiently established.

24. As the Commission points out, the question whether such a link has been established is a matter of fact which can only be decided by the Invalidity Committee. A distinction must be drawn here between questions of medical fact and issues of legal appraisal. Thus, as we have already seen, the question whether the activities giving rise to a disease fell within the scope of the official's duties, as opposed to being conduct inconsistent with them, would be a question of law to be decided by the appointing authority: see Case 76/84 *Rienzi*, cited above in paragraph 6. Such an issue of legal classification does not however arise in the present case, since it is not disputed that Mr Gill's underground descents during his period of service were made in the course of the performance of his duties with the Commission. Contrary to the submission made by Mr Gill in his

response, it is only where such an issue of legal appraisal is at stake that the question whether an illness is an occupational disease becomes a question to be decided by the appointing authority, rather than a question of medical fact to be decided by the Invalidity Committee.

25. The principle that questions of causality are issues of medical fact to be decided by the Invalidity Committee is clear from the Court's judgments in Case 257/81 *K.* v *Council*, cited above at paragraph 13, and Case 76/84 *Rienzi*. It should be noted, furthermore, that the organization and appointment of invalidity committees for the purposes of Article 78 of the Regulations are similar to those of medical committees for the purposes of Article 73. Thus, in both cases care is taken to ensure the balance and objectivity of the committees in question (compare Articles 7 to 9 of Annex II to the Regulations with Article 23 of the Insurance Rules). As the Court observed, in relation to decisions under Article 73, in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, at paragraph 11 of the judgment:

'... 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.'

As the Commission points out, those remarks are equally relevant to invalidity committees. It follows that neither the Commission, as appointing authority, nor the Court of First Instance itself, can be permitted to substitute its own view of the facts for the conclusions of a duly constituted invalidity committee. It seems to me, therefore, that the Court of First Instance exceeded its jurisdiction in finding, contrary to the conclusions of the Invalidity Committee, that a connection existed between the aggravation of Mr Gill's bronchial pneumonopathy during the years 1974 to 1981, and the performance of his duties with the Commission during the same period. It should be noted furthermore that in reaching such a conclusion, the Court of First Instance made an error of law which can be reviewed by this Court, rather than any finding of fact which it was entitled to make.

26. Nor does it seem to me that, as the Court of First Instance appears to argue in paragraph 24 of its judgment, the Commission must, in the peculiar circumstances of the present case, be presumed to have accepted responsibility for the risk that Mr Gill's illness would lead to his eventual incapacity to work.

27. It cannot of course be disputed that, in appointing an official, the appointing institution accepts the risk that he might one day claim an invalidity pension calculated according to one of the two bases laid down in Article 78 of the Regulations. The Commission has not however sought to deny such liability in respect of Mr Gill; and nor did it make use of the option given by Article 1(1) of Annex VIII to the Regulations, which at the time of Mr Gill's appointment would have allowed it to defer

for five years his admission to certain benefits.

28. It seems to me, however, that the only liability which the Commission can be said to have accepted was a liability to pay whatever benefits were properly due under the Regulations. Contrary to the view of the Court of First Instance, neither the presence of a pre-existing condition diagnosed at the time of Mr Gill's entry into service, nor (as I have already argued) the fact that the Commission benefited from a period of prior professional experience which had contributed to that condition, would be sufficient in themselves to make the aggravation of Mr Gill's illness an 'occupational disease' for the purposes of Article 78.

29. I reach the conclusion, therefore, that neither of the reasons given by the Court of First Instance for annulling the Commission's decision of 20 May 1988 is valid. Accordingly, it is not necessary to consider the third and fourth grounds of appeal.

Other issues

30. Having reached the conclusion that the Commission's appeal must succeed, I must now consider the consequences. Article 54, first paragraph, of the Statute of the Court (EEC) provides as follows:

'If the appeal is well founded, the Court of Justice shall quash the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.'

It seems to me that, in principle, before the Court can give final judgment in favour of an appellant, it may first need to be satisfied that the respondent was not entitled to succeed on some other ground that he had raised before the Court of First Instance. Otherwise there would be a serious risk of injustice to the respondent: a party who might be entitled to succeed might fail in his action merely because the ground on which he was entitled to succeed had not been considered; that might occur wherever the Court of First Instance had found in his favour on another ground and that decision was reversed on appeal.

31. It seems to me therefore that, on an appeal from the Court of First Instance, a respondent must be entitled, in his response, to raise an issue which was raised before, but not addressed by the Court of First Instance, and which might, if it had been addressed, have resulted in a decision in the respondent's favour. In other words, a respondent should be entitled to contend, not only that the decision of the Court of First Instance which is challenged by the appellant should stand, but also that, in the alternative, the Court of Justice should decide in the respondent's favour on one or more alternative grounds on which the respondent had relied before the Court of First Instance. Such a course is, in my view, open to a respondent under Articles 115 and 116 of the Rules of Procedure, even though no express provision is made for that possibility, as might have been expected, under Article 117(2) of those Rules. The view that the Court of Justice may consider grounds

other than those upon which the Court of First Instance based its judgment is supported by the fact that the Court of Justice will have the entire case file at its disposal; see Article 111(2) of the Rules.

32. Such a possibility must also, in my view, be allowed to the respondent in the interest of procedural economy. Otherwise, if the risk of injustice is to be avoided, it would be necessary for the case to be referred back to the Court of First Instance, for further proceedings to take place there and further costs to be incurred — not to mention the risk of a further appeal and, if other grounds had to be considered, for the entire process to be repeated yet again.

33. However, the jurisdiction of the Court of Justice, on appeals from the Court of First Instance, is limited to points of law; indeed, the provision for referring questions back to the Court of First Instance can be understood as concerning cases where further findings of fact are necessary. It seems to me therefore that in general it would be helpful if the Court of First Instance, when giving judgment on one ground in favour of an applicant, were to make the necessary findings of fact relevant to any other grounds on which the applicant has relied and on which, in the event of an appeal, he might seek to rely as respondent.

34. In the present case, it seems to me that the only point of substance on which the respondent might have sought to rely in the alternative, in the proceedings on the appeal, is that the decision of the Invalidity Committee was itself vitiated by defects rendering it invalid. Even though the respondent has not raised that issue in his response, I take the view that the Court can properly consider it, since no further findings of fact are necessary and since it can be regarded as a point which it is necessary for the Court to consider with a view to deciding, in accordance with Article 54 of the Statute, whether to give final judgment or to refer the case back to the Court of First Instance. Moreover the report of the Invalidity Committee is annexed to the response and has therefore been put before the Court.

35. Again, the alternative courses might have the effect of penalizing the respondent, either by giving final judgment without addressing a relevant issue, or by referring the case back to the Court of First Instance, thus causing the parties to incur additional costs and delay. The respondent should not be penalized for failing to raise in his response points previously raised in his application but not considered by the Court of First Instance, especially if it is borne in mind that this is one of the first appeals to have been brought, that the scope of the appellate jurisdiction of this Court is still uncertain and that there is no express provision in the Rules of Procedure governing the matter. It should be noted that Mr Gill did in fact raise the issue of the validity of the Committee's report before the Court of First Instance, arguing both that the mandate given to the Invalidity Committee was imprecise and incorrect, and that the Committee's report was based on insufficient reasoning (see

paragraph 16 of the judgment of the Court of First Instance).

36. Accordingly it is necessary to consider whether the report of the Invalidity Committee was itself vitiated by either of those defects. Such defects would arise where, as a result of the mandate given to it, the Committee addressed itself to the wrong issues; or where the Committee 'adopted an erroneous view of the concept of "occupational disease", or if its report did not establish a comprehensible link between the medical findings which it contains and the conclusions which it draws' (Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15 of the judgment); or if the report contained 'no reasons enabling the reader to assess the considerations on which [its] conclusion was based' (Case 257/81 *K.* v *Council*, cited above in paragraph 13, paragraph 17 of the judgment).

37. It is noteworthy that those matters are not addressed by the Court of First Instance in its judgment, and are not relied upon by the respondent or the intervening party in their pleadings before the Court of Justice. It is clear, none the less, that the validity of the Invalidity Committee's report is central to this case. As I have already observed, the question whether Mr Gill is suffering from an occupational disease involves an assessment of medical fact, and that assessment must be made by a properly constituted invalidity committee. Moreover, if the conclusions of the report of 31 March 1987 cannot be accepted, the result must be that the matter is to be referred again to an invalidity committee, so that the Commission can take a fresh decision based upon the conclusions of the latter: see Case 257/81 *K.* v *Council*, cited above in paragraph 13, at paragraph 20 of the judgment.

38. I turn therefore to the Committee's report. According to that report, the mandate given to it was in the following terms, namely to 'se prononcer sur l'existence éventuelle d'une maladie professionelle et, dans l'affirmative, sur son rapport avec les fonctions que M. Gill a exercées aux Communautés, à l'exclusion de ses états de service antérieurs'. While it is true that those terms are somewhat lacking in clarity and precision (in particular, the Committee could not decide whether an illness was an occupational disease without first enquiring into its relationship with the duties performed), they do not in the event appear to have prevented the Committee from addressing the relevant issues. Thus, it is clear from its report that the Committee addressed itself exclusively to questions of medical fact (see page 1 of the report), and in particular to the issue of whether a relationship of cause and effect existed between Mr Gill's incapacity to work and the performance of his duties between 1974 and 1981 (see its conclusions at page 3). As I have already mentioned, the Committee reached the conclusion that the aggravation of Mr Gill's disease was not attributable to his service with the Commission. As regards the reasons upon which its conclusions were based, it appears, from page 2 of the report, that the Committee examined and questioned Mr Gill, and considered, in particular, the development of his illness after 1981. The Committee thus took into account the fact that there had been no significant alteration in Mr Gill's condition after the date of his retirement.

39. It seems to me that the Committee, having examined Mr Gill and considered the history of his symptoms before, during and after his period of service with the Commission, was entitled to conclude, as a matter of medical fact, that Mr Gill's incapacity for work was attributable to his activities prior to 1974. Thus the Committee,

addressing itself to the relevant issues, based its conclusions upon relevant considerations. Its reasons for drawing those conclusions can be gathered from the report, which accordingly enables the reader to assess the considerations upon which it is based. The Committee's reasoning could perhaps have been stated with greater clarity and in greater detail, but it does not seem to me that the report can be said to be invalid for want of sufficient reasoning. In the result, therefore, no objection can be taken to the validity of the report, and the Commission was consequently entitled to rely upon it in reaching its decision regarding Mr Gill's pension.

Conclusion

40. I conclude that the Commission's appeal against the judgment of the Court of First Instance should be allowed, and the decision of the Court of First Instance quashed in accordance with Article 54 of the Statute. In view of Articles 70 and 122 of the Rules of Procedure, the parties should bear their own costs, including the costs before the Court of First Instance. The Union Syndicale-Luxembourg, which intervened in support of Mr Gill's submissions, should also bear its own costs.