REPORT FOR THE HEARING
delivered in Case 242/85 *

I — Summary of the facts

1. *Relevant rules*

Invalidity pensions for officials of the European Communities are granted on the basis of Article 78 of the Staff Regulations of Officials of the European Communities.

The first paragraph of Article 78 provides that an official is entitled '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'.

Article 78 provides for two types of pension which differ according to the origin of the invalidity.

The second paragraph provides that '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'.

The third paragraph provides that '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'.

In order to determine whether an official is incapable of performing his duties and the origin of such invalidity the appointing authority must request an opinion from an Invalidity Committee which, according to Article 7 of Annex II to the Staff Regulations, consists of three doctors. One is appointed by the institution to which the official concerned belongs, one by the official concerned and the third by agreement between the first two doctors.

In the event that the official's total permanent invalidity arises from an accident or occupational disease Article 73 (2) (b) of the Staff Regulations provides in addition for the payment of a lump sum equal to eight times his annual basic salary.

Article 73 (2) (b) of the Staff Regulations is implemented by the Rules on the Insurance of Officials of the European Communities against the risk of accident and of occupational disease. Articles 21 and 23 of the Rules set out the procedure to be followed for recognizing the existence of an accident or occupational disease. They state that before taking a decision the appointing authority must notify the official of the draft decision and of the findings of the doctor or doctors appointed by the institution. The official has a period of 60 days in which to request a meeting of a medical committee. The rules governing its composition are the same as those which apply to the Invalidity Committee.

* Language of the Case: French.

2. *Background to the case*

Mr Geist, an official of the Commission, is an extremely specialized engineer in the nuclear field. After working for some time on advanced research programmes he was assigned to the Centre at Ispra. Mr Geist did not accept that assignment, for he considered he was underemployed or even deprived of any real function. In any event, the problems caused by the new assignment lay behind several actions brought by Mr Geist before the Court of Justice. According to Mr Geist those disputes had serious effects on his health and led him in 1976 to stop work.

Mr Geist's absence led the Commission to assemble a first Invalidity Committee in 1978 to determine whether Mr Geist was suffering from an invalidity preventing him from performing his duties. The committee found that Mr Geist was fit for work but stated that it would perhaps be desirable to assign him somewhere other than to Ispra. Attempts to reassign him were not successful, however.

Mr Geist did not return to work, and a second Invalidity Committee was assembled in June 1980. Since it confirmed that Mr Geist was fit for work, the appointing authority requested Mr Geist on 5 December 1980 to resume work. Mr Geist did not comply, and his salary was therefore suspended with effect from 1 January 1981 pursuant to Article 60 of the Staff Regulations. Nevertheless Mr Geist persisted in refusing to resume work and regularly submitted medical certificates which in his view justified his absence. In response to his attitude a third Invalidity Committee was summoned. It took the view that the medical certificates submitted did not justify Mr Geist's absence from December 1980 to January 1983, the date when the committee gave its opinion.

Mr Geist submitted further medical certificates until 22 February 1984 when he requested early retirement and 'the application of Article 78 of the Staff Regulations and the Rules on Insurance against the risk of accident and of occupational disease'.

That request entailed the summoning in June 1984 of a fourth Invalidity Committee in order to determine whether or not Mr Geist was suffering from invalidity and to assess the validity of the medical certificates submitted by Mr Geist after January 1983.

3. *The proceedings of the Invalidity Committee*

Mr Geist appointed Professor Warter to represent him in the Invalidity Committee and the Commission appointed Dr Siddons. Pursuant to the Staff Regulations those two doctors, by agreement, appointed Professor Singer to complete the committee.

The committee submitted its opinion on 19 July 1984.

It held that the applicant was suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket and was therefore obliged to end his service with the Commission.

The committee attached to its report a separate sheet concerning the cause of the invalidity. It 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 committee also stated 'that the medical certificates submitted after January 1983 are valid and establish Mr Geist's incapacity for work from 1 June 1983 until the present'.

On the basis of that opinion, on 27 July 1984 the appointing authority retired Mr Geist on an invalidity pension fixed pursuant to the provisions of the third paragraph of Article 78 of the Staff Regulations. The amount of the pension represents 70% of Mr Geist's basic salary. The appointing authority also restored Mr Geist's entitlement to remuneration with effect from 1 June 1983.

On 20 November 1984 Mr Geist lodged a complaint against those two decisions of the appointing authority; the complaint was rejected on 29 April 1985.

The application was received at the Court Registry on 5 August 1985.

II — Conclusions of the parties

1. The *applicant* claims that the Court should:

Annul the appointing authority's decision of 27 July 1984 whereby the applicant was retired with an invalidity pension calculated in accordance with the provisions of the third paragraph of Article 78 of the Staff Regulations;

Annul the appointing authority's decision of 27 July 1984 restoring the applicant's entitlement to remuneration with effect only from 1 June 1983;

Annul the express decision whereby the Commission of the European Communities rejected the complaint lodged by the applicant on 20 November 1984 pursuant to Article 90 (2) of the Staff Regulations;

Order the defendant to pay the costs, pursuant to Article 69 (2) of the Rules of Procedure, including the expenses necessarily incurred for the purpose of the proceedings, in particular the cost of obtaining an address for service, travel and subsistence expenses and the remuneration of a lawyer, in accordance with Article 73 (b) of the Rules of Procedure.

2. The *defendant* contends that the Court should:

Dismiss the action;

Make an order for costs in accordance with the law.

III — Submissions and arguments of the parties

1. *Admissibility*

In its defence the *Commission* considers that the action is admissible only in so far as it relates to the appointing authority's decision of 27 July 1984, notified to the applicant on 10 August 1984, resuming payment of his salary with effect from 1 June 1983. The other decision adopted on 27 July 1984 whereby the applicant was retired on an invalidity pension determined pursuant to the provisions of the third paragraph of Article 78 of the Staff Regulations was notified to the applicant on 27 July 1984. Consequently, the complaint which was made on 20 November 1984 against the latter decision is out of time, and the action is inadmissible in so far as it relates to that decision.

In his reply the *applicant* cites a letter which he sent *in tempore non suspecto* to the Director of the Ispra Centre from which it appears that Mr Geist had not received a copy of the sheet annexed to the Invalidity Committee's report. It was not until 20 August 1984 that he was fully informed of the Invalidity Committee's conclusions, when he obtained the separate sheet and thus learned the precise purport of the decision of 27 July 1984. The complaint was thus lodged in time and the action is admissible in its entirety.

In its rejoinder the *Commission* alters its position and accepts that the action is admissible in its entirety.

2. *The first submission: infringement of Article 23 of the Rules on the Insurance of Officials of the European Communities against the risk of accident and of occupational disease inasmuch as the Medical Committee was not composed of three doctors*

The *applicant* states first of all that although this issue was not raised in the complaint it may be raised for the first time before the Court. The Court has consistently held that the parties are not bound by the terms of the complaint as to submissions and arguments before the Court if the claims made to the Court change neither the legal basis nor the subject-matter of the complaint.

Having made that preliminary point, the applicant alleges that Dr Siddons does not fulfil the conditions laid down by Belgian legislation for the practice of medicine in Belgium. Consequently, in the absence of evidence to the contrary, Dr Siddons is practising medicine illegally in Belgium and cannot therefore be regarded as a doctor.

The applicant also states that although the certificate produced by Dr Siddons certifies that he is a registered medical practitioner in the United Kingdom it is valid only from 6 August 1984, that is, subsequent to the meeting of the Invalidity Committee which examined the applicant.

In those circumstances the applicant considers that the Invalidity Committee which met on 19 July 1984 was unlawfully constituted since it was not composed of three doctors and was not able to adopt a valid opinion for the purposes of the Staff Regulations.

The *Commission* considers that the first submission is inadmissible since it was not raised in the complaint but made for the first time in the originating application.

On the substance of the submission the Commission considers that the question whether British and French doctors who are members of the Invalidity Committee satisfy the conditions required by Belgian legislation for establishment in Belgium or for practising medicine there on a temporary basis is quite separate from that of whether they are doctors for the purposes of Article 7 of Annex II to the Staff Regulations. It is thus irrelevant to the judgment in the present case. The Commission considers that any official which it employs must be able to perform the tasks entrusted to him without the prior approval or agreement of any authority of the State where he is employed. If that were not the case the Commission's independence would be jeopardized. In the present case the Commission considers that participation by an official who is a doctor in the work of an Invalidity Committee falls within the scope of the tasks which are entrusted to him.

The Commission also adduces various documents from which it is apparent that Dr Siddons was a registered medical practitioner in England well before 6 August 1984.

3. *The second submission: the Invalidity Committee's conclusions are irrelevant inasmuch as they are incomplete and based on incorrect information supplied by Mr Pincherle*

In the first place, the *applicant* maintains that the instructions given to the Invalidity Committee were imprecise in that the appointing authority did not instruct the Invalidity Committee to determine whether the illness was occupational in origin. The applicant admits that he did not expressly ask for the second paragraph of Article 78 of the Staff Regulations to be applied but he states that various passages in his letter requesting retirement show that that was his intention. In any event, the appointing authority should, in the light of its duty to have regard to his welfare, have requested him to state whether he wished to be retired on the basis of the second or the third paragraph of Article 78 of the Staff Regulations.

Secondly, the applicant complains that the file given to the members of the Invalidity Committee was incomplete. All the medical certificates drawn up since 1976 ought to have been made available to the Invalidity Committee, but they were not. Moreover, of the 11 medical certificates given after January 1983 (when the previous Invalidity Committee met) only the medical certificates of 7 June 1983, 24 August 1983 and 5 January 1984 were forwarded to the Invalidity Committee. The applicant considers that in those circumstances it was impossible for the Invalidity Committee to give a valid opinion on the cause of his psychological and physical state of health and to seek the real reasons for his invalidity.

Thirdly, the applicant states that the Head of the Staff Regulations Division of Directorate-General IX at the Commission, Mr Pincherle, was allowed to make representations to the Invalidity Committee, although neither the Staff Regulations nor any regulation adopted thereunder make any provision for his participation in the proceedings. The applicant considers that that was quite incompatible with the absolute secrecy which should encompass the Invalidity Committee's work. The applicant is all the more concerned inasmuch as it seems that Mr Pincherle did not fully inform the members of the Invalidity Committee of the possibilities available under the Staff Regulations and in particular did not mention Article 73. Mr Pincherle did not draw the attention of the members of the Invalidity Committee to the benefit to Mr Geist of an attribution of his invalidity to an occupational cause. The applicant is surprised, moreover, that it was Mr Pincherle who, for reasons which are unclear, determined 1 June 1983 as the date from which the medical certificates lodged by Mr Geist were valid and thus the date from which his salary was restored.

The *Commission* contends first of all that in his letter requesting retirement Mr Geist did not either expressly or by implication request that the second paragraph of Article 78 of the Staff Regulations be applied. The Commission also states that Dr Warter, who represented the applicant in the Invalidity Committee, did not seek to obtain details of the committee's task. In any event, the Commission considers that even if Mr Geist had expressly claimed that the second paragraph of Article 78 of the Staff Regulations should be applied, the Commission would not have been bound to comply, since Mr Geist had not worked since 1976 and previous Invalidity Committees were of the opinion that from the medical point of view he was fit for work.

Secondly, the Commission states that it was not necessary to provide the Invalidity Committee with the medical documents prior to January 1983 since those documents had already been considered by the previous Invalidity Committees. The Commission admits that the medical documents submitted by the applicant after 31 January 1983 were not included in the file which was made available to the members of the Invalidity Committee. However, that in no way adversely affected the applicant. Of the eight documents in question six came from Dr Warter, who was thus able to provide any missing information to the other members of the Invalidity Committee. Dr Warter could also have made available the two other documents drawn up by a Netherlands doctor who treated the applicant. Furthermore, says the Commission, it is in no way certain that those documents establish that the applicant was temporarily unfit for work during the period from 1 February to 31 May 1983. In any event, the most decisive point is that Dr Warter took part in the work of the committee and agreed to sign its report.

The Commission acknowledges that Mr Pincherle made representations to the members of the Invalidity Committee. It also admits that Mr Pincherle stated that 'in view of Mr Geist's seniority his pension would be 70% of his basic salary whether it was fixed on the basis of the second or the third paragraph of Article 78 of the Staff Regulations'. Although it is true that Mr Pincherle did not draw the attention of the members of the Invalidity Committee to Article 73 of the Staff Regulations, that is solely because the appointing authority did not consider that it was concerned with a request for a pension on grounds of invalidity having an occupational cause. In any event, the appointing authority would have considered such a request to be out of the question since for several years the applicant had been constantly absent. Mr Pincherle put forward the date of 1 June 1983 as the beginning of the applicant's invalidity in order to draw the attention of the members of the Invalidity Committee to the second part of their task, which was to determine whether the applicant could be considered to have been justifiably absent from work on medical grounds between 31 January 1983 and 19 July 1984, when the Invalidity Committee met. The first medical certificate for the purposes of Article 59 (1) of the Staff Regulations was that of 7 June 1983, covering the period from 1 June 1983 to 31 August 1983.

R. Joliet
Judge-Rapporteur