JUDGMENT OF THE COURT (First Chamber)
20 May 1987 *

In Case 242/85

J. J. Geist, a retired official of the Commission of the European Communities, represented by J. N. Louis, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of N. Decker, 16 avenue Marie-Thérèse,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser D. Gouloussis, acting as Agent, assisted by R. Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of two decisions of the Commission of 27 July 1984, the first retiring the applicant with an invalidity pension in accordance with the provisions of the third paragraph of Article 78 of the Staff Regulations and the second restoring his entitlement to remunation with effect from 1 June 1983,

THE COURT (First Chamber),

composed of: F. Schockweiler, President of Chamber, G. Bosco and R. Joliet, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 21 January 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 19 March 1987,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 August 1985 Mr Geist, a former official of the Commission, brought an action under the second paragraph of Article 173 of the Treaty against two Commission decisions of 27 July 1984, the first retiring him with an invalidity pension calculated in accordance with the provisions of the third paragraph of Article 78 of the Staff Regulations and the second restoring his entitlement to remuneration with effect only from 1 June 1983.

2 After working for the Commission as an engineer specializing in the nuclear field Mr Geist was assigned to the Ispra Centre. He took the view that that assignment did not correspond to his qualifications, and therefore stopped all work in 1976. Two successive Invalidity Committees were charged with the task of determining whether his absence was justified on medical grounds. They considered that Mr Geist was fit to work. Nevertheless Mr Geist refused to resume work, and the Commission accordingly suspended payment of his salary from 1 January 1981 pursuant to Article 60 of the Staff Regulations. Mr Geist did not resume work but submitted further medical certificates which in his view covered his absence. A third Invalidity Committee met in January 1983. It considered that Mr Geist was absent from work without due cause.

3 On 22 February 1984, without having resumed work, Mr Geist requested early retirement and 'application of Article 78 of the Staff Regulations and the Rules on Insurance against the risk of accident and of occupational disease'. In response to

that request a fourth Invalidity Committee was charged in June 1984 with the task of determining whether Mr Geist was suffering from a disability and to assess the validity of the medical certificates which he had continued to submit after January 1983.

4 The Invalidity Committee delivered its report on 19 July 1984. It declared that Mr Geist was suffering from 'total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket'. With regard to the cause of his invalidity the committee referred to a separate sheet which stated 'that it appears that occupational stress played a part in Mr Geist's invalidity but since in his case that has no significant effect the committee did not consider it necessary to go into that question'. The Invalidity Committee found that the medical certificates submitted after January 1983, when the previous Invalidity Committee had met, were valid and established Mr Geist's incapacity for work from 1 June 1983 until June 1984.

5 On the basis of that report the Commission retired Mr Geist on 27 July 1984 and granted him an invalidity pension calculated in accordance with the third paragraph of Article 78 of the Staff Regulations. That article states that where the invalidity is not due to an occupational cause the invalidity pension is to be equal to the retirement pension to which the official would have been entitled at the age of 65 if he had remained in the service until that age. In Mr Geist's case that amount was 70% of his basic salary. By a decision adopted on the same day the Commission retroactively restored Mr Geist's entitlement to remuneration from 1 June 1983.

6 Reference is made to the Report for the Hearing for a more detailed description of the facts and the submissions of the parties.

7 Mr Geist makes three submissions in support of his action: the first two concern the Commission's decision fixing the amount of his invalidity pension and the third concerns the Commission's decision restoring his entitlement to remuneration with effect from 1 June 1983. First of all, Mr Geist considers that the Invalidity Committee was not properly constituted. Secondly, he considers that it ought to

have declared his illness to be occupational in origin. Finally he claims that the Invalidity Committee ought to have taken into account the medical documents which he provided before June 1983.

The composition of the Invalidity Committee

8 In his first submission the applicant claims that the Invalidity Committee was not properly constituted on the ground that the doctor appointed by the Commission was not registered as a medical practitioner in Belgium and thus was not a doctor for the purposes of the Staff Regulations.

9 It is not necessary to consider the validity of that submission; it was not made in the complaint and was put forward only during the written procedure before the Court. As the Court has consistently held, most recently in the judgment of 7 May 1986 (Case 52/85 *Rihoux and Others* v *Commission* [1986] ECR 1555), an official 'may not submit to the Court conclusions with a subject-matter other than those raised in the complaint or put forward heads of claim based on matters other than those relied on in the complaint. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint, but must be closely linked to it'. Consequently, the first submission must be declared inadmissible.

Failure to declare that Mr Geist's invalidity is occupational in origin

10 The applicant considers that his invalidity is due to an occupational cause and that the provisions of the Staff Regulations relating to invalidity which is occupational in origin should have been applied to him. The relevant provisions are the second paragraph of Article 78 of the Staff Regulations, which provides for the payment of a pension at the flat rate of 70% of the official's last salary, and Article 73 of the Staff Regulations, which provides for the payment of a lump sum equal to eight times the annual basic salary.

11 Pursuant to the third paragraph of Article 78 of the Staff Regulations the applicant receives an invalidity pension equal to 70% of his basic salary. His invalidity pension is thus the same as the flat rate which would have been awarded to him under the second paragraph of Article 78 of the Staff Regulations.

12 It is therefore necessary to determine whether the applicant has an interest in taking action against the decision of 27 July 1984 awarding him a pension for an invalidity which was not due to an occupational cause.

13 In that respect it must be pointed out that Article 25 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'), which laid down the procedure which must be followed in order to obtain the application of Article 73 of the Staff Regulations states 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'. The Court held in its judgment of 15 January 1981 (Case 731/79 *B.* v *European Parliament* [1981] ECR 107) that the procedure under Article 73 of the Staff Regulations and the 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.

14 Consequently, even if in applying Article 78 of the Staff Regulations the Invalidity Committee did not hold the applicant's invalidity to be occupational in origin, it may still be held to be occupational in origin for the purposes of Article 73 of the Staff Regulations. It must also be pointed out that Mr Geist has not even requested the application of Article 73 of the Staff Regulations.

15 Mr Geist thus has no interest in bringing proceedings against the Commission's decision awarding him an invalidity pension under the third paragraph of Article 78 of the Staff Regulations since the decision in no way affects the amount of his pension and does not deprive him of the opportunity of obtaining payment of the lump sum provided for under Article 73 of the Staff Regulations.

16 It must therefore be concluded that in so far as the application is directed against the decision of 27 July 1984 granting Mr Geist an invalidity pension fixed pursuant to the third paragraph of Article 78 of the Staff Regulations it is inadmissible.

The refusal of the Invalidity Committee to hold that Mr Geist's absence prior to 1 June 1983 was authorized

17 The applicant considers that various medical documents covered his absence for the period prior to 1 June 1983.

18 Article 59 of the Staff Regulations provides that an official may produce medical certificates in order to justify his absence from work. In the present case the applicant does not deny that the documents which he produced before June 1983 were merely medical reports. It must therefore be concluded that they were not medical certificates within the meaning of Article 59 of the Staff Regulations.

19 Consequently, since the first medical certificate produced by the applicant is dated 7 June 1983 and covers the period from 1 June 1983 to 31 August 1983, the Invalidity Committee was correct to conclude that Mr Geist's absence was justified only from 1 June 1983.

20 Mr Geist's application must therefore be dismissed as inadmissible in so far as it is directed against the Commission's decision of 27 July 1984 granting him an invalidity pension fixed on the basis of the third paragraph of Article 78 of the Staff Regulations and as unfounded in so far as it is directed against the Commission's decision restoring his entitlement to remuneration with effect from 1 June 1983.

Costs

21 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, Article 70 of the Rules of Procedure provides that the institutions are to bear their own costs in proceedings commenced by employees of the Communities.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Declares the application to be inadmissible in so far as it is directed against the Commission's decision of 27 July 1984 granting Mr Geist an invalidity pension fixed on the basis of the third paragraph of Article 78 of the Staff Regulations;

(2) Declares the application to be unfounded in so far as it is directed against the Commission's decision restoring Mr Geist's entitlement to remuneration with effect from 1 June 1983;

(3) Orders the parties to bear their own costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 20 May 1987.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber