OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 19 March 1987 *

Mr President,
Members of the Court,

1. Mr J. J. Geist, an engineer specializing in the nuclear field, entered the employment of the Commission on 1 April 1962. In 1976 he stopped work on his own initiative and at his request he was retired with effect from 1 August 1984.

2. In his application he seeks the annulment of two decisions of the Commission, acting as appointing authority:

the decision of 27 July 1984 granting him an invalidity pension on the basis of the third paragraph of Article 78 of the Staff Regulations, whereas in his view the decision ought to have been taken pursuant to the second paragraph of Article 78;

the decision of 10 August 1984 fixing 1 June 1983 as the date on which the applicant's right to remuneration was restored in accordance with the opinion of the Invalidity Committee, whereas in his view the medical documents relating to the period from 1 February to 31 May 1983 had not been submitted to the committee for consideration.

3. Mr Geist also claims that the Invalidity Committee was not properly constituted. I shall consider that issue first of all.

I — The composition of the Invalidity Committee

4. I do not think that this claim is admissible. The Commission has rightly pointed out that it is based on a legal ground which bears no relation to those on which the complaint was based. The case-law on the connection which must exist between the substance of a complaint within the meaning of Article 91 of the Staff Regulations and that of an action before the Court has recently been confirmed and clarified in the judgment in *Rihoux and Others* v *Commission.*[1] According to that judgment, an applicant 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. The submissions and arguments made to the Court in support of those heads of claim need not necessarily appear in the complaint, but must be closely linked to it'.

5. Mr Geist's conclusions in his application have not altered the object of his complaint, but the claim based on the alleged unlawful composition of the Invalidity Committee constitutes a new head of claim which was not contained in the complaint.

* Translated from the French.

1 — Judgment of 7 May 1986 in Case 52/85 ECR 1555. See, in particular, the cases cited in paragraphs 12 and 13.

II — The decision of 27 July 1984

6. Pursuant to Article 78, an official suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket is entitled to an invalidity pension (first paragraph) equal to the retirement pension to which he would have been entitled at the age of 65 years if he had remained in the service until that age (third paragraph).

7. Mr Geist was retired with an invalidity pension calculated under the third paragraph of Article 78. Because of his seniority the pension is 70% of his last basic salary. That is the maximum rate under the Staff Regulations whether it be for a simple retirement pension or an invalidity pension granted on grounds of occupational disease.

8. Can the applicant, therefore, (the question was raised at the hearing) be regarded as having an interest in bringing proceedings under that head? He argues that he has, because a finding by the Invalidity Committee that his invalidity was caused by occupational disease would entitle him, on completion of the procedure for that purpose (which has not yet been initiated at the time of the hearing), to payment of the capital sum provided for in Article 73 (2) (b) of the Staff Regulations. That procedure, laid down in Article 16 *et seq.* of the Rules on the Insurance of Officials of the European Communities against the risk of accident and of occupational disease, adopted in application of Article 73 of the Staff Regulations (hereinafter referred to as 'the Rules'), is, he says, essentially a formality.

9. That argument, based on a notion of procedural economy, reflects a mistaken view of the relationship between Articles 73 and 78. Although both articles are concerned with 'occupational disease', the first is intended to cover a risk arising from the performance of an official's duties and to provide benefits and allowances in the event of injury suffered in the course of those duties. The second concerns only a finding of incapacity for work and a right to a pension. The existence of an occupational disease is relevant only for the purposes of entitlement to a higher rate of pension where a pension is in any event payable. Whereas occupational disease is merely one factor governing the application of Article 78, it is the essential basis of Article 73.

10. That is what the Court held in the case of *B.* v *Parliament*:[2]

'A comparison between Article 73 (compensation for occupational disease) and Article 78 (invalidity pension) indicates that the benefits provided by these two provisions are different and mutually independent, although a person may receive both of them.'

Referring to Article 25 of the Rules, pursuant to which 'recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and to those Rules shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa', the Court concluded

2 — Judgment of 15 January 1981 in Case 731/79 [1981] ECR 107, in particular paragraph 9.

'that there are two different procedures which may give rise to separate decisions independent of each other'.

11. Although it cannot be ruled out that the opinion of an Invalidity Committee (Article 78) may have a certain influence on that of a Medical Committee (Article 73) or vice versa, such an influence cannot be assumed or have any legal effect whatever, in view of the independence in law of the two procedures. It is thus for the applicant, relying on his alleged material and non-material interest, to initiate the Article 73 procedure. To seek, on the basis of Article 78, satisfaction of a right which can be pursued only under another article would lead to confusion and not economy of procedure.

12. I therefore think that Mr Geist has no legal interest in bringing proceedings with regard to the decision relating to his retirement. That question was the subject of argument at the hearing. In my view the lack of interest in bringing proceedings constitutes an absolute bar to proceeding with a case which may be considered by the Court at any time of its own motion pursuant to Article 92 (2) of the Rules of Procedure.

13. Alternatively, should the Court hold that Mr Geist has an interest in bringing proceedings I shall consider the question whether the Invalidity Committee ought or could have determined whether or not the illness or illnesses which it considered to give rise to invalidity were occupational in origin. In that respect the respective powers of the Invalidity Committee and the appointing authority should be borne in mind.

14. As in my Opinion delivered in Case 214/85 *Gherardi Dandolo* v *Commission*,[3] I refer to the judgment in the *Rienzi* case[4] for the proposition that although the Invalidity Committee has the sole power to determine the existence, level and consequences of invalidity in order to decide whether there is a connection between it and an accident or illness, it cannot determine whether such an accident or illness is occupational in origin since that is a matter exclusively for the appointing authority.

15. According to the judgment in *K.* v *Council* 'the administration need not, in the course of the procedure for retirement on the ground of invalidity cause to be examined and determine as a matter of course the cause of the invalidity' and 'it is for the official to request the benefit of the second paragraph of Article 78 of the Staff Regulations'.[5]

16. Mr Geist admits that he did not in the beginning make any express application of that kind, and in view of the aforementioned case-law he cannot rely on the administration's duty to afford assistance in order to oblige it systematically to seek additional explanations to cover any lacunae in requests made to it.

17. Mr Geist attempts to draw support from the aforementioned judgment with regard to the effect of his complaint submitted on 20 November 1984. Like him, Mr K. had submitted a complaint seeking to have his pension fixed pursuant to the second paragraph of Article 78 of the Staff Regulations. The Court criticized the rejection of the complaint by the Council, holding that it should have determined the cause of the

3 — Judgment of 20 May 1987; in Case 214/85 [1987] ECR 2163.

4 — Judgment of 21 January 1987 in Case 76/84 *Rienzi* v *Commission* ECR 315.

5 — Judgment of 12 January 1983 in Case 257/81 [1983] ECR 1, at paragraph 12.

invalidity 'and, if appropriate, should have accorded him the pension *rate* which he was seeking'.[6]

18. It is true that the applicant requested in his complaint that the Invalidity Committee should meet again in order to determine whether the invalidity from which he was suffering was 'due to an occupational disease or other cause the nature of which should be specified' and made express reference to the application of the second paragraph of Article 78. Nevertheless, contrary to the situation cited, the object of that request could not be to obtain a *maximum rate* of pension since that had already been granted by the appointing authority. We thus come back to the question of a lack of any legal interest in bringing an action. I therefore conclude, in the alternative, that Mr Geist's claim for the annulment of the decision of 27 July 1984 is unfounded.

19. That conclusion is not affected by the circumstances in which an employee of the defendant, Mr Pincherle, was allowed to make representations to the Invalidity Committee. That was a regrettable course of action, incompatible with observance of the balance of rights between the parties reflected in the composition of the Invalidity Committee. The Court had of course held that a committee composed of doctors may consult 'by common agreement other doctors if it considers it is necessary to do so, since the nature of the injuries to be assessed may require the opinion of a specialist'. That case-law does not apply, however, where it is a question of obtaining non-medical opinions. Since in this case the information sought was of a legal nature and was, moreover, requested from an agent of the appointing authority, the applicant should at the very least have been invited to attend the hearing, if necessary represented by his counsel. However, that objection can have no practical effect since the applicant's rights under Article 78 were not adversely affected.

III — The decision of 10 August 1984

20. This decision was taken in accordance with the opinion of the Invalidity Committee which found that the certificates submitted after the previous Invalidity Committee had met on 31 January 1983 were valid[7] and that they established 'Mr Geist's incapacity for work from 1 June 1983 until the present', that is to say until 19 July 1984.

21. It must be remembered that as

(i) the second and third paragraphs of Article 59 (1) of the Staff Regulations required, and

(ii) and Article 9 of Annex II to the Staff Regulations permitted,

it was for the applicant to submit *medical certificates* to the appointing authority and the Invalidity Committee concerning his absence for the relevant period. Mr Geist does not claim that he did so. Nor has he produced copies of medical certificates sent

6 — Judgment cited above in Case 257/81 *K.* v *Council* at paragraph 15; my emphasis.

7 — Judgment of 29 November 1984 in Case 265/83 *Suss* v *Commission* [1984] ECR 4029, at paragraph 12.

by him to the appointing authority in respect of his absence during the relevant period.

22. Finally, he claims that the date, 1 June 1983, from which his salary was reinstated did not correspond to any medical certificate. That is not true, for the certificate issued on 7 June 1983 by Dr Olmechette certifies that Mr Geist was unable to work 'from 1 June 1983 to 31 August 1983'.

23. Accordingly, the decision of 10 August 1984 does not appear to be improper in any way.

24. I therefore propose that the action should be dismissed; with regard to costs, the combined provisions of Articles 69 (2) and 70 of the Rules of Procedure should be applied.