matter of course, the cause of the invalidity.

Consequently, the administration cannot be criticized for determining the retirement pension of an official in accordance with the third paragraph of Article 78 of the Staff Regulations, where the official in question did not request a declaration that his invalidity had been caused by an occupational disease within the meaning of the second paragraph of that article.

In Case 257/81

K., a former Principal Administrator at the Council of the European Communities, resident in Rixensart, Belgium, represented by Georges Vandersanden of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Janine Biver,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by R. O. Dalcq of the Brussels Bar, with an address for service in Luxembourg at the office of Douglas Fontein, Director of Legal Affairs at the European Investment Bank,

defendant,

APPLICATION for the annulment of the decision of the Secretary General of the Council, dated 13 July 1981, refusing the applicant the benefit of the second paragraph of Article 78 of the Staff Regulations of Officials of the European Communities,

THE COURT (Third Chamber)

composed of U. Everling, President of Chamber, P. Pescatore and Y. Galmot, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

By a decision dated 8 November 1973, K., the applicant, was appointed to Grade A 5 as a Principal Administrator at the Council of the European Communities, with effect from 1 November 1973.

Because of a deterioration in the state of his health from 1977 onwards he underwent medical treatment of various types including neurological treatment, as well as a number of operations.

On 17 January 1980, when K. had had 393½ days sick leave between 10 January 1977 and 11 January 1980, the Council decided to apply the provisions of Article 59 of the Staff Regulations, the fourth subparagraph of paragraph (1) of which states:

"The appointing authority may refer to the Invalidity Committee the case of any official whose sick leave totals more than twelve months in any period of three years."

The Invalidity Committee, subsequently empanelled, decided on 24 October 1980, after examining his medical file and after a specialized neurological examination, that he was suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket.

On 28 November 1980 the Secretary General of the Council therefore decided to retire him with effect from 1 December 1980 and recognized his right to an invalidity pension under Article 53 of the Staff Regulations and Articles 13 and 14 of Annex VIII thereto. This decision was communicated to the applicant on the same day.

On 10 February 1981 K. submitted a complaint under Article 90 (2) of the Staff Regulations against the decision dated 28 November 1980, claiming that his pension should be fixed at 70% of his basic salary in accordance with the second paragraph of Article 78 of the Staff Regulations because the problems which had led to the recognition of his invalidity had arisen in connection with the performance of his duties. That provision states as follows:

"Where the invalidity arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity pension shall be 70% of the basic salary of the official."

On 13 July 1981 the Secretary General of the Council rejected the applicant's complaint on the ground that the Invalidity Committee had not declared that his total permanent invalidity had arisen from an occupational disease and therefore the amount of his invalidity pension had been fixed in accordance with the third paragraph of Article 78 of the Staff Regulations. That provision states that where the invalidity is due to some cause other than those specified in the second paragraph of Article 78 "the invalidity pension shall be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age".

By an application registered at the Court on 21 September 1981, K. instituted the present proceedings against that rejection, which was notified to him on 13 July 1981.

In the light of these proceedings and in the hope of discovering a solution quickly without having to wait for the outcome thereof, the Council referred the case back to the Invalidity Committee to resolve certain matters of a medical nature which were unclear. In two successive reports, dated 21 December 1981 and 25 January 1982, the Committee stated that in its opinion there was on the one hand a causal relationship between the work (or the working conditions) of the applicant and the deterioration in his state of health, but that on the other hand his invalidity did not arise from an occupational disease.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court (Third Chamber) decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *applicant* claims that the Court should:

1. Declare the application admissible;
2. Annul the decision of the Secretary General of the Council dated 13 July 1980 refusing the applicant the benefit of the second paragraph of Article 78 of the Staff Regulations of Officials of the European Communities;
3. Order the defendant to pay the costs.

The *Council* contends that the Court should:

1. Declare the application inadmissible and, in any event, unfounded;
2. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

1. Admissibility

The *Council*, while recognizing that all procedural time-limits have been adhered to, contends that the applicant has no right to bring an action since he failed to follow the proper procedure for establishing the existence of an occupational disease.

Under the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease the official "must submit a statement to the administration of the institution to which he belongs within a reasonable period following the onset of the disease or the date on which it was diagnosed for the first time", even where "the symptoms of the disease allegedly caused by his occupation become apparent after the termination of his service". The administration must hold an inquiry in the course of which it may obtain the opinion of one or more

doctors (Article 17). On the basis thereof the appointing authority is to prepare a draft decision and notify it and the findings of the doctor or doctors consulted to the person concerned. Within a period of 60 days the person concerned may request that an *ad hoc* medical committee deliver its opinion (Article 21). In the present case, as the applicant has not followed this procedure, he cannot claim to have an "occupational disease".

The Council states that the rules governing occupational diseases and those relating to invalidity pensions differ both as regards requirements and consequences. Under the former rules the official is entitled to a lump-sum allowance if his illness amounts to an "occupational disease" and leads to permanent incapacity, whether it be partial or total. On the other hand, under the latter rules the official is suspended and receives an invalidity pension if the illness, whether occupational or not, leads to total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket. Furthermore, while under the rules governing invalidity pensions the institution automatically declares the official unable to perform his duties, under the rules governing occupational diseases it is for the official himself to give notice of the occupational nature of his illness. Consequently, the second paragraph of Article 78 of the Staff Regulations presumes the prior recognition of an occupational disease at the request of the official, which may be achieved only by means of the procedure laid down in the rules previously cited, that is to say by recourse to an *ad hoc* medical committee different from the Invalidity Committee.

The *applicant* in his reply disagrees with the Council's view that he did not follow the correct procedure for establishing the existence of an occupational disease.

The procedure for obtaining the allowance payable in respect of an occupational disease under Article 73 of the Staff Regulations and the procedure for obtaining an invalidity pension, in particular in respect of an occupational disease, under Article 78 of the Staff Regulations are distinct and independent, as the Court stated in its judgment of 15 January 1981 (Case 731/79, *B.* v *European Parliament* [1981] ECR 107). The rules for obtaining an invalidity pension for an occupational disease under the second paragraph of Article 78 should not be subjected to the procedural rules for obtaining an allowance for an occupational disease under Article 73.

2. Substance

According to the *applicant,* two questions should be examined in turn: first, whether the mental problems producing his total permanent invalidity could amount to an occupational disease in a legal sense, and secondly, if the answer to the first question is in the affirmative, whether there was a sufficient causal relationship in law between his mental problems and the harassment suffered in the performance of his duties at the Council. The replies to both questions should be in the affirmative.

As regards the first question, Article 3 of the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease is based on a mixed system of recognition of occupational diseases, that is to say that it considers to be occupational diseases not only diseases contained in the European List of Occupational Diseases but also any disease or aggravation of a pre-existing disease "if it is sufficiently established that such disease or aggravation arose in the course of or in connection with the performance by the official of his duties with the Communities". The latter category includes illness of a mental nature.

As regards the second question, there are good reasons for recognizing that the applicant's nervous troubles arose in the course of his employment at the Council and that therefore they should be regarded as an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations. In that connection the applicant alleges that he was the victim over a number of years of various acts of vexatious interference on the part of the administration, including a threat to transfer him to the Official Publications Office in Luxembourg and to write an unfavourable staff report about him. Those events gradually affected his mental equilibrium. It is apparent, *inter alia,* from the report of the Invalidity Committee that the working atmosphere and the "hierarchical context" were the direct and essential cause of the appearance of the nervous troubles which gradually resulted in his invalidity.

The *Council,* in its defence, states that the existence of an occupational disease can be established only by the *ad hoc* medical committee, as the Court recognized in its judgment of 13 July 1972 (Case 29/71 *Luigi Vellozzi* v *Commission of the European Communities* [1972] ECR 513). Furthermore, in such cases the Court may only examine whether the proper procedure has been followed and may not consider matters of a purely medical nature. Finally, even on the assumption that the facts stated by the applicant could be established — and the Council would question this — it would not follow that his pre-existing illness was aggravated while he was performing his duties in the Communities' service and that such aggravation arose in the course of or in connection with the performance of those duties. It is not sufficient that the performance of his work was simply one factor which, together with others, aggravated his condition, as this is an occupational risk which all officials must accept.

In his reply the *applicant* states that a distinction must be drawn between the medical aspect and the legal aspect of an occupational disease. The Invalidity Committee, when it considered the case for the second time with a view to deciding whether the invalidity was caused by an occupational disease, accepted that the conditions for the existence of such a disease were met by recognizing that there was a causal relationship between the applicant's work (or working conditions) and the deterioration in his state of health. If the Committee, when considering the matter for the third time, found, in its report dated 25 January 1982, that the invalidity did not arise from an occupational disease, then that finding is based not on medical considerations but on considerations of legal interpretation, since the Committee took the erroneous view that it could not go outside the diseases enumerated in the standard list. In any case, the applicant states that the

atmosphere and working conditions in the service of the Communities were the sole factors which led to the deterioration in his state of health.

The *Council* observes in its rejoinder that it is not for the parties to substitute themselves for the Medical Committee provided for in the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease.

In that regard, the Council maintains that the Invalidity Committee was not entitled to decide on the existence of an occupational disease. When the Council referred the matter back to the Committee after the present action had been brought the Committee's function was to inform it unofficially whether it was likely that the applicant's allegations as to the causal relationship between his work (or working conditions) and the deterioration in his condition were true. In any event, the Council contests the suggestion that the Invalidity Committee acknowledged that the conditions for the existence of an occupational disease were met.

As a matter of law, the Council is of the opinion that in order to be able to speak of an occupational disease it is necessary not only that the illness should arise in the course of or by reason of the performance of duties in the service of the European Communities but also that the performance of those duties should be the principal or predominant cause, that is to say, the essential circumstances which gave rise to the disease or aggravation thereof. In this case, the adverse development of the applicant's pathological predisposition was due not to the working environment but to the difficulties which he experienced in his relations with others.

IV — Oral procedure

At the sitting on 21 October 1982 the parties presented oral argument.

The Advocate General delivered his opinion at the sitting on 18 November 1982.

Decision

1 By application lodged at the Court Registry on 21 September 1981, K., a former Principal Administrator of the Council of the European Communities, brought an action for the annulment of the decision of the Secretary General of the Council dated 13 July 1981 refusing him the benefit of the second paragraph of Article 78 of the Staff Regulations of Officials of the European Communities. According to that provision, the rate of the invalidity pension for an official suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket is to be 70% of the basic salary of the official where the invalidity arises, *inter alia*, from an occupational disease.

2 The applicant, who was a Principal Administrator (Grade A 5) at the Council from November 1973, underwent medical treatment of various types from 1977, including neurological treatment, as well as a number of operations. In view of the fact that he had had 393½ days of sick leave between 10 January 1977 and 11 January 1980, the Council decided, on 17 January 1980, to refer the matter to the Invalidity Committee under the fourth subparagraph of Article 59 (1) of the Staff Regulations.

3 On 24 October 1980 the Invalidity Committee stated, after examining the medical file and after a specialized neurological examination, that the applicant was suffering from "total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket".

4 By a decision dated 28 November 1980 the Secretary General of the Council retired the applicant with effect from 1 December 1980 in accordance with Article 53 of the Staff Regulations.

5 On 10 February 1981 the applicant submitted a complaint under Article 90 (2) of the Staff Regulations, claiming that his pension should be fixed at 70% of his basic salary in accordance with the second paragraph of Article 78 of the Staff Regulations because the problems which had led to the recognition of his invalidity had arisen in connection with the performance of his duties.

6 That complaint was rejected by the Council in its decision of 13 July 1981 — which is the subject of the present application — on the ground that the Invalidity Committee had not declared that the total permanent invalidity of the applicant had arisen from an occupational disease and therefore the amount of his invalidity pension had been fixed in accordance with the third paragraph of Article 78 of the Staff Regulations. That provision states that where the invalidity is due to some cause other than those specified in the second paragraph of Article 78 the invalidity pension is to be equal to the retirement pension to which the official would have been entitled at the age of 65 years if he had remained in the service until that age.

7 In view of the application to the Court and in the hope of discovering a solution quickly, the Council twice referred the matter back to the Invalidity Committee. In a second report dated 21 December 1981 the Committee

stated that there was in fact a causal relationship between the work or working conditions and the deterioration in the applicant's state of health but that his invalidity had not arisen from an occupational disease.

8 The third report dated 25 January 1982, however, revealed a difference of opinion amongst the doctors. While two members of the Committee considered that the applicant's invalidity had not resulted from an occupational disease, the third member stated that the applicant was not suffering from an occupational disease contained in the list of occupational diseases giving rise to compensation (standard list 503). Furthermore, it is clear from the evidence before the Court that two versions of this report were written and that the first, also signed on 25 January 1982, but subsequently withdrawn, stated that, in the unanimous opinion of all three doctors, although there was a relationship between the applicant's working conditions and the deterioration in his state of health, the invalidity did not arise from an occupational disease contained in the above-mentioned list of such diseases.

9 The Council submits first that the applicant has no right to bring an action since he did not follow the proper procedure for establishing the existence of an occupational disease in accordance with the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and of Occupational Disease (hereinafter referred to as "the Insurance Rules"). According to those rules, the official must submit a statement concerning the disease to the institution within a reasonable period following the onset of thereof or the date on which it was diagnosed for the first time. The institution will then conduct a medical inquiry and notify its draft decision to the official who may then request the opinion of an *ad hoc* medical committee.

10 That submission must be rejected since the Insurance Rules do not apply to this case. In fact they were adopted to give effect to Article 73 of the Staff Regulations, which relates to insurance against the risk of occupational disease and of accident, whereas the present proceedings concern Article 78 of the Staff Regulations, relating to invalidity pensions, which are governed by the pension provisions contained in Chapter 3 ("Pensions") of Title V of the Staff Regulations. As the Court stated in its judgment of 15 January 1981 (Case 731/79 *B.* v *European Parliament* [1981] ECR 107), a comparison of

Articles 73 and 78 of the Staff Regulations indicates that the benefits available under the two provisions are different and independent of one another. That view is confirmed by Article 25 of the Insurance Rules, which states that recognition of partial or even total permanent invalidity pursuant to those rules "shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa".

11 It therefore follows that findings as to the existence of total permanent invalidity preventing the official from performing the duties corresponding to a post in his career bracket and as to the cause of such invalidity should be made in accordance not with the Insurance Rules but with the procedure laid down in the rules relating to the pension scheme, in this case Annex VIII to the Staff Regulations ("Pension scheme"). Article 13 thereof makes it quite clear that it is for the Invalidity Committee to make the findings in question.

12 However, the Council's argument must be upheld inasmuch as it is for the official to request the benefit of the second paragraph of Article 78 of the Staff Regulations and in the absence of such a request 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.

13 Consequently, the Council cannot be criticized for having initially fixed the applicant's retirement pension, on the basis of its decision of 28 November 1980, in accordance with the third paragraph of Article 78 of the Staff Regulations, since the applicant had not requested a declaration that his invalidity had been caused by an occupational disease within the meaning of the second paragraph of that article.

14 Nevertheless, the Council was not entitled to reject his complaint, as it did in its decision of 13 July 1981, without considering this question, because the applicant had, by that very complaint, requested that his pension should be fixed in accordance with the second paragraph of Article 78, claiming that the problems which had led to the recognition of his invalidity had arisen in the course of the performance of his duties.

15 In such circumstances the administration should have considered and determined in the proper manner whether or not the applicant's invalidity had arisen from an occupational disease within the meaning of that provision and, if appropriate, should have accorded him the pension rate which he was seeking. Such a procedure was all the more necessary in the present case since it is clear from the observations of the Council itself that, at this stage, the Invalidity Committee had not yet considered the cause of the invalidity.

16 Both parties have relied in support of their conclusions on the subsequent reports of the Invalidity Committee dated 21 December 1981 and 25 January 1982. In such circumstances it is appropriate to examine whether those reports validate the contested Council decision by providing sufficient legal evidence that the applicant's invalidity did not in fact arise from an occupational disease within the meaning of the second paragraph of Article 78 of the Staff Regulations.

17 That question must be answered in the negative. Whilst the report dated 21 December 1981 does not use the term "occupational disease", it does recognize the existence of a causal relationship between the work or working conditions and the deterioration in the applicant's state of health, as does, moreover, the first version of the report of 25 January 1982. Although, on the other hand, the definitive version of the latter report indicates that two doctors, that is to say a majority, concluded that the applicant's invalidity did not result from an occupational disease, it remains to be said that that version contains no reasons enabling the reader to assess the considerations on which that conclusion was based nor any explanation as to the inconsistency between that conclusion and the conclusion set out in the second report and in the first version of the third report.

18 Furthermore, the fact that in the second version of the latter report one of the doctors refers, in a dissenting opinion, to the list of recognized occupational diseases, which is not pertinent to this case, gives rise to doubt whether the Invalidity Committee had a sufficiently clear idea of its function, all the more so since the Council itself has stated in its submissions that the Committee merely received an unofficial request for clarification and that it was not empowered to decide upon the existence of an occupational disease.

19 It follows from the foregoing that the decision of the Secretary General of the Council, dated 13 July 1981, rejecting the applicant's complaint, is tainted by procedural illegality and should therefore be annulled.

20 In these circumstances the Council must, before coming to a decision, refer the matter once more to the Invalidity Committee, which must verify whether the applicant's pathological condition has a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed.

Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the Council has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls the decision of the Secretary General of the Council dated 13 July 1981 rejecting the applicant's complaint;**

2. **Orders the Council to pay the whole of the costs.**

Everling Pescatore Galmot

Delivered in open court in Luxembourg on 12 January 1983.

P. Heim
Registrar

U. Everling
President of the Third Chamber