

Case T-165/89

Onno Plug

v

Commission of the European Communities

(Officials — Invalidity procedure — Relationship
between the procedures laid down in Articles 73 and 78
of the Staff Regulations — Claim for compensation)

Judgment of the Court of First Instance (Fourth Chamber), 27 February 1992 II - 369

Summary of the Judgment

1. *Officials — Actions — Prior administrative complaint — Decision in a complex procedure — Decision not contested — No effect on the right of appeal against subsequent measures (Staff Regulations, Arts 90 and 91)*
2. *Officials — Compensation for accidents and occupational diseases — Invalidity pension — Different benefits — Different procedures — Finding that a disease has an occupational origin — Finding made in the invalidity procedure (Staff Regulations, Arts 73 and 78)*
3. *Officials — Invalidity — Invalidity Committee — Forwarding of its conclusions to the appointing authority and to the official concerned — Obligation — Scope (Staff Regulations, Annex II, Art. 9)*
4. *Officials — Insurance against accidents and occupational diseases — Invalidity — Medical Committee and Invalidity Committee — Judicial review — Scope — Limits (Staff Regulations, Arts 73 and 78)*

5. *Officials — Social security — Insurance against accidents and occupational diseases — Finding that a disease has an occupational origin — Expert medical report — Discretion of the administration — Limits*

(*Staff Regulations, Art. 73; Rules on the Insurance of Officials against the Risk of Accident and Occupational Disease, Arts 18 and 19*)

6. *Officials — Actions — Action for damages — Annulment of contested measure not providing adequate compensation for the non-material damage suffered — Award of damages*

(*Staff Regulations, Art. 91*)

1. In a complex procedure consisting of a number of interdependent acts, such as a procedure for the recognition of invalidity, the persons concerned cannot be required to bring as many complaints as the number of acts adopted in the procedure capable of adversely affecting them. Since the various acts of which that procedure is composed form a whole, the fact that he did not bring a complaint in respect of one of them cannot bar the applicant from pleading the irregularity of subsequent acts having a direct link with it.

It thus constitutes an infringement of Article 78 for pursuit of the procedure laid down in the second paragraph of that provision to be made subject to the prior completion of the procedure laid down in Article 73 when the person concerned had requested a finding that his invalidity had an occupational origin on the basis of the second paragraph of Article 78 of the Staff Regulations.

2. A comparison between Articles 73 and 78 reveals that the benefits provided for by those two provisions are different and independent of one another, although they may overlap. The same applies to the procedures leading to the application of those provisions. It follows that findings as to the existence of total permanent invalidity preventing an official from performing duties corresponding to a post in his career bracket as well as findings as to the cause of such invalidity are to be made in accordance with the rules and procedure laid down in the regulations relating to the pension scheme referred to in Annex VIII to the Staff Regulations and not according to the Insurance Rules.

3. Although Article 9 of Annex II to the Staff Regulations requires that the Invalidity Committee's conclusions be communicated to the appointing authority and to the official concerned, it does not require the communication of the proceedings of that committee, which must remain secret.

4. The purpose of the Medical Committee and the Invalidity Committee is to confer upon medical experts the task of definitively appraising all medical questions. It follows that judicial review may not extend to medical appraisals properly so-called, which must be considered definitive, provided that the conditions in which they are made are not irregular. On the other hand, judicial review may extend to questions concerning the constitution and proper functioning of those committees and also the regularity of the opinions which they issue.

From that point of view, the Court has jurisdiction to examine whether the opinion of the Invalidity Committee contains reasons enabling the reader to assess the considerations on which the conclusions which it contains were based and whether it has established a comprehensible link between the medical findings which it contains and the conclusions which it reaches.

administration is entitled to appoint new medical experts indefinitely without giving reasons for its decision, merely because it does not agree with opinions reached by the previous experts.

In such a case, the administration is using its powers for a purpose other than that for which they were conferred on it and thereby commits a misuse of its powers.

5. Although Article 18 of the Rules on Insurance against the Risk of Accident and Occupational Disease allows the administration to obtain any expert medical opinion necessary for the implementation of those rules and the administration is free to disregard the opinion issued by an expert appointed by it and, where appropriate, to seek further expert opinions, it is not the case that the
6. The non-material damage suffered by an official owing to an administrative fault of such a kind as to make the administration liable entitles the official concerned to damages where, taking account of the circumstances of the case, the annulment of the unlawful contested measure cannot in itself provide adequate compensation for that damage.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

27 February 1992 *

In Case T-165/89,

Onno Plug, a former temporary servant of the Commission of the European Communities, residing in Thônex (Switzerland), represented by Georges Vander-sanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 Avenue Guillaume,

applicant,

* Language of the case: French.