REPORT FOR THE HEARING
delivered in Case 76/84 *

I — Facts and written procedure

On 10 September 1981 disciplinary proceedings were instituted against Mr Alessandro Rienzi, who at the material time was an official of the Commission of the European Communities, for breach of Articles 12 and 17 of the Staff Regulations. He was charged with selling between 1972 and 1979 confidential documents belonging to the Commission and with engaging in outside activities between 1972 and 1981 without authorization.

The disciplinary proceedings lasted from 10 September 1981 to 3 January 1983, when the appointing authority finally established that Mr Rienzi was guilty of infringements less serious than those with which he had been charged at the commencement of the proceedings and downgraded him from Grade A5 to Grade A6.

Mr Rienzi then brought two actions, one seeking the annulment of the decision downgrading him, and the other seeking a declaration, should the penalty be upehld, that the wrongful act or omissions of the Commission during the disciplinary procedure were the cause of the applicant's serious and irreversible illness which resulted in his early retirement on health grounds on 1 July 1983, with the result that the Commission should be ordered to compensate the applicant for the material and non-material damage suffered by him. By judgment of 11 July 1985 in Joined Cases 255 and 256/83, the Court dismissed both actions holding that the penalty imposed on the applicant was lawful and also that there was no evidence of wrongful conduct on the part of the Commission during the disciplinary procedure.

Whilst the proceedings in the aforesaid cases were pending before the Court, Mr Rienzi challenged the decision of 27 June 1983 of the Director-General for Personnel and Administration retiring him with effect from 1 July 1983 and awarding him an invalidity pension fixed in accordance with the provisions of the third paragraph of Article 78 of the Staff Regulations of Officials. In his view, that pension should have been fixed in accordance with the second paragraph of Article 78 which is applicable to cases of invalidity arising from an occupational disease.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the First Chamber of the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Annul the decision of 27 June 1983 and the accompanying letter of the same date in so far as they refuse to recognize the applicant's illness as an occupational disease;

2. Annul the express decision contained in a letter of 20 December 1983 rejecting the applicant's complaint submitted through official channels;

* Language of the Case: French.

3. Declare that the illness which resulted in the applicant's total permanent invalidity is an occupational disease;

4. Order the defendant to grant the applicant the benefits provided for in the second paragraph of Article 78 of the Staff Regulations in respect of total permanent invalidity arising from an occupational disease;

5. Order the defendant to pay the costs in their entirety.

The *Commission* contends that the Court should:

1. Declare the application unfounded;

2. Make an appropriate order as to costs.

III — Submissions and arguments of the parties

Mr Rienzi points out in the first place that on 15 March 1983 the appointing authority asked the Invalidity Committee to determine whether the applicant's invalidity, if established, could have arisen from an accident in the course of or in connection with the performance of his duties or from an occupational disease; the Committee's findings, submitted on 7 May 1983, were first of all that as a result of the applicant's total permanent invalidity he was unable to carry out the duties corresponding to a post in his career bracket, and secondly that his invalidity had arisen in connection with specific events which occurred in the performance of his duties.

The Commission adopted its aforesaid decision of 27 June 1983 on the basis of those findings, whereupon Mr Rienzi obtained from the doctor whom he had designated to sit on the Invalidity Committee a statement to the effect that 'on the basis of a precise anamnesis and a detailed examination the doctors have come to the conclusion that there was a direct connection between the serious deterioration in your mental health and those events [that is to say the disciplinary proceedings against Mr Rienzi]. For that reason they have regarded your illness as being on the same footing as an occupation-related ailment'.

In the light of those factors, Mr Rienzi considers that his illness has been duly recognized as an occupational disease by the competent medical authorities and that the Commission was not entitled to disregard that finding.

In support of his application, Mr Rienzi puts forward a number of submissions alleging the infringement of the provisions of the Staff Regulations of Officials and of the general principles of Community law.

The applicant's *first submission* is based on the following grounds: (a) infringement of the second paragraph of Article 78 of the Staff Regulations and misapplication of the third paragraph of Article 78; (b) inconsistent, incorrect and inadequate statement of reasons; and (c) misuse of powers, inasmuch as in its contested decision the Commission applied the third paragraph of Article 78 of the Staff Regulations to the applicant whilst claiming to rely on the findings of the Invalidity Committee, although that committee had expressly stated that the applicant's invalidity arose in connection with specific events which occurred in the performance of his duties.

The *applicant* states that it is not disputed that the concept of occupational disease referred to in the second paragraph of Article 78 of the Staff Regulations is the same as that in Article 73, which provides for the adoption by common agreement of the Community institutions of rules on insurance against the risk of occupational disease and of accidents.

According to Article 3 of the Rules on the Insurance of Officials of the European Communities against the risk of accident and of occupational disease ('the Insurance Rules'), any disease or aggravation of a

disease must 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.

That is precisely the link which emerges from the Invalidity Committee's report in the applicant's view. The fact that the Invalidity Committee used a paraphrase which, moreover, according to the applicant, has the same legal effect as the expression 'occupational disease' is attributable solely to the administration's interference in the drafting of the medical report.

Contrary to the defendant's opinion, the question whether an illness is to be regarded as an occupational disease is exclusively a matter for the Invalidity Committee which alone is competent to determine whether there is a causal link between the illness and the duties performed.

Moreover, in this case, as is clear from a letter of the Deputy Director-General for Personnel and Administration of 15 March 1983, the appointing authority expressly entrusted the Invalidity Committee with the task of determining whether or not the applicant's invalidity, if established, arose from an occupational disease.

Thirdly, even if the appointing authority was entitled to draw the legal consequences of the medical findings of the Invalidity Committee, it has not produced sufficient evidence that the applicant's invalidity did not arise from an occupational disease.

Moreover, the applicant considers that the allegedly wrongful nature of the events which caused the illness cannot be said to have deprived it of its character as an occupational disease. There is nothing in the Staff Regulations which empowers the appointing authority to treat occupational invalidity as ordinary invalidity. Even in cases where the invalidity has been deliberately brought about by the official himself, the appointing authority merely has a choice, pursuant to the Staff Regulations, between the award of an invalidity pension and the award of a retirement pension.

Finally, the applicant contends that the statement of reasons on which the Commission's decision is based is contradictory inasmuch as the Commission purports to rely on the findings of the Invalidity Committee but refuses to recognize the existence of the occupational disease established by that committee, or at least that the statement of reasons is inadequate inasmuch as, if the appointing authority had wished to depart from the committee's findings, it should at the very least have specified its reasons for doing so.

The *Commission* observes that the Invalidity Committee has not established that the applicant is suffering from an occupational disease but that, by using a specific wording differing from that which is set out on the standard printed forms used for such cases and according to which 'the invalidity arises from an occupational disease', the Invalidity Committee intended to leave to the appointing authority the task of deciding whether the applicant's illness could be regarded as an occupational disease. In order to determine whether an illness is an occupational disease, it is necessary to establish not only that it was caused by specific events which occurred in the performance of the official's duties but also that those events are not attributable to the official himself.

Although the first point is essentially a medical question, the second point is not, and may be freely assessed by the appointing authority. Admittedly, the appointing authority cannot deny that an illness is in the nature of an occupational disease by relying on medical grounds because it would then encroach upon the

powers of the Invalidity Committee; however, the appointing authority may quite properly decide questions of a legal nature, in particular whether or not an illness resulting from lawful action duly taken by the administration in relation to an unlawful situation for which the official is wholly responsible is to be regarded as an occupational disease.

Even if the Staff Regulations do not expressly envisage the possibility of an illness arising as an accidental consequence of unlawful conduct on the part of the official concerned, one of the criteria of the concept of occupational disease is that the illness cannot be attributed to the unlawful events for which the official himself is responsible.

The Commission justifies the inclusion of the absence of any unlawful event as one of the criteria in the definition of occupational disease by reference to the scheme of Articles 73 and 78 of the Staff Regulations and of the provisions implementing those articles, and in particular to the final paragraph of Article 78 of the Staff Regulations — which applies to cases where the invalidity is deliberately brought about by the official — and to Article 7 of the Insurance Rules.

The applicant's *second submission* is based on the following grounds: (a) infringement of Article 13 of Annex VIII to the Staff Regulations, (b) breach of the general principle *patere legem quam ipse feciste*, and (c) misuse of powers, inasmuch as the contested decision takes no account of the fact that the illness which led to the applicant's total invalidity was an occupational disease, even though it is for the Invalidity Committee alone to make the necessary findings on the matter and to determine whether or not any invalidity was caused by an occupational disease, and the appointing authority is required to abide by the terms of reference which it has given to the Invalidity Committee.

According to the *applicant*, the defendant should have adhered to the precise terms of reference which it had itself given to the Invalidity Committee, by whose opinion it was bound in advance, as regards both the existence of invalidity and the classification of the illness which led to it as an occupational disease.

The *Commission* points out that the applicant's second submission can scarcely be distinguished from his first submission and therefore refers to the arguments it raised in connection with the first submission. It acknowledges that the letter of 15 March 1983 from the Deputy Director-General for Personnel and Administration entrusting the Invalidity Committee with the task of determining whether the applicant's illness was an occupational disease was badly drafted but states that this cannot affect the determination of the respective powers of the appointing authority and the Invalidity Committee.

The applicant's *third submission* is based on the following grounds: (a) infringement of Article 90 (1) of the Staff Regulations; (b) breach of the general principle of the protection of legitimate expectation *vis-à-vis* the administration and of the general principles governing the statement of reasons in administrative measures; (c) absence of legally permissible grounds and (d) misuse of powers, inasmuch as the reasons for the express rejection of the applicant's complaint differ from those stated in the decision of 27 June 1983, although an administrative authority which confirms an initial decision that remains in force may not subsequently amend the statement of reasons for that decision.

According to the applicant, the only reason relied upon by the appointing authority in its decision of 27 June 1983 is the reference to the findings of the Invalidity Committee.

It was only in the decision rejecting the applicant's complaint that the appointing authority added a fresh reason concerning his alleged responsibility for his illness. That decision was adopted after the four-month period prescribed by the Staff Regulations had expired, with the result that the applicant's complaint had already been rejected by an implied decision. However, according to the case-law of the Court, a decision which rejects a complaint after the time-limit for doing so has expired only confirms the implied decision which preceded it, and the latter decision coincides in turn with the contested decision.

With regard to the breach of the general principle of the protection of legitimate expectation, the applicant points out that the complaints procedure was established solely in the interest of officials in order to enable them to defend their rights, and not in the interest of the appointing authority to enable it to attempt to remedy any illegality *a posteriori*. The authors of the Staff Regulations clearly intended legal disputes to be brought forthwith before the appointing authority, which has no alternative but to uphold a complaint, either wholly or in part, or purely and simply to reject it.

In the *Commission*'s opinion, this submission is devoid of substance, both factually, inasmuch as the decision expressly rejecting the complaint does not rely on any reason not contained in the contested decision, and legally, inasmuch as it is incorrect to state that a decision of the appointing authority rejecting a complaint against another decision cannot contain any reasons other than those already set out in the contested decision.

In fact, the usefulness of the complaints procedure lies precisely in the fact that it enables the administrative authority to amend or to justify, where necessary, decisions adopted by a subordinate authority and thus to obviate if possible proceedings before the Court of Justice. Such a procedure would serve no purpose if, where the original decision was upheld, the decision rejecting the complaint could only be based on the same reasons as the original decision.

Only the reasons for an implied decision of rejection must necessarily be deemed to coincide with the reasons stated in the decision complained of.

In his *fourth submission*, the applicant alleges 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.

According to the *applicant*, the true reason for the decision, which is clearly not referred to at all in the decision of 27 June 1983, is related to the disciplinary proceedings brought against him.

In reply, the *Commission* states that in its decision it merely sought to resolve a problem which had arisen in connection with the applicant's invalidity pension and it had no intention whatsoever of imposing a further penalty on him over and above the disciplinary measure.

G. Bosco
Judge-Rapporteur