JUDGMENT OF THE COURT (FIRST CHAMBER)
13 JULY 1972[1]

Luigi Vellozzi
v Commission of the European Communities

Case 29/71

Summary

Officials — Invalidity — Determination — Criteria
(Staff Regulations of the European Communities, Annex VIII, Article 13)

The existence of an occupational disease causing total or partial permanent invalidity of the official and giving him the right to benefit under Article 73 or Article 78 of the Staff Regulations as the case may be, must appear clearly and precisely from the relevant conclusions of the Invalidity Committee referred to in Article 13 of Annex VIII to the Staff Regulations.

In Case 29/71

LUIGI VELLOZZI, an official of the Commission of the European Communities, residing in Brussels, represented by Émile Drappier, Advocate at the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B/4 rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Pierre Lamoureux, acting as Agent with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Application for the benefit of Article 73 of the Staff Regulations of Officials to be granted to the applicant,

1 — Language of the Case: French.

THE COURT (First Chamber),

composed of: J. Mertens de Wilmars, President of Chamber, A. M. Donner and R. Monaco (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of facts and procedure

The facts of the case and the procedure may be summarized as follows:

1. The applicant is an official of the Commission in the post of Principal Clerical Officer in Grade C3. After entering the service in 1960 he worked until 1968 as an operator in the offset workroom. In July 1968 he was transferred to the Directorate-General for Competition where he was given administrative work.
Following numerous absences on sick leave from 1964, in particular between 1965 and 1968, the Commission had the applicant examined by an Invalidity Committee in accordance with the third subparagraph of Article 59(1) of the Staff Regulations. Relying on the report of this Committee made on 5 December 1968 and 13 January 1969, the applicant claimed the benefit of Article 73 of the Staff Regulations. On 12 February 1971 he submitted to the Commission a complaint under Article 90 of the Staff Regulations seeking:

— an admission that he suffers from an occupational disease;

— reimbursement of all medical expenses already incurred or which may be incurred in the future;

— an admission of a degree of invalidity.

The appointing authority did not reply within two months and the applicant brought the present application which was lodged at the Coust Registry on 9 June 1971.
In his application the applicant, relying on a fresh medical report, states that the degree of invalidity from which he suffers is 30% and seeks *inter alia* the convening of an Invalidity Committee which 'would determine the degree of invalidity' on the basis of information supplied by both parties.

2. Convinced 'that the best way of determining the rights of the party concerned ... and to put an end to the proceedings was to have the applicant re-examined by an Invalidity Committee' the Commission, pursuant to Article 7 of Annex II to the Staff Regulations, asked the Court of Justice on 30 July 1971 to appoint the first doctor to serve on the Invalidity Committee and in a letter of 3 August 1971, invited the applicant to appoint the doctor to represent him. As first doctor, the Court appointed Dr Therasse of Brussels; the

applicant stated on 27 August 1971 that he had appointed Dr D'Avanzo as his doctor. In January 1972 these two doctors appointed the third doctor, Dr Vapel, a lung specialist. In a letter of 29 September 1971 giving Dr Therasse confirmation of his duty the Commission stated '... in the case of Mr Vellozzi the duty of the Invalidity Committee goes beyond the normal task of deciding on the permanent and total invalidity of the person concerned. In view of the present administrative status of Mr Vellozzi and of the possibility that he is not suffering from total and permanent invalidity, it should be determined whether he is suffering from partial permanent invalidity making him capable or incapable of carrying out the duties corresponding to a post in his career bracket in order to determine the sum to which he is entitled under Article 73(2)(c) of the Staff Regulations. (In the case of partial permanent invalidity the degree thereof should be determined)'.
By a subsequent letter of 10 January 1972 the Commission further informed Dr Therasse that he 'should decide whether the medical and pharmaceutical expenses for which reimbursement is sought, should be considered to be the consequence of the occupational disease from which the applicant is suffering ... and if this is not the case, make a break-down of these costs according to their cause'. The same instructions with the same details were given by the Commission to Dr D'Avanzo.
By a letter of 18 February 1972 Dr Therasse asked the applicant to appear on 23 February 1974 before the Invalidity Committee which was 'to give an opinion as to (his) invalidity and as to the break-down of the pharmaceutical expenses'.
By a letter of 21 February 1971 the applicant replied to Dr Therasse that he could not appear before this Committee because certain conditions which he regarded as indispensable had not been fulfilled. After stating that 'the wording of your letter is ambiguous with regard to the duty of the Invalidity Committee' he added 'I should therefore like the duty to be clearly defined in accordance with my previous request' and again set out his point of view seeking first 'actual admission of the existence of an occupational disease on the basis of the report of the Invalidity Committee of 5 December 1968'.
By a note of 25 February 1972, the Medical Service of the Commission asked the applicant to give his permission for his medical file to be sent to the Invalidity Committee. The applicant's Counsel asked for details as to the purpose of this request and the Medical Service explained in a letter of 10 March 1972 that 'the Committe must be in the possession of all the medical details in order to give a proper opinion' and that in the absence of the medical file 'it could be seriously hindered in its work (annex to the rejoinder). In a letter of 21 March 1972 the applicant's Counsel replied that the applicant was on principle opposed to letting his medical file go to the Invalidity Committee because of the confidential nature of this file as set out in Article 26 of the Staff Regulations and Article 9 of Annex II to the Staff Regulations.

3. On hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court (First Chamber) invited the applicant to produce the report of the Invalidity Committee of 5 October 1968 and 13 January 1969 and invited the defendant to produce the text of the instructions given to the members of the 1968 Invalidity Committee defining their duties. After these documents had been produced the Court (First Chamber) decided to open the oral procedure.
The parties presented oral argument on 14 June 1972.
The Advocate-General delivered his opinion on 28 June 1972.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare null and void the implied rejection by the Commission of the complaint through official channels of 12 February 1971 registered on 17 February 1971;

2. Accordingly declare and rule that the applicant suffers from 30% invalidity;

3. Order the defendant to reimburse the applicant on the basis of Article 73 of the Staff Regulations the medical and pharmaceutical expenses amounting to Bfrs 100 000, subject to amendment in the course of the proceedings;

4. Order the defendant to pay to the applicant the sum provided for in Article 73(2)(c) of the Staff Regulations which is assessed at Bfrs 100 000, subject to amendment in the course of the proceedings;

5. Order the defendant to pay the costs of the proceedings.

The *defendant* contends that the Court should:

— rule that the action is now unjustified and has no purpose;

— reject the action in its entirety as now inadmissible and unfounded;

— order the applicant to bear the costs.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

The applicant recalls that when he was engaged by the Commission he underwent a medical examination confirming that he was in perfect health and that he became ill after working in a basement room with poor ventilation where he had to use solvents to clean the machines. The Invalidity Committee which was set up in 1968 because of the numerous occasions on which he had had sick leave since 1964, was given the duty of determing whether the applicant suffered from total permanent invalidity preventing him from carrying out his duties altogether in view of the possible application of Article 78 of the Staff Regulations. The Committee answered this question in the negative. Nevertheless in its report it confirmed the existence of 'spasmodic bronchitis' and stated that 'without saying that they are the sole cause, it may in all fairness be accepted that the conditions in which Mr Vellozzi worked for eight years are largely the cause of his bronchitis'.

It follows from this report that whilst the applicant does not suffer from total permanent invalidity which he has never indeed claimed, he does nevertheless suffer from occupational disease and that only the consequent degree of invalidity has not been determined because this was not within the terms of reference given to the Invalidity Committee. The applicant was therefore justified in asking, first in his complaint of 12 February 1971 and subsequently in these proceedings that the appointing authority should determine the degree of invalidity and allow him to benefit under Article 73(2)(c) of the Staff Regulations.

The *defendant* states that according to the report of the Invalidity Committee, from which the applicant merely cited a few selected extracts in support of his conclusion whilst failing to produce it before the Court, although he did produce it in the annex to his complaint of 12 February 1971, Mr Vellozzi at the time of the examination only showed 'slight symptoms of bronchitis' contrary to previous findings by other doctors.

The Commission further states that the appointing authority initiated the necessary procedure to determine the rights claimed by the applicant in his action thus making the action superfluous. The applicant's refusal to go before the Invalidity Committee makes it impossible for the appointing authority to meet any claims he may have. The applicant had thus adopted an attitude which denies his case both as to the subject-matter and cause of action and which, considered together with the measures taken by the Commission, has the effect of destroying the subject-matter of the action and depriving the applicant of any legal interest in taking proceedings.

The *applicant* alleges that these conclusions are ill-founded, stating that the main purpose of the action is to obtain an admission of the existence of occupational

disease on the basis of the report of the Invalidity Committee of 1968 and accordingly the application of Article 73(2)(c) of the Staff Regulations in his favour after the degree of invalidity caused by the disease has been determined. On the other hand the fact that the most recent Invalidity Committee has been given the duty of determining whether he is suffering total permanent invalidity shows that the defendant has not yet admitted the existence of such a disease. Thus the duty assigned to the Committee is outside the scope of the complaint of 12 February 1971 and of the present action so that the action is not without cause and subject-matter.

The *defendant* insists that the applicant willfully fails to submit to the appropriate procedure to assess his possible rights. In this respect it emphasizes that apart from the applicant's rejection of the invitation to attend the meeting of the Invalidity Committee, he also refused to authorize his medical file to be sent to this Committee.

In addition, in support of his case, the applicant merely took one sentence from the report of the Invalidity Committee of 1968 removing it from context and not indicating in any way what he considers the term 'occupational disease' to mean.

The 'rules' provided for in Article 73 of the Staff Regulations have not yet been adopted. Nevertheless in accordance with national laws relating to the public service and the position adopted by the Commission in its recommendations of 23 July 1962 and 20 July 1966 it would be reasonable to accept that: 'the term "occupational disease" refers to any disease or injury which arose in the course of and by reason of the performance of duties in the service of the European Communities where it is established that the performance of those duties was the principal or the predominant cause of the disease or of the aggravation of a pre-existing disease'.

The definition used in the report of the Invalidity Committee of 1968 is subtly worded and seems to show that the Committee did not think it possible to state that the working conditions were the sole or main cause of the disease and, moreover, it had not been given this duty at the time. The attitude of the Invalidity Committee therefore seems to justify the prudence of the administration and would therefore justify fresh examination by an Invalidity Committee entrusted with the duty of deciding *inter alia* whether the origin of the disease is occupational or not. Moreover the report of the Invalidity Committee of 1968 shows that examination revealed only slight symptoms of bronchitis contrary to earlier findings by various doctors. The question may therefore be legitimately raised whether the declared improvement has continued to the point where there is now no longer any disease.

Thus a new medical examination of the applicant as well as the examination of his medical file appears necessary. These examinations, in particular that of his medical file, would also enable it to be decided which medical and pharmaceutical expenses might be attributable to any disease admitted as being occupational.

In addition the applicant's refusal to authorize his medical file to be sent to the Invalidity Committee is in no way justified by Article 26 of the Staff Regulations and Article 9 of Annex II to the Staff Regulations. The former provision only applies to the 'personal' file of the official; the latter provides solely that the proceedings of the Committee shall be secret which precisely ensures respect of the principle of medical secrecy by the Invalidity Committee when it has to consult the medical file of the party concerned in order to form a proper opinion on the case.

Finally the applicant had no right to challenge the appointment of the Invalidity Committee and to refuse to submit to examination by it since the conditions for the application of Article 59(1) of the Staff Regulations were complied with in this case.

Grounds of judgment

1 By an application lodged at the Court Registry on 9 June 1971 the applicant has brought an action seeking the annulment of the implied rejection by the Commission of his complaint of 12 February 1971 whereby he sought to be granted the benefit of Article 73(2)(c) and (3) of the Staff Regulations of Officials.

2 The applicant alleges that the Invalidity Committee convened in 1968 pursuant to the third subparagraph of Article 59(1) of the Staff Regulations admitted that he was suffering partial permanent invalidity, the degree of which remained to be determined.

3 Therefore he asked the appointing authority to determine that degree in order that he might benefit under Article 73(2)(c) of the Staff Regulations and in accordance with paragraph (3) of that article to reimburse to him all the medical and pharmaceutical expenses incurred because of this invalidity.

4 In 1971 the appointing authority set up a new Invalidity Committee to which it assigned the duty not only of ruling as to the existence of total permanent invalidity but also examining whether the applicant might be suffering from partial permanent invalidity caused by the working conditions and, if this was so, to determine the degree of invalidity.

5 This Committee was further given the task of examining whether the medical and pharmaceutical expenses for which reimbursement was sought should be regarded as attributable to the occupational disease.

6 The applicant refused to appear before this Committee or to allow his medical file to be sent to it by the departments of his institution.

7 In support of this refusal he raised the allegedly ambiguous nature of the duty assigned to the Commission and sought 'actual admission of the existence of an occupational disease on the basis of the report of the Invalidity Committee of 5 December 1968'.

8 The existence of an occupational disease causing total or partial permanent invalidity of the official and giving him the right to benefit under Article 73 or Article 78 of the Staff Regulations as the case may be must appear clearly and precisely from the relevant conclusions of the Invalidity Committee referred to in Article 13 of Annex VIII to the Staff Regulations.

9 In this case the Invalidity Committee convened in 1968 stated in its report that the applicant suffered from asthmatic or related bronchitis caused largely by the

conditions in which he had worked in the offset workroom of the Publications Office.

10 At the same time it found that there was an improvement in the asthmatic condition which had been found by several doctors previously, caused in all probability by the fact that since February 1968 the applicant had been transferred to a different department.

11 It concluded that 'the state of health of Mr Vellozzi does not prevent him from working but urgently requires that the work should be carried out in a place sheltered from the elements and in an atmosphere free from any substance which might irritate the respiratory organs'.

12 Thus whilst the Invalidity Committee set up in 1968 admitted that the applicant was suffering from a form of bronchitis it nevertheless did not conclude that he was suffering from an occupational disease entailing partial permanent invalidity.

13 The force of the conclusions which it reached as to the existence of the applicant's partial permanent invalidity are weakened by the fact that according to the report of 5 December 1968 Mr Vellozzi's lack of cooperation prevented the Commission from undertaking all the medical examinations which it contemplated.

14 In these circumstances the applicant cannot rely on such a report to argue that the Invalidity Committee set up in 1968 admitted that he was suffering partial permanent invalidity or that the new Invalidity Committee should merely determine the degree of this invalidity and the medical and pharmaceutical expenses to be reimbursed under Article 73 (3)of the Staff Regulations.

15 On the contrary the report of 5 December 1968 justifies the setting up of a new Invalidity Committee with the duty *inter alia* of deciding the causes of the applicant's alleged invalidity.

16 For these reasons the application is rejected.

Costs

17 Under Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

18 The applicant has failed in his submissions.

19 However, under Article 70 of the Rules of Procedure, in proceedings brought by servants of the Communities, institutions shall bear their own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Staff Regulations of Officials, especially Articles 73 and 78 and Annex II;
Having regard to the Protocols on the Statute of the Court of Justice;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT (First Chamber)

hereby:

1. **Dismisses the application;**

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

Mertens de Wilmars Donner Monaco

Delivered in open court in Luxembourg on 13 July 1972.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 29 JUNE 1972[1]

Mr President,
Members of the Court,

The applicant in the proceedings in which I am today giving my opinion entered the service of the Commission of the European Economic Community in 1960. He is an official in Grade C3 (Principal Clerical Officer) and for some years was a technician in offset printing in the printing department of the Commission. However since 1964 the applicant has apparently repeatedly suffered from diseases of the respiratory organs which have kept him away from

1 — Translated from the German.