JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
26 September 1990 *

In Case T-122/89,

Mr F., a former official of the Commission of the European Communities, of Ajaccio, represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by Hendrik van Lier, a member of its Legal Department, acting as Agent, assisted by Claude Verbraeken, of the Brussels Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, Wagner Centre, Kirchberg,

defendant,

supported by

Société Royale belge, whose registered office is in Watermael-Boitsfort (1170 Brussels), represented by François van der Mensbrugghe, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Albert Wildgen, 23 rue Aldringen,

intervener,

APPLICATION for the annulment of the Commission's decision of 15 July 1988 defining the applicant's degree of permanent invalidity resulting from his occupation as 50%,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Third Chamber)

composed of: A. Saggio, President, B. Vesterdorf and K. Lenaerts, Judges,

Registrar: B. Pastor, Administrator,

having regard to the written procedure and further to the hearing on 4 July 1990,

gives the following

Judgment

Facts and procedure

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 November 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 . . . ';

(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 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, by an application lodged at the Registry of the Court of Justice on 5 July 1989 — within three months of the rejection of the complaint by express decision, in accordance with the abovementioned provision of the Staff Regulations, *in fine* — the applicant requested the annulment of the decision of 15 July 1988.

6 The written procedure took place entirely before the Court of Justice. The Court of Justice referred this case to the Court of First Instance by an order of 15 November 1989, pursuant to Article 3(1) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities. By an order of 23 January 1990, the Court of First Instance granted the Société Royale belge leave to intervene in support of the conclusions of the Commission in so far as they concern the application of Article 73 of the Staff Regulations. Upon hearing the Report of the Judge-Rapporteur, the Court of First Instance decided to open the oral procedure without any preparatory inquiry. At the hearing the applicant produced, at the request of the Court of First Instance, the complaint submitted by the letter of 26 June 1985 to the Director-General for Personnel and Administration against the decision of 11 June 1985, cited above, and the letter sent on 21 January 1986 to the applicant by the competent head of division.

Conclusions of the parties

7 The applicant claims that the Court of First Instance should:

(i) declare the present application admissible and well founded;

(ii) 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%;

(iii) 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;

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

The defendant contends that the Court of First Instance should:

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

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

Infringement of Article 73 of the Staff Regulations

8 With regard to defining the degree of invalidity resulting from his occupation for the purposes of Article 73 of the Staff Regulations, the applicant challenges the reasons on which the contested decision was based. Contrary to what the Commission contends, he considers that by expressing the view it did regarding the cause of the degree of invalidity of 18% at issue, the Medical Committee did not exceed its powers and in particular did not encroach upon the administration's exclusive competence to assess the legal conclusions to be drawn from findings of a medical nature. The applicant relies mainly on the Medical Committee's report, which, as he stressed at the hearing, established that the degree of invalidity of 18% relating to his conduct on 6 October 1982 must, in fact, be attributed to the pre-existing aggravation of his state of health due to his occupation since his entry into the service of the Commission, and to 'the succession of occupational

vicissitudes' mentioned in the expert's reports. In that regard, he claims that the attribution of the 18% in question to a condition resulting from his occupation which existed prior to the incident of 6 October 1982 is an assessment of a purely medical nature. Accordingly, the present proceedings can be distinguished from the *Rienzi* case, cited above, in which the conduct of the official in question which led to the disciplinary measures that caused his condition was not — unlike the situation of the applicant in the present case — linked to a pre-existing complaint resulting from his occupation. The applicant concludes from the above that, within the context of the present case, it is the administration which exceeded the limits on its decision-making power by deliberately and unjustifiably departing from the conclusions of the Medical Committee, whereas it was under a duty to draw 'the necessary direct, immediate and incontrovertible legal conclusions' from the medical opinion which had been delivered unanimously after a proper and thorough investigation.

9 The defendant considers, on the other hand, that the question whether or not the conduct infringing the Staff Regulations which took place on 6 October 1982 was caused by a psychopathic condition resulting from the applicant's occupation is entirely immaterial in the context of an invalidity procedure. It states in that regard that the Medical Committee found that the applicant was responsible for his actions at the time of the incident which took place on 6 October 1982, as was pointed out by the Commission's decision of 6 May 1985 removing the applicant from his post as a disciplinary measure.

In support of its argument the Commission cites the judgment in *Rienzi*, in which the Court held — without drawing a distinction according to whether or not the conduct in breach of the Staff Regulations at issue resulted from a pre-existing occupational disease — that only an occupational disease caused by 'the lawful performance of . . . duties' can justify the application of Articles 73 and 78(2) of the Staff Regulations (paragraph 10). According to the defendant it would be 'contrary to the concept of occupational disease to include within that concept diseases resulting from factors which are wholly unconnected with the official's occupation or inconsistent with the basic obligations imposed upon an official by his occupation'. The defendant deduces from the above that by concluding that compensation is payable pursuant to Article 73 of the Staff Regulations in respect of the 18% permanent invalidity attributable to the incident which took place on 6 October 1982, the Medical Committee exceeded its powers. The Commission maintains that it is established case-law that 'since the question whether the aforesaid incident and its effects on the applicant's health constitute a risk inherent in the performance of his duties insured under Article 73 or whether, on the

contrary, they constitute a risk arising from the applicant's infringement of his obligations under the Staff Regulations "is a matter of law, it was for the appointing authority to answer it" (judgment in *Rienzi*, paragraph 20)'. The Commission did not therefore exceed its powers by departing in the contested decision from the Medical Committee's conclusions with regard to the 18% invalidity attributable to the incident which took place on 6 October 1982.

10 The intervener supports all the Commission's observations. It emphasizes in particular that the Medical Committee has entered legal territory by deciding that the 18% permanent invalidity attributable to the events of 6 October 1982 resulted from the official's occupation on the ground that it did not seem 'fair' to the Committee to exclude the 18% from the compensation awarded to the applicant.

11 Consequently, it is necessary to determine the real scope of the Medical Committee's report, upon which the parties are not agreed.

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.

Infringement of Article 78

18 The applicant also objects that the Commission did not take into account Article 78 of the Staff Regulations in the contested decision. He claims that by bringing an action on 6 December 1985 against the decision of 6 May 1985 to remove him from his post which had given rise to the above — mentioned decision to bring to an end the procedure under Article 78 of the Staff Regulations, he implicitly contested the abandonment of the procedure under Article 78 because — he maintains — the annulment of his removal from his post 'would automatically mean that the procedure commenced under Article 78 of the Staff Regulations would have to be completed'. The applicant also reserved his rights with regard to the application of Article 78, as he maintained at the hearing, by sending to the competent authorities, on a number of occasions, letters complaining of the abandonment of the procedure under Article 78.

19 With regard to the substance, the applicant considers that the conditions for the application of Article 78 must be evaluated at the time the request is submitted. As, at the material time, he was still an official of the Commission, those conditions were met in his case. Accordingly, in the applicant's view, once it had been partially recognized that his invalidity resulted from his occupation, Article 78 ought to have been applied in his favour.

20 However, the Commission maintains that the second submission is inadmissible and unfounded. It points out firstly that the rejection, on 11 June 1985, of the applicant's request to have Article 78 of the Staff Regulations applied in his favour became definitive as the applicant failed to submit a complaint and bring an action within the time allowed. It points out in that regard that it is only in the event of a successful outcome, that is to say if the removal from the post was annulled, that the action brought by the applicant against the decision to remove him from his post could have made it superfluous to pursue a separate action against the decision of 11 June 1985.

21 As regards the substance, the Commission contends that the applicant does not fulfil the conditions laid down in Article 78 for entitlement to the invalidity pension, in particular the condition that the applicant's invalidity must prevent him from performing his duties. It points out that Mr F."s invalidity did not prevent him from performing his duties because those duties had already ceased pursuant to the decision removing him from his post. By depriving him of his status as an official the abovementioned decision prevented him from still being entitled to an invalidity pension, for which only officials qualify. In that regard, the Commission rejects the applicant's argument relating to the time at which the conditions for the application of Article 78 must be met, pointing out that under Article 14 of Annex VIII of the Staff Regulations, relating to the detailed rules for the grant of an invalidity pension, the right to receive payment of an invalidity pension has effect from the first day of the calendar month following recognition of the official's permanent incapacity to perform his duties. It follows, according to the Commission, that in the absence of such a decision recognizing the applicant's permanent incapacity at the time the applicant was removed from his post, that removal rendered the application submitted by the applicant pursuant to Article 78 of the Staff Regulations devoid of purpose.

22 The Court of First Instance 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* 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 claim for damages

25 The applicant also makes a claim for damages.

(a) He considers, first of all, that the defendant committed a wrongful act first by defining at the start of the invalidity procedure — more precisely in the draft definitive decision notified to the applicant by letter dated 28 July 1987 — his degree of permanent incapacity as 60%, whereas the medical opinion gave

that as a provisional figure, subject to a new examination of the applicant within two years.

(b) The applicant considers, moreover, that the Commission incurred liability by adopting the contested decision in so far as that decision does not take account of the 18% invalidity resulting from the incident of 6 October 1982.

(c) The Commission also committed a wrongful act in so far as the contested decision does not take into account the applicant's request under Article 78.

(d) Finally, the defendant institution committed a serious wrongful act by adopting the decision to remove the applicant from his post on 6 May 1985, while he was on sick leave, without waiting for the medical opinion on his responsibility for his actions. He considers, in that regard, that 'the claim for damages contained in the present application is independent of the dismissal of the application for the annulment of the second decision to remove him from his post'.

26 The applicant maintains that those wrongful acts — and in particular 'the anguish inherent in a procedure lasting many years (from 1982 to the present) and in numerous medical reports and examinations' — have caused him considerable damage by causing his state of health to deteriorate even further and by having a considerable effect on his chances of resuming work; he is at present unemployed, despite having made numerous job applications, and is in a very precarious financial situation. Accordingly, he considers that fair compensation for the damage he has suffered would be a sum equivalent to 24 months' salary of an official in Grade A 5/6, which was the grade he was in at the time he left the Commission.

27 The defendant contends that the applicant has not adduced proof of the wrongful acts he alleges it committed. It states, first of all, that the draft decision notified to the applicant by letter dated 28 July 1987 merely followed the expert medical report of Professor De Buck. With regard to the two submissions relating to the contested decision, the defendant referred to the arguments it put forward against the application for annulment. With regard to the fourth wrongful act of which it is accused by the applicant, the defendant observes that 'in a claim for damages the

applicant cannot call into question the earlier procedure for removal from a post when the Court has already dismissed his application for a declaration that that procedure was irregular'; it points out that the inadmissibility of an action for annulment entails the inadmissibility of a claim for damages (see, in particular, the judgment in Case 346/87 *Bossi* v *Commission* [1989] ECR 303).

28 Furthermore, the defendant denies the existence of a causal link between the damage allegedly suffered by the applicant and the decision adopted. According to the Commission, 'that damage is due, at most, to the decision to remove the applicant from his post'. In the Commission's view it follows that, since the Court of Justice dismissed the action for annulment brought by the applicant against that decision, the claim for damages must also be dismissed.

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.

31 Article 20 of the applicable rules provides that the degree of invalidity is defined after the official's injuries have consolidated. According to the second paragraph of Article 20, 'where it is impossible to define the degree of invalidity after medical treatment is terminated, (the medical opinion) must specify a deadline for reviewing the official's case'. In application of those principles, the expert consulted by the Commission pursuant to the rules, Professor de Buck, concluded that 'as Mr F."s present degree of invalidity has been estimated at 80%, I believe that his permanent invalidity can, for the present, be defined as 60% and that he should be re-examined within two years, to obtain a final definition of his degree of permanent invalidity'. The degree of invalidity in question was broken down by the expert as follows:

' (i) percentage relating to his state of health prior to his entry into the service of the Communities 12%

(ii) percentage relating to the assault of 2 September 1978 0%

(iii) percentage relating to the incident on 6 October 1982 which gave rise to the removal of the applicant from his post 18%

(iv) percentage resulting from his occupation 30%'.

32 Accordingly, the appointing authority was required, pursuant to the third paragraph of Article 20 of the Rules, to grant a provisional allowance corresponding to the undisputed proportion of the permanent invalidity rate. That allowance had to be set off against the final benefit.

33 The Court of First Instance points out in this regard that the Commission's draft decision, notified to the applicant pursuant to Article 21 of the Rules, conforms to 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 proven 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 proven, 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*, cited above). It follows that the claim for damages based on the circumstances in which the disciplinary procedure took place is inadmissible.

Costs

37 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which are applicable *mutatis mutandis* pursuant to the third paragraph of Article 11 of the Council Decision of 24 October 1988, cited above, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the applicant has succeeded in the main part of his claim, the defendant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

(1) Annuls the Commission's decision of 15 July 1988 in so far as it defines the degree of permanent invalidity as 50%;

(2) Dismisses the claim for damages;

(3) Orders the Commission to pay the costs, except for the costs of the intervener, which must be borne by the intervener.

Saggio Vesterdorf Lenaerts

Delivered in open court in Luxembourg on 26 September 1990.

H. Jung
Registrar

A. Saggio
President of Third Chamber