JUDGMENT OF THE COURT (SECOND CHAMBER)
14 DECEMBER 1966[1]

Cesare Alfieri
v European Parliament[2]

Case 3/66

Summary

1. Officials — Retirement by institution — Procedure — Plurality of connected steps — Application against the measure retiring an official — Possibility of contesting the legality of earlier steps
(Staff Regulations of Officials of the ECSC, Article 91; Staff Regulations of Officials of the EEC and EAEC, Article 53)

2. Officials — Retirement by institution — Written form obligatory
(Staff Regulations of Officials of the EEC and EAEC, Article 53)

3. Officials — Retirement by institution — Obligation of the person concerned to cooperate — Powers of the administration if the person concerned fails to act
(Staff Regulations of Officials of the ECSC, Article 91; Staff Regulations of Officials of the EEC and EAEC, Article 53, Annex II, Article 7)

1. Since the various steps comprising the procedure for retiring an official form a single entity, it must be accepted that in an action contesting the retirement decision, the applicant may contest the legality of earlier steps which are closely linked to it. A submission of inadmissibility on the ground than an appeal against these steps was out of time is therefore inadmissible.
Cf. para 1, summary, Joined Cases 12 and 29/64, Rec. 1965, p. 144.
2. A decision to retire an official must be made in writing.
3. The guarantees conferred by the Staff Regulations with regard to retiring an official must not be interpreted as meaning that it is possible for the person concerned to object to the formation of an Invalidity Committee, particularly by refusing to appoint a doctor of his own choise. It follows from the fundamental duty of loyalty and cooperation which all officials owe to the authority to which they belong that the power to appoint a doctor at the same time constitutes a duty.
The administration has the power, if necessary, to remedy the failure of the person concerned to appoint a doctor in order to ensure the setting up and functioning of an Invalidity Committee, provided that any element of an arbitrary nature is avoided and that the official's interests are not unnecessarily harmed.

In Case 3/66

CESARE ALFIERI, an official of the European Parliament, residing at 81, rue d'Anvers, Luxembourg, assisted by André Elvinger, Advocate of the Cour Supérieure de

1 — Language of the Case: French.
2 — CMLR.

Justice of the Grand Duchy of Luxembourg, with an address for service in Luxembourg at the Chambers of the said André Elvinger, 84 Grand'rue,

applicant,

v

EUROPEAN PARLIAMENT, 19, rue Beaumont, Luxembourg, represented by its Secretary-General, Hans Robert Nord, acting as Agent, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of the said Alex Bonn, 22 Cote-d'Eich,

defendant,

Application for the annulment in particular of the decision of the President of the European Parliament of 13 November 1965, retiring the applicant,

THE COURT (Second Chamber)

composed of: R. Monaco, President of Chamber, A. M. Donner and W. Strauß (Rapporteur), Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

A — *In general*

The applicant, an official seconded from the Italian Parliament, was recruited by the European Parliament on 1 July 1958.
On 8 May 1959, he became seriously ill; between that date and 1 December 1965 his absence owing to illness amounted to 1 666 days.
When the Staff Regulations of Officials entered into force, he was convalescing, so that his integration was postponed. It nevertheless took place on 1 Feburary 1963, despite the fact that he had undergone a serious operation.
In August 1963, the applicant suffered a first relapse and in August 1964 a second; thereafter he never resumed work.
By decree of the President of the Italian Chamber of Deputies of 25 February 1966, the applicant was retired for reasons of health, with effect from 1 March 1966.

B — *Course of the invalidity procedure commenced by the defendant*

1. By letter of 12 October 1964, the Secretary-General of the European Parliament (hereinafter referred to as 'the Secretary-General'):
— notified the applicant that the President of the Parliament had decided to submit his case to the Invalidity Committee provided for in Article 59 of the Staff Reg-

ulations of Officials of the EEC and EAEC;
— notified him that, in accordance with Article 7 of Annex II to the Staff Regulations, he had requested the President of the Court of Justice of the European Communities to appoint a doctor to sit on this Committee;
— invited him to appoint a doctor to represent him on the Committee.

In his reply of 13 October, the applicant refused to make the appointment, declaring *inter alia* that 'this would expose me to a professional opinion which might result in my being retired'. He subsequently confirmed his refusal by numerous letters, and has maintained this position up to the present time.

2. On 16 October 1964, the Secretary-General repeated his request, pointing out to the applicant that his refusal inevitably made the formation and functioning of the Invalidity Committee impossible.

In return, the applicant set out his point of view in a letter of 22 October 1964 addressed to the President of the Parliament, drawn up 'purely in the spirit' of Article 90 of the Staff Regulations.

In his reply of 6 November 1964, the President requested the applicant 'most forcibly' to comply with the Secretary-General's invitation, 'failing which it would be necessary to consider making a compulsory appointment on your behalf'.

3. By letter of 21 January 1965, the Parliament requested the President of the Court of Justice either to appoint, instead and on behalf of the applicant, a doctor to defend the latter's interests, or to state the most appropriate procedure to follow.

In his reply of 1 Feburary 1965, the President of the Court:
— declared himself unable to comply with the request, in particular owing to the fact that at that date an action introduced by the applicant against the Parliament on another ground was pending;
— suggested that the Parliament should grant an ultimate period of grace to the applicant and notify him that, if he persisted in his refusal, the Parliament would request the Medical Council to have a doctor appointed.

4. By letter of 5 February 1965, the Secretary-General wrote to the applicant to this effect, prescribing a period of grace of two weeks.

As the applicant gave a negative reply, the Parliament requested the President of the Luxembourg Medical Council by letter of 25 February 1965 to appoint a doctor to look after the applicant's interests on the Invalidity Committee. To assist the President in his choice, the Parliament notified him of the names of doctors who had treated the applicant at one time or another during his illness; this list included *inter alia* Dr Éloi Welter and Dr Pierre Stein.

On 13 March 1965, the President of the Medical Council complied with this request and proposed Dr Stein 'who has indicated his willingness to accept the task'.

5. In the meantime, by letter of 9 March 1965, the applicant's lawyer, Mr Elvinger, had in particular:
— disputed the Parliament's right to oblige the applicant to appoint a doctor and to appoint one on its own initiative;
— disputed the competence of the President of the Medical Council to participate in such an appointment;
— declared that the applicant considered as null and void the adjournment of 5 February 1965, the composition of the Invalidity Committee and all the steps taken by it, together with, in general, all the steps taken with a view to a declaration of invalidity.

6. By letter of 19 March 1965, the Parliament
— informed Dr Éloi Welter—who had been appointed by the President of the Court of Justice (cf. 1 above)—of the appointment of Dr Pierre Stein;
— requested him to communicate with the latter with a view to the appointment by agreement of a third doctor (Article 7 of Annex II to the Staff Regulations).

7. By letter of 26 March 1965, the Secretary-General informed the applicant of this composition of the Invalidity Committee, together with the fact that Dr Stein had agreed to sit on it and that the two abovementioned doctors would appoint the third doctor.

By letter of 6 April 1965, addressed to the Secretary-General, the applicant's lawyer:
— confirmed the position adopted in his letter of 9 March 1965;

— expressed his belief 'that Dr Pierre Stein will certainly refuse this task when he knows that it has been entrusted to him against the will of the person he must allegedly represent', all the more so since he could scarcely 'avoid taking into account, at least in the opinion which he must personally form, information acquired as the applicant's private doctor' and would thus run the risk of committing a breach of professional secrecy;
— announced that he had addressed copies of this letter to the President of the Medical Council and to Dr Stein;
— declared that his client 'would make an application to the Court of Justice within the appropriate period against the decisions which he considers as adversely affecting him'.

8. By letter of 14 April 1965, addressed to the applicant, the Secretary-General:
— disputed the opinion expressed in the letter of 6 April 1965;
— prescribed a final period of grace of two weeks in order that the applicant might himself appoint a doctor of his choice; this point of view was reasoned thus: 'Since your letter ... of 6 April, a fresh fact has ... arisen; the Court has given its judgment [that is, in Case 35/64]. Although, in my opinion, there was never any connexion between that action and the invalidity procedure, you have always claimed that the two proceedings are connected and your refusal to appoint your doctor has until now rested on the existence of the application. Since this reason now no longer exists, it seems reasonable that you should reconsider your stand in the matter.'

Since the applicant did not comply with this request, the defendant notified Dr Éloi Welter of this on 4 May 1965 and requested him to continue and to commence the procedure.

9. On 10 June 1965, Dr Stein wrote to the applicant in the following terms: 'I ... can assure you that, in accordance with your wishes, I shall resign from the Committee entrusted with examining on behalf of the administration the "state of your health". You need therefore have no worries in this respect ...'

10. Dr Éloi Welter and Dr Pierre Stein appointed Dr Roger Welter as third doctor, and Dr Éloi Welter by letter of 17 September 1965 in his capacity as Chairman of the said Committee invited the applicant, who was then in the sanitorium in Vianden (Grand Duchy of Luxembourg), to appear before the Committee in Luxembourg on 24 September 1965.

By letter of 28 September, Dr Éloi Welter notified the defendant that the applicant had neither complied with this request, nor submitted reasons for not doing so.

However, by a letter written at Vianden on 30 September 1965, the applicant informed the defendant that he had been requested by telephone 'by a Dr Welter' to come to Luxembourg, but owing to his health he was unable to travel. Moreover, this letter was interpreted differently by the two parties: according to the applicant, the letter authorized his private doctors to supply the Parliament's medical adviser, who was not a member of the Invalidity Committee, with such information as they might consider appropriate 'on the basis of professional ethics'; according to the defendant, the letter authorized them to give 'all information concerning his state of health'.

11. By letter of 4 October 1965 addressed to the Secretary-General, the applicant's lawyer referring to the abovementioned letter of 17 September 1965:
— stated that prior to that letter he had had reason to believe that the invalidity procedure was suspended, in view of Dr Stein's letter of 10 June 1965;
— stated that in the circumstances the applicant had not been properly informed of the composition of the Invalidity Committee;
— requested the Secretary-General to inform him whether the Parliament intended to continue the invalidity procedure and how the Committee was to be composed;
— maintained all the objections previously raised in respect of the said Committee.

In his reply of 12 October 1965, the Secretary-General:
— referred to his letter of 26 March 1965;
— notified the applicant's lawyer that the two doctors first appointed had in turn appointed Dr Roger Welter;
— signified that for his part he had 'no in-

formation with regard to the intention imputed to Dr Stein of refusing to serve on the Invalidity Committee';
— requested the said lawyer to address directly to the Committee the objections with regard to its functioning.

In a letter of 15 October 1965, the applicant's lawyer, in particular:
— disputed that the Invalidity Committee was 'at present in existence';
— expressed his astonishment that Dr Stein should participate in the work of the Committee, in view of his letter of 10 June 1965;
— transmitted a copy of this last letter to the Secretary-General.

12. By letter of 5 November 1965, Dr Éloi Welter wrote to the Secretary-General in the following terms:

'The Invalidity Committee appointed to consider the case of Mr Alfieri and composed of Dr Stein, appointed by the President of the Medical Council, myself, appointed by the President of the Court of Justice of the European Communities, and of Dr Roger Welter, appointed with the agreement of the foregoing, met on 22 September 1965 to consider the case submitted to it. Mr Alfieri, who had been requested by registered letter to appear neither presented himself nor acknowledged receipt of the request. Since Dr Pfeiffer, the doctor in charge of the sanitorium at Vianden, had assured us that Mr Alfieri was capable of travelling and since, moreover, according to the information given us by the ... European Parliament's medical adviser, Mr Alfieri had declared that he would refuse to be examined by the Invalidity Committee, we decided to give our ruling on the basis of documentary evidence.

These documents were moreover sufficiently convincing to enable us to form an opinion. Finally, after deliberation, we arrived at the unanimous view that the patient's health was incurable as a consequence of pulmonary and cardiac defects and that consequently he must be recognized as suffering from total permanent invalidity preventing him from performing his duties with the European Parliament.

Finally, when I requested my two colleagues to sign with me the minutes of our deliberations, they refused to do so, since they had in the meantime received a communication from Mr Alfieri's lawyer, Mr Elvinger, warning them of the legal consequences of any breach of professional secrecy on the Invalidity Committee.'

In a letter of 11 January 1966, addressed to the applicant's lawyer, Dr Stein stated that 'when I became aware of the real purpose of the Committee of which Dr Éloi Welter is Chairman, I categorically refused all participation and have at no time committed a breach of professional secrecy with regard to Mr Alfieri. Thus I did not associate myself with Dr Éloi Welter's conclusions and that is why I have also been unable to sign the minutes in question'.

13. By decision of the President of the Parliament of 13 November 1965, referring in particular to the letter of 5 November 1965 set out above, the applicant was 'granted the invalidity pension provided for in Article 78 of the Staff Regulations' from 1 December 1965.

On 17 November 1965, the Secretary-General notified the applicant of this decision and also of Dr Éloi Welter's letter of 5 November.

By letter of 20 December 1965, the applicant's lawyer made a complaint through official channels against the said decision to the President of the Parliament.

14. On 16 February 1966, the applicant commenced the present application.

II — Conclusions of the parties

In his application, the *applicant* claims that the Court should:

'— declare that the present application is admissible with regard to form;
— rule that it is well founded;
— declare that the appointments to and the composition of the Invalidity Committee are irregular on the ground of infringement of the second paragraph of Article 7 and the first paragraph of Article 9 of Annex II; rule that the mode of procedure of the Invalidity Committee is irregular, particularly for failure to observe the provisions of the second and third paragraphs of Article 9 of Annex II and Article 13 of Annex VIII;

— consequently annual the subsequent procedure and in particular the report drawn up by the Invalidity Committee dated 5 November 1965 and the decision of 13 November 1965 to retire the applicant;
— consequently reinstate the applicant in his duties with all the rights pertaining thereto, and in particular the salary and benefits attaching thereto;
— order the European Parliament to pay the arrears of salary owed and the incidental benefits pertaining thereto;
— order the payment to the applicant of damages in compensation for the injury suffered by him, which is estimated at 100 000 francs for non-material damage and at 20 000 francs, subject to increase, for loss of interest and injury resulting from the temporary unavailability of funds and the delay in payment of salary due;
— order the defendant institution to bear the costs and expenses of the proceedings'.

The *defendant*, in its statement of defence, contends that the Court should:

'— take note that the defendant relies on the wisdom of the Court with regard to the admissibility of the application and declare the application unfounded;
— dismiss the application;
— give a ruling on the costs in accordance with the appropriate rules.'

In their reply and rejoinder, the parties maintained their previous conclusions.

III — Submissions and arguments of the parties

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

1. *Admissibility*

Although the *defendant* declares that it relies on the wisdom of the Court in the matter, it considers that two series of facts militate against the admissibility of the application:

(a) With regard to the complaints relating to the steps prior to the decision to retire the applicant, he could have brought the matter before the Court earlier. In fact:

— 'the crucial question which the application endeavours to raise was asked at the beginning of the invalidity procedure;'
— in particular, the applicant raised the objections in question at the beginning of the invalidity procedure and submitted a complaint through official channels, within the meaning of Article 90 of the Staff Regulations, as early as 22 October 1964.

(b) The applicant cannot rely on Article 91 of the Staff Regulations, since the use which he has made of the methods of recourse therein provided is improper.

In fact, since the applicant systematically refused to appoint a doctor to represent him on the Invalidity Committee, the defendant was obliged to have recourse to the contested substitution procedure. The said refusal was not put forward in the applicant's legitimate interests, but with the sole purpose of obstructing the lawful conduct of the defendant and thus of impeding the normal functioning of the Committee.

It was impossible for the defendant to overcome the applicant's attitude by an application to the Court, since no jurisdiction has been conferred upon the Court of Justice in this respect.

The *applicant* replies:

With regard to point (a):

The steps prior to the decision to retire him were only of a preliminary nature and would not necessarily have given that result. Consequently, that decision alone may be considered as 'adversely affecting him'.

As the Court ruled in its judgment of 7 April 1965 in Case 35/64 between the same parties, the irregularity of earlier steps only constitutes a submission in support of conclusions relating to the final decision.

With regard to the letter of 22 October 1964, the applicant expressly indicated that it was not of an official nature and that it was not to be interpreted as an appeal through official channels.

With regard to point (b):

Here too the defendant confuses the retirement decision and the preliminary steps.

The applicant clearly has an interest in contesting a decision terminating his career.

2. *The substance of the case*

The *applicant* makes a general declaration 'that in so far as is necessary, the present application is also directed against:
— the decision setting up the Invalidity Committee, which was notified to him by the Secretary-General's letter of 12 October 1964;
— the decision of the appointment of the Invalidity Committee, notified to the applicant by letters from the Secretary-General dated 26 March 1965 and 12 October 1965;
— the alleged report of the Invalidity Committee dated 5 November 1965'.

The *defendant* indicates from the outset that the applicant does not even contest that his retirement is justified, but merely restricts himself to pointing out alleged defects of form.

First complaint: Infringement of Article 7 of Annex II to the Staff Regulations

The *applicant* states that there is no provision conferring on the President of the Medical Council the power to appoint a doctor, in this instance Dr Stein, to sit on the Invalidity Committee. Moreover, such an appointment cannot compensate for the lack of an appointment by the official concerned. Consequently, the appointment of Dr Roger Welter is also irregular.

Moreover, the steps in question are defective because these two persons were appointed against the applicant's wishes. They were his former private doctors and consequently their entire cooperation in the proceedings of the Committee can only constitute a breach of professional secrecy, a wrongful act governed by Article 458 of the Luxembourg Penal Code, since the derogations provided for by that provision do not cover cases such as the present.

It cannot be complained that the applicant has 'obstructed' anything, since Article 7 of Annex II to the Staff Regulations does not make it encumbent upon an official to cooperate, by appointing a doctor, in proceedings of which he disapproves. If the defendant was faced with a difficulty, it would have been possible to bring the matter before the Court of Justice, the only authority competent to interpret the Staff Regulations.

Moreover it is incorrect to say that the applicant hindered the retirement procedure. In fact, Dr Pierre Stein and Dr Roger Welter did not notify the defendant of their intention to accept the task which the latter wished them to perform: otherwise, it is difficult to explain why on 14 April 1965 the defendant again requested the applicant to appoint a doctor of his choice. Moreover on 10 June 1965 Dr Stein declared that he was relinquishing his duties.

The *defendant* replies that the applicant completely ignores his obstinate refusal to appoint a doctor. Although the Staff Regulations do not expressly provide for the substitution procedure to be followed in such cases, it is nonetheless true that such a procedure is necessary, if the post occupied by an official who may be unfit for work is not to be blocked for an indefinite period.

In this case, the procedure in fact followed took account of the spirit of the provisions of the Staff Regulations; it was perfectly correct:
— First, the interests of the service, the supreme guide for the conduct of the institution, obliged it to fill a post *de facto* vacant as soon as possible.
— Moreover, an official who refuses to appoint a doctor to represent him 'is in the position of someone who considers this additional guarantee of his rights to be useless'. Thus the defendant 'could have ... adopted the first doctor appointed not by the institution, but by the President of the Court of Justice'—an additional guarantee of impartiality—and refrained from appointing the other two. The defendant, however, preferred to follow another procedure and addressed itself to the sole appropriate authorities.

  If on the other hand it is admitted, as the applicant says, that the Invalidity Committee must at all events be composed of *three* members, it follows that the applicant, contrary to what he avers, was *bound* to appoint a doctor.
— After the names of the applicant's pri-

vate doctors had been notified to the President of the Medical Council, it was for the latter 'to decide whether it was appropriate, in the interests of the person concerned, to have recourse to one of the doctors or on the other hand to dispense with them'. The President adopted the first solution, after obtaining Dr Stein's agreement to sit as a member of the Committee.

— 'Neither Dr Stein nor Dr Roger Welter at any time informed Dr Éloi Welter or the President of the Medical Council or the defendant of their intention either to refuse the task entrusted to them, or not to take part in the proceedings of Committee'. In fact they took part in those proceedings even after 10 June 1965, the date of Dr Stein's letter (although there is doubt as to that date) and they came to the same conclusions as Dr Éloi Welter. At no time was Dr Stein's or Dr Roger Welter's duty of professional secrecy breached. 'In fact, Mr Alfieri's private doctors could not produce to the Invalidity Committee any information not already on the file of the person concerned. His extended sick leave had been supported by medical certificates. The Parliament's medical adviser had been able to acquaint himself with the applicant's state of health. The applicant had declared that he had authorized his private doctors to give the medical adviser such information as they thought fit (letter of 30 September 1965)'. The legal duty of the private doctors 'was to put forward the information obtained in the course of their professional activities, not before third parties who were not entitled to know this information, but on a medical committee entrusted with drawing up a report to inform the institution ... on its official's state of health'. Article 458 of the Luxembourg Penal Code provides an express derogation where a law obliges a professional man to divulge confidential information.

The reasons for the letter of 14 April 1965 have been partially set forth. It was in addition to give the applicant a last chance as well as to take account of the objections raised by his lawyer in his letter of 6 April 1965 with regard to the appointment of Dr Stein.

The *applicant* replies, with regard to the implications of his letter of 30 September 1965, addressed to the Head of the Personnel Department of the Parliament, that he had merely authorized 'his private doctors, in order to save the Parliament's medical adviser the journey to Vianden where the applicant was in hospital at the time, to supply the said medical adviser, who was not a member of the Invalidity Committee, with such information as they thought fit "on the basis of their professional ethics"'. This mandate, although subject to many reservations, was thus given to a specified person, for a distinct purpose, outside the proceedings of the Invalidity Committee, and several months after Dr Stein withdrew from his functions as a member of the Invalidity Committee. The applicant had therefore not released his private doctors from their obligation of professional secrecy.

Second complaint: Infringement of the first paragraph of Article 9 of Annex II to the Staff Regulations

The *applicant* states that under this provision an official may submit to the Invalidity Committee any reports or certificates from his regular doctor or from any other medical practitioners whom he may have consulted.

Since two of his regular doctors were appointed to the Committee, the applicant lost this additional guarantee.

'It is in fact superfluous to point out the difference which exists between appointing his regular doctor against the will of the person concerned and the use which the person concerned may make, of his own free will, of certificates issued by his regular doctor, guided purely by his personal interest.

An official who employs the prerogative conferred on him by the first paragraph of Article 9 of Annex II does not incur the obligation to give evidence against himself involved in the duty to supply the Invalidity Committee with the fullest possible information on the state of his health, but has in

view the most legitimate interest of all, that of his defence.'
The *defendant* replies that precisely because two of his regular doctors took part in the work of the Committee the applicant has no grounds for complaint.

Third complaint: Infringement of the second and third paragraphs of Article 9 of Annex II together with Article 13 of Annex VIII to the Staff Regulations

The *applicant* emphasizes that under these provisions the entire Invalidity Committee must participate in the proceedings referred to. In this instance, Dr Pierre Stein and Dr Roger Welter refused from a specific point in time to cooperate in these proceedings. There were therefore no deliberations nor any decision by the said Committee.
The report drawn up by the Committee must be signed by all its members in order for it to be valid; otherwise there is no guarantee that the conclusions arrived at by this report conform to the opinion of the doctors who have not signed.
These formalities must be observed all the more strictly as the institution is not bound to have recourse, with regard to an official in the situation referred to by Article 59 of the Staff Regulations, to the last resort of constituting an Invalidity Committee. Other solutions may be entertained until his cure, such as 'protracted sick leave' (the second subparagraph of Article 7 (2) of the Staff Regulations).
Finally, the applicant was never examined by any of the members of the Committee. 'The visit to the applicant made by the Parliament's medical adviser while on holiday, in a friendly and private capacity, during which the doctor in question, who was moreover not a member of the Invalidity Committee, did not carry out a medical examination, clearly cannot compensate for the lack of an examination by the Committee'.
The *defendant* considers first that 'the unacceptable intimidation' employed by the applicant's counsel towards Dr Stein and Dr Roger Welter 'is to be deplored, but cannot affect the validity of the procedure and report of the Committee'. Secondly, it emerges from the file that these doctors in fact participated in the proceedings of this Committee and that they simply refused to sign the report.
Thirdly in this case it cannot be averred that even in the absence of a report by the Invalidity Committee the retirement is null and void. In fact, 'the refusal of the person concerned to appoint his doctor and his refusal to cooperate in the proceedings of the Committee established beyond doubt, with the other evidence from the file, the incontestable invalidity of the applicant'. Moreover, the Staff Regulations do not even provide for a 'report' by the Invalidity Committee; it was thus even possible for the Committee to communicate its conclusions verbally.
Finally, the Staff Regulations do not lay down that the decision to retire a person must proceed on the basis of an opinion by the Committee.
Article 13 of Annex VIII to the Staff Regulations, governing the right to an invalidity pension, is irrelevant to the present case.

Fourth complaint: Infringement of the first paragraph of Article 13 of Annex VIII to the Staff Regulations

According to the applicant, the Invalidity Committee did not comply with this provision, under the terms of which it must consider whether the invalidity from which the official suffers is capable of 'preventing him from performing the duties corresponding to a post in his career bracket'. In fact, the Committee failed to consider whether or not other posts in the applicant's career bracket should be taken into account.
The *defendant* replies that the findings contained in the Committee's report make it quite clear that the applicant is prevented from performing any duty whatsoever; consequently, the invalidity has been properly established.
Moreover, Article 13 which has been invoked is irrelevant for the reasons set out in connexion with the third complaint.

IV — Procedure

The procedure followed the normal course. After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court (Second Chamber) de-

cided, by an order of 16 June 1966, of its own motion to hear the evidence of Dr Éloi Welter, Dr Pierre Stein and Dr Roger Welter on the following questions:

'Is it correct that the Invalidity Committee, composed of Dr Éloi Welter, Dr Pierre Stein and Dr Roger Welter, met on 22 September 1965 to consider the case of Mr C. Alfieri and that after deliberation the Committee decided that he was suffering from total permanent invalidity preventing him from performing his duties with the European Parliament?'

The said Chamber heard Dr Roger Welter at the hearing on 6 October 1966 and Dr Pierre Stein at the hearing on 9 November 1966.

Dr Éloi Welter was duly summoned to the abovementioned hearings, but excused himself on valid grounds. He submitted a written declaration to the Chamber which was read at the hearing on 9 November 1966, with the consent of the parties.

The parties presented oral argument at the hearing on 9 November 1966.

The Adovate-General delivered his opinion at the hearing on 23 November 1966.

Grounds of judgment

I — Admissibility

1. Although the defendant declares that it relies on the wisdom of the Court with regard to the admissibility of the application or of certain of its heads, it considers that it is inadmissible on two grounds.

(a) With regard to the complaints against the steps prior to the retirement decision, the application was filed after the expiry of the period laid down in Article 91 of both the Staff Regulations of Officials of the ECSC and the Staff Regulations of Officials of the EEC and EAEC (hereinafter referred to as 'the Staff Regulations').

Since the retirement procedure consists of several interdependent steps, this argument would be tantamount to requiring the persons concerned to bring as many actions as the number of acts capable of adversely affecting them contained in the said procedure.

Having regard to the close connexion between the different steps comprising this procedure, it must be accepted that in an action contesting the retirement decision the applicant may contest the legality of earlier steps which are closely linked to it.

It follows that the complaints made by the applicant against the appointment of the members of the Invalidity Committee together with its composition and conduct may be taken into consideration in deciding whether the retirement was valid, this being the main issue involved in the application.

(b) According to the defendant, the application is 'contrary to the principle prohibiting the improper exercise of rights'.

In fact, since the applicant refused to appoint a doctor, in accordance with Article 7

of Annex II to the Staff Regulations, the defendant alleges that it is 'inadmissible to object to the procedure adopted by the authority to arrive, notwithstanding his obstruction, at the finding of his invalidity by the Invalidity Committee'.

The application is essentially directed against the retirement decision, an act adversely affecting the applicant within the meaning of Article 91 of the Staff Regulations and which he has therefore an interest in contesting. Besides, the question whether the applicant's own conduct is such as to weaken the complaints made against the said decision should be considered with the substance of the case.

2. The applicant requests the Court to order the defendant to pay him 100 000 francs for non-material damage and '20 000 francs, subject to increase, for loss of interest and injury resulting from the temporary unavailability of funds and the delay in payment of salary due'.

Since the originating application contains no indication how these amounts have been assessed, on this point it fails to satisfy the requirements of Article 38 (1) (c) of the Rules of Procedure, under the terms of which the application 'shall contain ... a brief statement of the grounds on which the application is based'. Consequently, these conclusions are inadmissible.

It follows from all the foregoing that the present application is admissible, with the exception of the conclusions referred to above at 2.

II — The substance of the case

1. *Question to be raised by the Court of its own motion*

The contested decision is limited to providing that the applicant 'shall be entitled to the invalidity pension' without expressly retiring him. Logically, retirement precedes the grant of an invalidity pension and is provided for in Article 53 of the Staff Regulations.

Furthermore, it alters the position of the person concerned so seriously that the view must be taken, despite the silence of the Regulations, that it is required to be made in writing.

Consequently, the contested decision is irregular in this respect. However, since the defendant's intentions are clear in this case, this irregularity is not of such a nature as to entail the annulment of the said decision.

2. *The applicant's first complaint*

The applicant claims that there is no provision conferring on the President of the

Medical Council the power to appoint a doctor, in this instance Dr Stein, as a member of the Invalidity Committee, and that such an appointment can be no substitute for an appointment by the official concerned. Consequently, both the appointment of Dr Pierre Stein and that of Dr Roger Welter, in which Dr Stein participated, are irregular.

Moreover, the steps in question are also claimed to be irregular because these two persons were appointed against the applicant's wishes. They were his former private doctors and consequently their participation in the proceedings of the Committee could only constitute a breach of professional secrecy.

It follows from the combined provisions of Articles 53 and 78 of the Staff Regulations that retirement can only take place when the Invalidity Committee finds that the person concerned suffers from total permanent invalidity.

Under the terms of Article 7 of Annex II to the Staff Regulations, the Invalidity Committee shall consist of three doctors, the first and second of these being appointed by the President of the Court of Justice and by the person concerned respectively, while the third shall be chosen by agreement between the first two doctors.

By thus empowering the person concerned partially to decide the membership of the Committee while refusing this power to the institution, and rendering the retirement decision dependent on the assent of an independent expert body, and finally by providing in Article 91 for the right of the person concerned to contest such a decision, the Staff Regulations have given the latter very wide guarantees against any possible irregularity on the part of the administration.

However these provisions must not be interpreted as meaning that it is possible for the person concerned to object to the formation of an Invalidity Committee, particularly by refusing to appoint a doctor of his own choice. If it were otherwise, an official unfit for work would be in a position to obstruct the institution in its right and duty to retire him and to fill the post which he occupies.

Moreover it also follows from the fundamental duty of loyalty and cooperation which all officials owe to the authority to which they belong that the abovementioned power to appoint a doctor at the same time constitutes a duty.

Taken together, the foregoing considerations lead to the conclusion that the institution has the power, if necessary, to remedy the failure of the person concerned to appoint a doctor, in order to ensure the setting up and functioning of an Invalidity Committee, provided that any element of an arbitrary nature is avoided and that the official's interests are not unnecessarily harmed.

In the present case, neither the defendant nor the other authorities who have participated in setting up the Invalidity Committee have failed to observe this requirement.

Basically, the decision to entrust the appointment of the second doctor to the President of the Luxembourg Medical Council, an impartial and expert authority, appears reasonable.

Moreover, the fact that the Invalidity Committee included two of the applicant's former private doctors does not render its composition irregular.

On the contrary, it should be pointed out that Article 7 of Annex II to the Staff Regulations empowers the person concerned to appoint a doctor himself, clearly presupposing that the person concerned will choose a person in whom he has confidence, and therefore in the majority of cases that it will actually be one of his private doctors.

It follows from these considerations as a whole that the present complaint must be rejected.

3. *The applicant's second complaint*

The applicant claims that, owing to the appointment of two of his private doctors, he was deprived of the right granted him by Article 9 of Annex II to the Staff Regulations, that is to say, of submitting to the Invalidity Committee any reports or certificates from his regular doctor.

This complaint is unfounded.

In fact, in such cases, it is clear that the person concerned may avail himself of the abovementioned power by requesting the private doctors in question to lodge with the Committee the reports or certificates in question. It is not open to the applicant to make the present complaint.

In fact his attitude was tantamount to prohibiting Dr Pierre Stein and Dr Roger Welter acting in the abovementioned manner and manifested his intention not to cooperate in any way in the work of the Invalidity Committee.

4. *The applicant's third complaint*

(a) The applicant sees another irregularity in the fact that there was no deliberation or decision by the Invalidity Committee, since Dr Pierre Stein and Dr Roger Welter refused from a specific point in time to participate in the proceedings of this Committee and did not sign the final report submitted to the defendant institution.

Under the terms of the second paragraph of Article 9 of Annex II to the Staff Regulations, the 'Committee's' conclusions shall be communicated to the appointing authority.

Furthermore, as was stated in connexion with the first complaint, the applicant's retirement can only take place if the 'Invalidity Committee', which must be composed of three members, has found that the person concerned suffers from total permanent invalidity.

It is clear from these considerations as a whole that the retirement is dependent on the assenting opinion of at least the majority of the members of the Committee.

This condition was not complied with in the present case.

First of all, when Dr Roger Welter was giving evidence to the Court, he declared in particular that 'the Committee met and discussed the matter', but 'it is not correct that it arrived at any conclusion on [the degree of the applicant's invalidity]'.

Secondly, Dr Pierre Stein, who also gave evidence, stated in particular that 'we did not even sit as a Committee' and that 'the Committee therefore made no finding'.

Finally, in the written statement which he sent to the Court, Dr Éloi Welter admitted that 'the conclusions with regard to total permanent invalidity, which, in my opinion, emerged from our meeting on 22 September 1965, are only binding on their signatory', that is to say, on himself.

It is clear from these considerations that the contested decision is irregular since a procedural requirement of the Staff Regulations has not been satisfied.

However, by refusing to appoint the second doctor and by categorically objecting to Dr Pierre Stein and Dr Roger Welter taking part in the work of the Invalidity Committee, an objection which amounts to rejecting those two doctors, the applicant has himself brought about the irregularity of which he complains.

It is thus scarcely open to him to complain of the way in which the other members of the Committee, particularly Dr Éloi Welter, have thought fit to perform their duties as members of the said Committee.

In these circumstances, he may not complain either that the contested decision was based simply on the letter addressed by Dr Éloi Welter, a duly appointed member of the Invalidity Committee, to the appointing authority stating that the applicant's medical file made it possible by itself to establish the total invalidity of the applicant.

The position might be different if it had to be presumed that this irregularity distorted the outcome of the invalidity procedure.

In this connexion the following facts and circumstances must be taken into account:

First, the applicant has not stated, even as an alternative conclusion, that the factual conditions for his retirement were lacking.

He has not performed his duties since August 1964 owing to his state of health.

Secondly, in his letter of 13 October 1964, addressed to the Secretary-General of the defendant institution, he refused to appoint a doctor as a member of the Invalidity Committee, in particular on the ground that 'this would expose me to a professional opinion which might result in my being retired'.

Thirdly, he was retired on grounds of health by the Italian Parliament, after appearing before the committee set up by it for this purpose and apparently without protesting against the said retirement.

Finally, certain undisputed facts relating to the applicant's state of health must be taken into account, particularly the duration of his absences.

In all these circumstances, nothing gives grounds for presuming that the irregularity which the applicant himself brought about materially distorted the outcome of the invalidity procedure.

It follows from the foregoing considerations as a whole that the present complaint must be rejected.

(b) Under the same complaint, the applicant further claims that the Invalidity Committee failed to examine him.

This complaint must emphatically be rejected owing to the fact that the applicant refused to appear before the Committee, although the doctor in charge of the sanitorium in Vianden found that the applicant's physical condition made it possible for him to travel from Vianden to Luxembourg.

Moreover, no provision lays down that the Invalidity Committee must carry out such an examination and there may be cases where it is possible to deduce the invalidity of the person concerned by simply reading the medical file.

5. *The applicant's fourth complaint*

According to the applicant, the Invalidity Committee failed to comply with the

provisions of the first paragraph of Article 13 of Annex VIII to the Staff Regulations, under the terms of which it was required to consider whether the invalidity from which the official suffered was capable of 'preventing him from performing the duties corresponding to a post in his career bracket'; it follows from this that the Committee should have considered whether other posts in the applicant's career bracket should be taken into account.

First, the abovementioned provision is intended to govern the amount of the invalidity pension and therefore cannot have been infringed by the Invalidity Committee.

Moreover, it follows from the considerations in connexion with the third complaint, at (a), that this complaint is pointless. It must therefore be rejected.

It follows from the foregoing as a whole that the present application must be dismissed.

III — Costs

The applicant has failed in his application.

Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Under Article 70 of the said Rules, in proceedings commenced 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 evidence of the witnesses;
Upon hearing the opinion of the Advocate-General;
Having regard to the respective Protocols on the Statute of the Court of Justice annexed to the Treaties establishing the ECSC, the EEC and the EAEC;
Having regard to the Staff Regulations of Officials of the ECSC, together with the Staff Regulations of Officials of the EEC and EAEC, especially Articles 53, 78 and 91, Articles 7 to 9 of Annex II and Article 13 of Annex VIII;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 38 (1) (c), 69 and 70;

THE COURT (Second Chamber)

hereby:

1. **Dismisses Application 3/66 as unfounded, with the exception of the conclusions for the award of compensation which are dismissed as inadmissible.**

2. The applicant is ordered to pay the costs of the proceedings, with the exception of those incurred by the defendant.

Monaco Donner Strauß

Delivered in open court in Luxembourg on 14 December 1966.

A. Van Houtte R. Monaco

Registrar President of the Second Chamber

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 23 NOVEMBER 1966[1]

Mr President,
Members of the Court,

By a decision of 13 November 1965 of the President of the European Parliament, Cesare Alfieri, an official of that institution, was granted the invalidity pension referred to in Article 78 of the Staff Regulations, with effect from 1 December 1965. He requests you to annul the said decision and also contests, in so far as is necessary, the decisions concerning the setting up and composition of the Committee which decided his case together with the report of that Committee.

The facts in which the contested step occurred are sufficiently well-known to you through the report of the hearing and the statements of the witnesses for me to be able to refrain from repeating them at this point.

Instead I wish in the first place to dismiss two objections of inadmissibility which the defendant has raised against the application, while ultimately relying on the wisdom of the Court in the matter.

First Mr Alfieri does not base his application on a defect in the retirement decision itself, but rather on the alleged illegality of the steps which preceded it. This point had already emerged at the outset of the proceedings, by which time the applicant had already made a complaint through official channels to the President of the European Parliament on 22 October 1964. However, since this letter was of a private and personal nature, it seems impossible to consider it as a complaint within the meaning of Article 90 of the Staff Regulations. Furthermore, your case-law is firmly established to the effect that the applicant may always rely on defects vitiating the preliminary procedure in respect of a decision which ultimately affects him adversely (that is, the retirement decision).

Secondly the European Parliament maintains that Mr Alfieri wished to take advantage of apparent lacunae in the Staff Regulations to obstruct his retirement which was made necessary by his state of health. For example, he refused to appoint a doctor to represent him on the Invalidity Committee, which was not only his right but his duty. It is alleged that this obstruction prevents him from relying on Article 91 of the Staff Regulations and that his application is improper. To which one might reply that if, as in the present case, there is a dispute between an institution and one of its servants concerning the legality of an act adversely affecting the latter, under Article 91 it is your duty to give a ruling on the dispute. The legality of the position adopted by the applicant—which I shall come to examine in connexion with the complaints which he raises—comes within the substance of the case and does not concern its admissibility. What are the provisions of the Staff Regulations and of the Annexes thereto which govern the matter? According to Article 59,

1 — Translated from the French.