REPORT FOR THE HEARING
in Case C-346/90 P*

I — Facts and procedure before the Court of First Instance

It is apparent from the judgment of the Court of First Instance in Case T-122/89 *F.* v *Commission of the European Communities* [(1990] ECR II-517) that:

'1. The applicant, Mr F., entered the employment of the Commission in 1975 and was established as an official in Grade A 5 with effect from 1 April 1980. After an altercation on 6 October 1982 with the Director-General for Personnel and Administration he was removed from his post without any withdrawal or reduction of entitlement to a retirement pension. The Court annulled that decision on the ground that it did not contain an adequate statement of reasons (judgment in Case 228/83 *F.* v *Commission* [1985] ECR 275) and subsequently, on 6 May 1985, the Commission adopted a fresh decision, with a proper statement of reasons, removing the applicant from his post without any reduction or withdrawal of entitlement to a retirement pension. In its judgment of 5 February 1987, the Court of Justice dismissed the action brought by the applicant against that decision (Case 403/85 *F.* v *Commission* [1987] ECR 645).

2. On 22 March 1985, following the annulment of the first decision to remove him from his post, the applicant submitted a request for Article 78 of the Staff Regulations of Officials ("the Staff Regulations") to be applied to him. Article 78 of the Staff Regulations provides that "an official shall be 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".

That request led to an exchange of letters between the applicant and the Commission, which may be summarized as follows:

(i) in reply to the request under Article 78, and after the applicant had been removed from his post for the second time on 6 May 1985, the Director-General for Personnel and Administration informed the applicant by a letter of 11 June 1985 that as a result of the (fresh) decision to remove him from his post with effect from 31 May 1985, pursuance of the invalidity procedure with regard to the applicant had become devoid of purpose;

(ii) following that letter, the applicant sent a letter to the Director-General in question on 26 June 1985 contesting the abovementioned decision of 11 June and requesting that the procedure under Article 78 be continued. On 27 June 1985 he also sent a letter of protest to the President of the Commission claiming that he had made a request for Articles 73 and 78 of the Staff Regulations to be applied to him and that, therefore, the Commission's opinion of 11 June 1985 on his request of 22 March 1985 appeared to be "contrary to both the spirit and the letter of Community law . . . ";

* Language of the case: French.

(iii) subsequently, by a letter sent to the defendant on 28 January 1986 in reply to a letter of 21 January 1986, which referred only to the procedure under Article 73, the applicant requested that not only Article 73 but also Article 78 should be applied to him.

3. Moreover, on 15 May 1985 the applicant asked for Article 73 of the Staff Regulations to be applied to him. Article 73 of the Staff Regulations provides that "an official is insured, from the date of his entering the service, against the risk of occupational disease and of accident . . . ". Consequently, the Commission initiated the procedure provided for for that purpose by the rules laying down, by common agreement of the institutions, the conditions of such cover, pursuant to Article 73(1) of the Staff Regulations (hereinafter referred to as "the Rules"). Those Rules provide in particular that "the decision defining the degree of invalidity shall be taken after the official's injuries have consolidated" (Article 20). By letter dated 28 July 1987, pursuant to Article 21 of the Rules, the appointing authority notified the applicant of the draft decision accompanied by the findings of the doctor appointed by the institution, Professor De Buck. The draft decision defined the applicant's degree of permanent invalidity as 60%, of which 30% resulted from his occupation. Following that letter, the applicant requested that the Medical Committee deliver its opinion, pursuant to Article 21 of the Rules. That Committee ° consisting of three doctors: one appointed by the appointing authority, one by the official or those entitled under him and one by agreement between the first two doctors ° has as its task to set out its opinion, on completing its proceedings, in a report to be communicated to the appointing authority and to the official or those entitled under him.

4. On 26 May 1988 the Committee decided that the applicant's disorder had consolidated; it defined the degree of permanent partial incapacity as 80%, broken down as follows: 12% attributable to his condition prior to his entry into the service of the Communities and "the remainder, namely 68%, results from his occupation, and there are no other concomitant factors which have helped to bring it about". In that 68%, the Committee included the degree of invalidity of 18% resulting from the episode on 6 October 1982 which led to the applicant's removal from his post.

5. In a decision of 15 July 1988 the Commission stated that by including in the proportion of invalidity resulting from his occupation the degree of invalidity of 18% caused by the abovementioned events of 6 October 1982, "the Medical Committee has exceeded its terms of reference by assessing the legal conclusions to be drawn from its medical findings, for which the administration alone is competent". In the abovementioned decision, the Commission relies on the judgment of the Court of Justice in Case 76/84 (*Rienzi* v *Commission* [1987] ECR 315) to support its contention that the 18% at issue cannot be covered by the insurance against the risk of occupational disease within the meaning of Article 73 of the Staff Regulations; consequently, the Commission considers that the applicant's degree of invalidity amounts to 50% on the basis of Article 73. On 7 October 1988, the applicant submitted a complaint against the aforementioned decision pursuant to Article 90(2) of the Staff Regulations. Within the period allowed for appeals under the second indent of Article 91(3) of the Staff Regulations, the Commission rejected that complaint by an express decision on 20 April 1989.'

It was in those circumstances that, on 5 July 1989, F. brought an action claiming that the Court of First Instance should:

(a) declare the application admissible and well founded;

(b) consequently, annul the Commission decision contained in the letter of 15 July 1988 from Mr R. Hay reducing the applicant's degree of permanent invalidity resulting from his occupation to 50%;

(c) award the applicant, by way of compensation for damage suffered, a sum equivalent to 24 months' salary of an official in Grade A 5/6;

(d) order the defendant to pay all the costs.

The defendant contended that the Court of First Instance should:

(a) dismiss the entire application as unfounded and the second conclusion as inadmissible and unfounded;

(b) order the applicant to pay his own costs pursuant to Article 69(2) and Article 70 of the Rules of Procedure.

In support of his action before the Court of First Instance, the applicant submitted two pleas in law based respectively on infringement of Article 73 and infringement of Article 78 of the Staff Regulations.

The Court of First Instance considered the first plea in law in the contested judgment as follows:

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12. The first point to be noted is that in its report to the appointing authority the Medical Committee clearly concluded in favour of definitively fixing the degree of permanent partial incapacity as 80%, including 12% attributable to the applicant's state of health prior to his entry into the service of the Communities; "the remainder, namely 68%, results from his occupation with the Communities and there are no other concomitant factors which have helped to bring it about" (p. 26 of the Medical Committee's report).

13. Moreover, it is evident from the reasons upon which the abovementioned report is based that the Medical Committee has shown clearly and incontrovertibly that the 18% invalidity at issue resulted from the applicant's occupation, within the meaning of Article 73 of the Staff Regulations and the applicable rules. In the chapter of its report entitled "Discussion", the Committee based its conclusions on the following reasons: "It seems clear to us that the events of 6 October 1982 are a direct consequence of the difficulties which the patient experienced in his occupation over a number of years. The aggressive behaviour of which the patient is accused merely expresses his psychopathic condition and forms an integral part thereof... We therefore consider that the entire permanent partial incapacity, as estimated in our conclusions, results from the working conditions experienced by Mr F. in the performance of his duties, which were the essential cause of the aggravation of a pre-existing disorder" (pp. 23 and 24 of the Medical Committee's report).

14. The Medical Committee has therefore adequately established that the aggravation of Mr F."s invalidity which followed the incident of 6 October 1982 was in fact caused in the performance of his duties in the service of the Community, in so far as it resulted, in the final analysis, from the applicant's pre-existing occupational disease. The Committee thus "established a comprehensible link between the medical findings (in its report) and the conclusions which it draws", as it is required to do (see the judgments of the Court of Justice in Case 189/82 *Seiler* v *Council* [1984] ECR 229, paragraph 15 and Case 277/84 *Jänsch* v *Commission* [1987] ECR 4923, paragraph 15).

15. Accordingly, the Court of First Instance considers that the Medical Committee confined itself to drawing the appropriate medical conclusions from its findings relating to the cause of the applicant's disease and did not make appraisals of a legal nature.

16. It follows from all the foregoing considerations that the defendant wrongly interpreted the medical opinion by considering only the relationship between the 18% incapacity at issue and the events of 6 October 1982 and not taking into account the relationship clearly established by the medical report between that incident and the pre-existing disorder which the aforementioned report established resulted from the applicant's occupation. By refusing to acknowledge that the proportion of the applicant's invalidity at issue resulted from his occupation, the decision thus departed from the conclusions of the medical report and replaced them with its own appraisal of a matter of a purely medical nature, which falls within the exclusive competence of the Medical Committee, whose appraisals must be regarded as definitive provided that the conditions in which they are made are regular, as they are in the present case (see the judgments in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, paragraphs 9 to 15, and Case 2/87 *Biedermann* v *Court of Auditors* [1988] ECR 143, paragraph 8). The fact that the applicant's conduct on 6 October 1982 was in breach of the Staff Regulations cannot be used to dispute that the 18% invalidity at issue resulted from the applicant's occupation. The fact that his conduct during the incident of 6 October 1982 was in breach of the Staff Regulations does not call into question the relationship between that incident and the applicant's pre-existing psychopathic condition. It does not therefore have any bearing on the causal link established by the Medical Committee between the applicant's pre-existing occupational disease and the 18% aggravation of his degree of invalidity at issue.

17. It follows that the decision must be annulled since it refuses to take into account, as occupational disease, the 18% degree of invalidity at issue which has been shown to have resulted from the applicant's occupation for the purposes of compensating the applicant under Article 73 of the Staff Regulations.

. . . '.

With regard to the second plea, the Court stated (in the contested judgment) as follows:

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22. The Court . . . notes first of all that, by a letter of 11 June 1985, the Commission informed the applicant of its decision to bring to an end the invalidity procedure pursuant to Article 78. It also notes that the decision of 15 July 1988, which is the

subject-matter of these proceedings, was adopted as part of the procedure for the application of Article 73. The Commission therefore adopts a position only with regard to the applicant's request under Article 73 and does not reconsider the question of the possible grant of an invalidity pension pursuant to Article 78. However, even assuming that the aforementioned decision could be interpreted as containing an implied refusal to grant a request made by the applicant under Article 78, that refusal would constitute, in the absence of any new factors not taken into account in the decision of 11 June 1985, cited above, an act confirming the decision and could not, therefore, adversely affect the applicant. The application for the annulment of the decision of 15 July 1988, based on Article 78, is therefore inadmissible, even assuming there to have been an implied rejection of a request under Article 78.

23. Moreover, the decision of 11 June 1985 can no longer be challenged because the applicant failed to bring legal proceedings within the time-limits prescribed in Article 91(2) of the Staff Regulations. The applicant's argument that he reserved his rights with regard to the application of Article 78 cannot be upheld. The time-limits prescribed in Articles 90 and 91 for the lodging of complaints and appeals are a matter of public policy: they were laid down with a view to ensuring legal certainty and are not subject to the discretion of the parties or the Court (judgments in Case 4/67 *Muller (née Collignon)* v *Commission* [1967] ECR 365, Case 227/83 *Moussis* v *Commission* [1984] ECR 3133 and Case 191/84 *Barcella* v *Commission* [1986] ECR 1541). In particular, the fact that the applicant contested at least implicitly the abandonment of the procedure under Article 78 by bringing an action against the second decision to remove him from his post does not in any way change the situation. In the absence of fresh facts and in the event that his action against the abovementioned decision to remove him from his post failed, the applicant could only challenge the Commission's decision refusing to grant his request under Article 78, which was notified to him by a letter of 11 June 1985, by complying with the procedures laid down by Articles 90 and 91 of the Staff Regulations. The applicant did in fact submit a complaint against the decision of 11 June 1985 by a letter of 26 June 1985 to the Director-General for Personnel and Administration, clearly stating the subject-matter and the grounds of the complaint, in accordance with the procedure provided for in Article 90. However, he did not bring an action within the prescribed time-limit for the annulment of that decision. The documents before the Court show that the Commission did not reply to the abovementioned complaint within four months from the date on which it was lodged, which amounted to a rejection by implied decision at the end of that period, that is to say on 26 October 1985. Proceedings could have been brought against that implied rejection within a period of three months, with an extension of six days on account of distance to which the applicant, who lives in Corsica, was entitled. Since the applicant did not bring an action before the Court of Justice within that period for the annulment of the decision of 11 June 1985 and the implied rejection of his complaint, the decision of 11 June 1985 became final (see the judgment in Case 152/85 *Misset* v *Council* [1987] ECR 223).

24. It follows from all the foregoing considerations that the second submission, based on Article 78, is inadmissible. The Court of First Instance need not therefore, in this judgment, rule on the question of substance raised in that submission.

...'.

The application for damages was considered by the Court in the contested judgment as follows:

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29. Each of the applicant's submissions must be examined in turn.

30. (a) With regard to defining the degree of permanent invalidity at the start of the invalidity procedure as 60% ° which was given as an entirely provisional figure in the medical report ° the applicant has not proved that the Commission has failed to fulfil its obligations under the Staff Regulations, or that he suffered damage during the procedure in question due to the conduct of the Commission of which he complains.

...

33. The Court of First Instance points out ... that the Commission's draft decision, notified to the applicant pursuant to Article 21 of the Rules, conforms to (Article 20 of) those rules when it recognizes a degree of invalidity resulting from his occupation of 30%, corresponding to the undisputed proportion of the permanent invalidity rate, as defined in Professor De Buck's report. Consequently, in all those regards, the Commission has fulfilled its obligations under the Staff Regulations vis-à-vis the applicant and the applicant has not proved the existence of the damage which he alleges. It follows that the first part of the claim for damages is unfounded.

34. (b) With regard to the claim for compensation for the damage which the applicant claims to have suffered due to the Commission's refusal to take into account a proportion of 18% of his invalidity resulting from his occupation, the Court of First Instance observes, first of all, that the damage alleged by the applicant is related to the adoption of the contested decision. The Court of First Instance considers that the annulment of the irregular decision and the consequent definition, by the Commission, of the applicant's degree of permanent invalidity resulting from his occupation, in implementation of the present judgment, enables the applicant's rights to be restored to him. The applicant has not specified in detail the damage allegedly suffered in the form, in particular, of an aggravation of his state of health and of his occupational circumstances. He has not proved, or offered to prove, either that such aggravation occurred after the adoption of the contested decision, or that there is a causal link between the damage allegedly suffered and the adoption of the decision in question. Consequently, the second part of the claim for damages is not well founded.

35. (c) The third part of the claim, which relates to the fact that the Commission did not apply Article 78 in the contested decision, does not fall to be considered. The decision has already been considered from the point of view of the application of Article 78 and the Court of First Instance has held that it is not irregular in that respect. It follows that no wrongful administrative act can be ascribed to the Commission with regard to the contested decision and that no damage capable of being compensated can be taken into account.

36. (d) With regard to the claim for damages based on the allegation that the Commission committed a serious wrongful act, which consisted in pursuing the disciplinary procedure while the applicant was on sick leave, that claim does not have the same subject-matter as the claims made in the complaint. The complaint was made only against the contested decision and against the invalidity procedure. The claim for damages based on an alleged serious wrongful act relating to the pursuance of the disciplinary procedure must therefore be regarded as inadmissible, in so far as it does not comply with the preliminary administrative procedure laid down in Article 90 of the Staff Regulations, which also applies to claims for damages made by officials. That interpretation is borne out by the case-law of the Court of Justice, which has held, with regard to claims for damages, that "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" (see the judgments in Case 242/85 *Geist* v *Commission* [1987] ECR 2181, paragraph 9, and Case 346/87 *Bossi* v *Commission* ...). It follows that the claim for damages based on the circumstances in which the disciplinary procedure took place is inadmissible.

....'

II — Subject-matter of the appeals, and forms of order sought

By application lodged at the Court Registry on 27 November 1990, F. appealed against the aforementioned judgment, on the ground that it was in breach of Community law.

By its response lodged at the Court Registry on 30 January 1991, the Commission appealed against the same judgment on the ground that it was in breach of Community law.

F. claims that the Court should:

(i) declare the appeal admissible and well founded;

(ii) set aside the judgment of the Court of First Instance of 26 September 1990 in so far as it declared the claim relating to Article 78 of the Staff Regulations inadmissible and in so far as it dismissed the claim for damages;

(iii) consequently, declare admissible and well founded the claim relating to Article 78 of the Staff Regulations and declare that the appellant is entitled to an invalidity pension pursuant to Article 78 of the Staff Regulations;

(iv) award the appellant, as compensation for the damage suffered, an amount equivalent to 24 months' salary of an A 5/6 official or, in the alternative, an amount fixed on an equitable basis by the Court;

(v) order the respondent to pay the costs.

The Commission contends that the Court should:

(i) dismiss the applicant's appeal as unfounded;

(ii) set aside the contested judgment in so far as it annulled the Commission decision of 15 July 1988 inasmuch as it set the degree of permanent invalidity at 50%;

(iii) order the applicant to pay the costs in accordance with Article 122 of the Rules of Procedure.

III — Summary of the parties' pleas and arguments

(1) *The applicant's appeal*

In support of his appeal, the applicant relies on two pleas in law.

The first plea, which has two limbs, covers the wording of the judgment by which the Court of First Instance decided that the plea based on Article 78 of the Staff Regulations was inadmissible and unfounded. The second plea relied upon in support of the appeal covers the Court's dismissal of his application for compensation.

The first plea in law

With regard to the first limb of the first plea, the *applicant* argues that the letter of 11 June 1985 does not constitute a decision to reject his request for an invalidity pension. The content of that letter is in no way equivalent to a decision; it indicates the Director-General's interpretation of a new event which led to the finding that the request had become devoid of purpose. The letter of 26 June 1985 addressed by the applicant to the Director-General should, therefore, be regarded not as a complaint within the meaning of Article 90 of the Staff Regulations, but only as a letter clarifying the position. Consequently, the lack of reply to that letter cannot be considered as an implicit rejection of the request for an invalidity pension. The applicant claims that the decision of 15 July 1988 contained the first clearly expressed refusal of his request. The Court therefore wrongly held that the plea based on a breach of Article 78 of the Staff Regulations was inadmissible.

With regard to the second limb of the first plea, the applicant argues, first, that the final sentence of Article 73(2)(c) of the Staff Regulations clearly states that benefits relating to occupational diseases may be paid in addition to the benefits provided for in Chapter 3 of the Staff Regulations. He argues, secondly, that, in so far as the basis for entitlement to benefits for occupational disease and the basis for entitlement to an invalidity pension are identical, he could not be refused the invalidity pension provided for in Article 78 if he was simultaneously granted the right to receive the benefits payable under Article 73.

With regard to the first limb of the first plea, the *Commission* argues, first of all, that the Court has consistently held that measures which are the definitive expression of an institution's intentions are to be regarded as decisions. Where the Commission unequivocally adopts a measure which produces legal effects touching the interests of the persons concerned and which is binding on them, that step is a decision. Moreover, the decision of 11 July 1985 is undeniably such a measure and, consequently, the applicant's application opposing the decision of 15 July 1988 is inadmissible.

The Commission argues, in the alternative, that the applicant's letter of 22 March 1985, regarding his request for entitlement under the provisions of Article 78 of the Staff Regulations, was presented in the form of a request within the meaning of Article 90(1) of the Staff Regulations. Accordingly, in so far as the letter of 11 June 1985 was not an explicit decision, the applicant's action, brought four years later, was manifestly late.

The Commission claims that the decision of 15 July 1988 related exclusively to the request brought under Article 73 of the Staff Regulations and not to the request for an invalidity pension. The question of the latter request is therefore long since closed.

The Commission then states that it concurs with the applicant's view that the letter of 26 June 1985 is not a complaint but a letter of clarification, and does not relate to Article 73 of the Staff Regulations. In the Commission's view, the object of that letter was to have the procedure laid down in Article 73 legitimately pursued and concluded. The Court of First Instance was therefore wrong to hold that that letter was a complaint.

The Commission considers however that that consideration should not lead to the contested judgment being amended since it is agreed between the parties that the applicant did not make a complaint against the decision of 11 June 1985 and that accordingly his action was inadmissible in any event.

With regard to the second limb of the first plea, relating to whether the request for an invalidity pension is well founded, the Commission argues that an invalidity pension may only be paid to an official afflicted with a permanent invalidity considered to be total and placing him in a situation where it is impossible for him to perform the duties corresponding to a post in his career bracket. The applicant cannot claim that his inability to perform his duties is due to his invalidity since it arose from his removal from his post. One of the essential conditions for applying Article 78 of the Staff Regulations is therefore not fulfilled in the present case.

The second plea in law

The *applicant* complains that the Court of First Instance was wrong to hold that compliance with its judgment, under which the Commission's decision of 15 July 1988 was annulled in so far as it defined the degree of his permanent invalidity as 50%, enabled him to have his rights re-established. The applicant considers that in so doing the Court refused to take into account the real damage he had suffered.

In that connection, the applicant argues, first, that the damage he has suffered is considerable and not open to question. The contested decision of 15 July 1988 and the length of the procedure preceding it have contributed to the deterioration in his health, established in the Medical Committee's report and in the medical reports, and have reduced his chances of reinstatement. The unjust and unfounded nature of the decision of 15 July 1988 forced him to incur legal expenses and to put all his energies into the action which he was made to bring before the Court of First Instance. The applicant considers, secondly, that the non-material, physical and financial damage caused by the decision of 15 July 1988 has not been compensated by the Court's judgment. The annulment of the decision is only the fair recognition of a legitimate right, but not compensation for the vexations he has suffered in order to achieve recognition of that right.

The *Commission* observes that the only 'fault' alleged by the applicant is the fact that it applied a degree of invalidity of 50% and not 68%. In that connection, it denies any error or fault capable of giving rise to the payment of damages. Furthermore, the applicant has shown no causal link between the damage allegedly suffered and the Commission's decision of 15 July 1988. Only the additional legal costs could be the subject of a request for compensation. However those costs were borne by the Commission, as ordered by the Court.

In the alternative, the Commission argues that, as decided by the Court, the annulment of the wrongful decision and the fixing by the Commission of a new degree of permanent disability of occupational origin for the applicant, in compliance with the judgment, enable the applicant to have his rights re-established. The applicant has not established the existence of damage distinct from that which resulted from the decision annulled by the Court. With regard to the amount of the damages, estimated by the applicant to be 24 months' salary of an official of Grade A 5/6, the Commission states that the applicant has not amended his claim in that respect despite the fact that the basis of his appeal is more limited than that of the action which he brought before the Court of First Instance.

(2) *The Commission's appeal*

By its response, the Commission also seeks the annulment of the judgment of the Court of First Instance inasmuch as that judgment annulled the Commission's decision of 15 July 1988 in so far as it defined the degree of permanent invalidity as 50%.

In support of that appeal, the *Commission* argues that the Medical Committee went beyond its powers when it considered that it was not appropriate to deduct the 18% from the compensation granted to the applicant. It states that the Court has consistently held that the powers of the Medical Committee are restricted exclusively to making assessments of a medical nature. The Medical Committee may not then, under any circumstances, undertake a legal classification (see judgment in Case 76/84 *Rienzi* v *Commission* [1987] ECR 315). The Commission considers that it also follows from the Court's case-law that the powers of the Medical Committee are limited to determining the cause of the incapacity for work and to verifying whether the applicant's pathological condition has a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed. However, it is for the admin-

istration 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 (see, *inter alia*, the judgments in *Rienzi*, above, in Case 257/81 *K.* v *Council* [1983] ECR 1, and in Case 189/82 *Seiler* v *Council* [1984] ECR 229).

The Commission considers that the applicant has not denied that the incident of 6 October 1982 constituted grounds for conducting a disciplinary procedure and, ultimately, for removal from his post. It observes that, in those circumstances, the question of whether that incident constitutes a risk within the meaning of Article 73 of the Staff Regulations or whether, on the contrary, the risk is one arising out of the applicant's breach of his obligations under the Staff Regulations, is a legal question. It is appropriate, therefore, for the appointing authority to reply to that question. The Commission also states that where 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, the appointing authority is bound to decide that the illness from which the applicant is suffering is not an occupational disease (see the judgment in *Rienzi*, cited above, paragraphs 20 to 22).

Lastly, the Commission observes that the Medical Committee calls in question the findings reached by the appointing authority in its decision to remove him from his post, namely that the applicant was considered to be responsible for his actions, a finding which, moreover, he did not contest.

The *intervener* in the proceedings before the Court of First Instance, the Société Anonyme Royale Belge, shares the Commission's views with regard to the section of the response seeking the partial annulment of the Court of First Instance's decision. The Société Anonyme Royale Belge complains, first, that the Court based its assessment on extracts of the Medical Committee's report which did not correctly reflect the reasoning of the Medical Committee's findings, and, secondly, that the Court interpreted that report in a manner incompatible with the actual wording of the report. It considers, as does the Commission, that the Medical Committee was empowered to make a finding that the applicant's permanent occupational invalidity of 18%, due to the aggravation of an existing medical condition, was caused by the events of 6 October 1982, but that those powers were restricted to that finding. It was therefore not appropriate for the Medical Committee to consider, as it did in its report, whether it was 'fair' for that aggravation to be compensated under Article 73 of the Staff Regulations. Only the administration could determine whether those events corresponded to a specific risk inherent in the performance of the applicant's normal duties, or, on the contrary, to conduct inconsistent with his obligations under the Staff Regulations. The intervener considers that the Medical Committee has, in the present case, made legal findings on the basis of medical observations, and that making those findings was exclusively the domain of the administration.

P. J. G. Kapteyn
Judge-Rapporteur