JUDGMENT OF THE COURT (First Chamber)
21 January 1987 *

In Case 76/84

Alessandro Rienzi, a former official of the Commission of the European Communities, residing at 9 Plantage Centrum, Wouwse Plantage, Netherlands, represented by Jacques Putzeys and Xavier Leurquin, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Mr Nickts, Huissier de Justice, 17 boulevard Royal,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, Dimitrios Gouloussis, acting as Agent, assisted by Robert Andersen, of the Brussels Bar, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission's decision of 27 June 1983 awarding Mr Rienzi an invalidity pension, and of the accompanying letter of the same date, in so far as they refuse to recognize the illness which caused the applicant's invalidity as an occupational disease,

THE COURT (First Chamber)

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

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 23 April 1986,

* Language of the Case: French.

after hearing the Opinion of the Advocate General delivered at the sitting on 23 October 1986,

gives the following

Judgment

1 By an application lodged at the Court Registry on 20 March 1984, Alessandro Rienzi, a former official of the Commission of the European Communities, brought an action for the annulment of the Commission's decision of 27 June 1983 awarding him an invalidity pension, and of the accompanying letter of the same date, in so far as they refuse to recognize the illness which resulted in his invalidity as an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations of Officials.

2 Reference is made to the Report for the Hearing for the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 In his first submission, Mr Rienzi contends that the Commission's decision of 27 June 1983 is inconsistent, incorrect and based on an inadequate statement of reasons, inasmuch as, in the first place, the Commission claims to rely exclusively on the findings of the Invalidity Committee which, according to the applicant, recognized the existence of invalidity arising from an occupational disease, and, secondly, it refuses to apply the second paragraph of Article 78 of the Staff Regulations, as it should do on the basis of those findings.

4 In his second submission, Mr Rienzi alleges the infringement of Article 13 of Annex VIII to the Staff Regulations, breach of the general principle *patere legem quam ipse feciste* and misuse of powers, inasmuch as by departing from what the applicant claims are the Invalidity Committee's findings, the appointing authority encroached on the exclusive powers of the Invalidity Committee and, moreover, failed to abide by the terms of reference which it had given to that committee.

5 In support of those submissions, Mr Rienzi argues (a) that the appointing authority expressly entrusted the Invalidity Committee, as is clear from a letter of the Deputy Director-General for Personnel and Administration of 15 March 1983, with the task of determining whether the applicant's invalidity arose from an occupational disease, (b) that the Invalidity Committee established, in its findings of 7 May 1983, that the applicant's invalidity 'arose in connection with specific events which occurred in the performance of his duties', and (c) that one of the members of that committee confirmed at the applicant's request, in a statement of 6 September 1983, that the committee had 'regarded his illness as being on the same footing as an occupation-related ailment'.

6 It should be noted at the outset that in order to determine whether those two submissions are well founded, the first question to be considered is whether the Invalidity Committee is empowered, under the Staff Regulations, not only to ascertain whether an official is suffering from an illness resulting in invalidity, but also to give a legal definition of the concept of occupational disease, particularly where it is necessary to establish whether a causal connection exists between the pathological symptoms exhibited by the official and the lawful performance of the duties corresponding to a post in his career bracket. If the answer to that question is no, the first and second submissions may be dealt with together.

7 Pursuant to Article 7 of Annex II to the Staff Regulations, the Invalidity Committee is to consist of three doctors and, in accordance with Article 9 of Annex II, it may examine, in the exercise of its powers, any reports or certificates from the official's regular doctor or from any medical practitioners whom he may have consulted.

8 With regard to the nature of the Invalidity Committee's tasks, Article 13 of Annex VIII to the Staff Regulations provides that it is for the committee to establish whether an official is suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket.

9 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.

10 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.

11 It is for the administration alone to determine the legal consequences that are to be drawn from the medical findings and, in particular, to ascertain, subject to review by the Court, whether the official's invalidity arose from conduct inconsistent with his obligations under the Staff Regulations.

12 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. Accordingly, both the first and the second submission must be rejected, in so far as they presuppose that the Invalidity Committee is also empowered to give a legal definition of the concept of occupational disease.

13 With regard to the argument that inadequate reasons are given for the decision in so far as it is not based exclusively on the findings of the Invalidity Committee, it must be borne in mind that the statement of reasons must also be assessed in the light of the letter accompanying the decision, which states that the terms used by the Invalidity Committee do not correspond to any of the possibilities referred to in the second paragraph of Article 78. It is quite clear from that explanation that the appointing authority considered that the applicant's illness was not an occupational disease. Accordingly, the first submission must also be rejected in so far as it is based on the contention that the statement of reasons in the contested decision is inadequate.

14 In his third submission, Mr Rienzi contends that the reasons for the express rejection of his complaint of 13 July 1983, which was dated 20 December 1983, differ from the reasons stated in the decision of 27 June 1983, although an administrative authority which confirms the initial decision may not subsequently amend the reasons on which that decision is based.

15 It must be emphasized that the reasons on which a decision is based must — as has already been pointed out — be assessed in the light of the accompanying letter, which supports the conclusion that the reasons for the decision of 27 June 1983 were based on the finding that the applicant was not suffering from an occupational disease. Accordingly, the decision expressly rejecting the complaint does not contain any fresh reasons inasmuch as it specifies that, in so far as the applicant's illness arises from the lawful and proper exercise by the appointing authority of its disciplinary powers in relation to the applicant's unlawful conduct, the Commission does not consider itself able to recognize the applicant's illness as an occupational disease or, consequently, to award him the benefits that would result from such recognition.

16 Since the decision rejecting the complaint does not contain any fresh reasons but only those on which the initial decision was based, the third submission must be rejected.

17 In his fourth submission, Mr Rienzi contends that the decision of 27 June 1983 is vitiated by a misuse of powers inasmuch as, by refusing to recognize his illness as an occupational disease, the appointing authority had in fact sought to penalize him once again for his alleged misconduct.

18 In order to determine whether there has been a misuse of powers, it is necessary to establish first whether the decision adopted by the appointing authority in relation to the applicant is a decision which it was obliged to take under the Staff Regulations and, consequently, whether the appointing authority was wrong to consider, on the basis of the Invalidity Committee's uncontested report, that the applicant was not suffering from an occupational disease.

19 It is not disputed by any of the parties that the 'specific events which occurred in the performance of his duties' and which, according to the Invalidity Committee's report, are the cause of the applicant's illness, are the initiation and the course of the disciplinary proceedings and the decision to downgrade him as a result of his conduct which, as the Court confirmed in its judgment of 11 July 1985, was inconsistent with his obligations as an official.

20 Since the question whether the aforesaid events, which are the cause of the applicant's invalidity, constitute a risk inherent in the duties which he performed, in the terms used by the Court in its aforesaid judgment of 12 January 1983, is a matter of law, it was for the appointing authority to answer it.

21 In that regard, it should be pointed out that, in this case, the applicant's illness is connected not with the pursuit of his occupation but with risks arising from conduct which is inconsistent with the obligations imposed upon officials by the Staff Regulations and which is therefore wholly unconnected with the applicant's proper performance of his duties.

22 In the light of the foregoing considerations, it must be held that the appointing authority was bound under the Staff Regulations to decide that the illness from which the applicant was suffering was not an occupational disease.

23 It follows that the fourth submission must also be rejected.

Costs

24 Pursuant to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those Rules, institutions are to bear their own costs in proceedings brought by servants of the Communities. Under Article 69 (3) the Court may, in certain specific circumstances, order even a successful party to pay the costs which the Court considers that party to have caused the opposite party to incur.

25 In this connection, it should be borne in mind that the Commission has acknowledged that its letter of 15 March 1983 entrusting the Invalidity Committee with the task of considering the applicant's position was worded ambiguously and was such as to create the impression that the committee was also empowered to determine whether he was suffering from an occupational disease. That ambiguity was heightened by the standard printed form used by the Commission and annexed to the aforesaid letter, which contained the following sentence: 'The Invalidity Committee states that the invalidity arises/does not arise from an occupational disease'.

26 In those circumstances, the Commission must be ordered, pursuant to Article 69 (3) of the Rules of Procedure, to pay 50% of the applicant's costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the Commission to pay 50% of the applicant's costs.

Schockweiler Bosco Joliet

Delivered in open court in Luxembourg on 21 January 1987.

P. Heim
Registrar

F. Schockweiler
President of the First Chamber