OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 23 October 1986 *

Mr President,
Members of the Court,

A — 1. The proceedings in which I am to give my Opinion today are concerned with the question whether the applicant, who has been in the service of the European Communities since 1966 and has already brought proceedings before the Court in Cases 255 and 256/83, is entitled to an invalidity pension under the second paragraph of Article 78 of the Staff Regulations or only under the third paragraph of that article.

2. Article 78 is worded as follows:

'An official shall be entitled, in [the] manner provided for in Articles 13 to 16 of Annex VIII, 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.

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.

Where the invalidity is due to some other cause, 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.

...

In the case of invalidity deliberately brought about by the official, the appointing authority may decide that he should receive only a retirement pension.'

3. I may be very brief in my comments regarding the background to the proceedings in view of the findings made in the judgment, and in my Opinion, in Cases 215 and 256/83.

4. It will be recalled that disciplinary proceedings were instituted against the applicant lasting from September 1981 until January 1983. In December 1982 the Disciplinary Board found that the applicant had committed a breach of his obligations as an official by actively participating in the transmission of documents of a non-confidential nature to third parties in return for payment, by providing incorrect information in his application for authorization to engage in an outside activity as regards the scope of that activity and the remuneration therefor, and by failing to obtain authorization to engage in an outside activity for the period from 1977 to 1982. On the basis of those findings and in accordance with the Disciplinary Board's proposal, on 3 January 1983 the appointing authority downgraded the applicant from Grade A5 to Grade A6 as a disciplinary measure.

5. It will also be recalled that the applicant failed in his action in Joined Cases 255 and 256/83. By judgment of 11 July 1985, the Court dismissed his action against the disciplinary measure and his action for compensation on account of wrongful acts or

* Translated from the German.

omissions on the part of the Commission during the disciplinary proceedings, which were allegedly the cause of his illness and invalidity.

6. As a result of his illness — and here I come to the subject-matter of these proceedings — the applicant seems to have been repeatedly absent from work from December 1981, and in March 1983 his case was referred to the Invalidity Committee. The committee was expressly instructed to state whether his invalidity, if established, arose from an occupational disease, and it was requested by the applicant to determine whether there was a causal connection between the disciplinary proceedings and the disciplinary measure, on the one hand, and his state of health, on the other.

7. After examining the applicant, the Invalidity Committee stated on 7 May 1983 that he was suffering from total permanent invalidity and, as regards the cause thereof, it also found that 'the invalidity arose in connection with specific events which occurred in the performance of his duties'. That finding was followed on 27 June 1983 by a decision retiring the applicant with effect from 1 July 1983 and awarding him a pension under the third paragraph of Article 78 of the Staff Regulations. It was stated in an accompanying letter of the same date that the relevant provision was the third paragraph of Article 78 because the wording used by the Invalidity Committee — to which I have just referred — 'does not correspond to any of the possibilities set out in the second paragraph of that article'.

8. The applicant regarded that conclusion as incorrect and on 13 July 1983 he lodged a complaint against the aforesaid decision stating that the wording used by the Invalidity Committee referred to the disciplinary proceedings instituted against him. It thus followed — and this finding was definitive in his view — that his invalidity arose from an occupational disease with the result that the second paragraph of Article 78 was applicable.

9. In order to gain support for that view, on 19 July 1983 the applicant wrote to the doctor whom he had designated to sit on the Invalidity Committee. He asked whether the committee was able to establish whether there was a causal connection between the disciplinary proceedings and his state of health which led to his invalidity, and raised the question whether the words 'specific events which occurred in the performance of his duties', used in the committee's findings, related to the disciplinary proceedings. In September 1983 the applicant received the reply that the committee had unanimously taken the view that the disciplinary proceedings were the cause of the serious depression from which he was suffering, which had led to his invalidity, with the result that there was a direct connection between those events and the deterioration in the applicant's health. It was also stated in that reply that the doctors making up the committee had for that reason 'regarded his illness as being on the same footing as an occupation-related ailment'.

10. The applicant's complaint was unsuccessful. It was expressly stated in a decision of 20 December 1983 (that is to say after the expiry of the four-month period prescribed by Article 90 of the Staff Regulations) that Article 3 of the Rules on Insurance for Officials of the European Communities against the risk of accident and of occupational disease (hereinafter referred to as 'the Insurance Rules') that a disease is to be considered an occupational

disease only if it is sufficiently established that such disease arose in the course of or in connection with the performance by the official of his duties with the Communities. The defendant maintains that no such finding has been made by the Invalidity Committee. Moreover, although, according to the findings of the committee, it must be assumed that the applicant's illness was caused by disciplinary proceedings which were properly conducted and which were — like the disciplinary measure imposed — the consequence of the applicant's improper and unlawful conduct, that does not justify the conclusion that the applicant is suffering from an occupational disease.

11. The applicant has therefore brought this action in which he claims that the Court should:

(1) Annul the decision of 27 June 1983 and the accompanying letter of the same date in so far as they refuse to recognize the applicant's illness as an occupational disease;

(2) In so far as is necessary, annul the express decision contained in a letter of 20 December 1983 rejecting the applicant's complaint submitted through official channels;

(3) Declare that the illness which resulted in the applicant's total permanent invalidity is an occupational disease; and

(4) Order the defendant to grant the applicant the benefits provided for in the second paragraph of Article 78 of the Staff Regulations.

B — 12. *My assessment* of those claims and the arguments which have been put forward in support thereof, none of which are accepted by the Commission, is as follows:

I — Admissibility

13. The admissibility of the application, on which neither of the parties has expressed any views during the proceedings, must be considered first because at the end of the hearing the question arose as to what additional benefit the applicant would derive from the application of the second paragraph as opposed to the third paragraph of Article 78. The Commission has informed the Court that in the present case there is no difference between the benefits awarded under either paragraph since the applicant — in view of his length of service — already receives a pension amounting to 70% of his basic salary under the third paragraph of Article 78. This means that there is no reason whatever to determine which of those two paragraphs must be applied to the applicant.

14. However, following the explanation furnished by the Commission, the further question arose whether the applicant has any interest at all in pursuing these proceedings. When this question was expressly put to him, he replied — as the Court will remember — that he felt he did have such an interest. He pointed out that he was also covered against the risk of occupational disease by Article 73 of the Staff Regulations. According to that provision, in the event of total permanent invalidity an official is to receive a lump sum equal to eight times his annual basic salary and full reimbursement of any medical and other expenses incurred. However, since in the applicant's view the meaning of the concept of 'occupational disease' in Article 73 is the same as in Article 78, he should be recognized as having an interest in the clarification of the questions raised in these proceedings (namely whether his invalidity is the result of an occupational disease), in order to enable him — and also the Commission — to decide on his rights under Article 73 of the Staff Regulations (in respect of which, as is clear from the letter of 27 June 1983, he has already submitted a claim).

15. If strict criteria were to be applied, it might be concluded that the applicant has

no interest in bringing these proceedings. It must be borne in mind that the proceedings in this case are based exclusively on Article 78 of the Staff Regulations and that Article 25 of the Insurance Rules provides as follows: 'Recognition of total or partial permanent invalidity pursuant to Article 73 of the Staff Regulations and to these Rules shall in no way prejudice application of Article 78 of the Staff Regulations and vice versa.'

16. However, it is clear that in this case the medical findings (namely that the applicant's illness is attributable to the disciplinary proceedings) are not contested; instead, the crux of the matter is whether in such cases there is any scope for a legal assessment on the part of the appointing authority and whether that assessment was correct, inasmuch as there was held to be no sufficiently close connection with the applicant's professional life on the ground that his illness is the result of disciplinary proceedings quite properly brought against him on account of his misconduct. It must also be acknowledged that the answer to that question may — in view of the fact that the concept of 'occupational disease' in Article 73 of the Staff Regulations is the same as in Article 78 — have an impact on Mr Rienzi's other application, referred to earlier, which was clearly submitted within the period prescribed by Article 17 of the Insurance Rules and has not yet been decided upon.

17. Accordingly, it may be considered justified, in order to simplify the procedure, to recognize that the applicant has a reasonable interest in the clarification of certain fundamental issues in these proceedings. In any event, I would not suggest that the Court declare the action as a whole inadmissible on account of the absence of a legitimate interest, but merely put forward for consideration the possibility that it should declare inadmissible the fourth claim in the application (seeking an order requiring the defendant to grant the applicant the benefits provided for in the second paragraph of Article 78 of the Staff Regulations).

II — Substance

18. *1.* I should begin with the applicant's argument, which is the subject-matter of the first submission, to the effect that the Invalidity Committee recognized that he was suffering from an occupational disease. The decision of 27 June 1983 was based, as is clear from the reasons stated therein, exclusively on the findings of the Invalidity Committee. However, in so far as it excludes the application of the second paragraph of Article 78 of the Staff Regulations (which concerns invalidity arising from an occupational disease), the decision is criticized by the applicant for not stating the reasons for its exclusion.

19. Let me state at once that I do not share that view.

20. (a) It is significant that the second paragraph of Article 78 contains the following phrase: 'Where the invalidity arises from . . . an occupational disease . . . '. The question which the Invalidity Committee had to answer, on the form which it was required to complete, is couched in similar terms. As stated earlier, however, the question was not answered with a simple affirmative (which was possible) but in the following terms: 'The invalidity arose in connection with specific events which occurred in the performance of his duties.' That can only mean that the Invalidity Committee in fact did not wish to make a finding of the kind envisaged by the second paragraph of Article 78 of the Staff

Regulations, but merely wished to point to the existence of a connection between the applicant's invalidity and his employment.

21. That conclusion cannot be avoided even if, on the basis that the same concept of 'occupational disease' is used in Article 73 and in Article 78 of the Staff Regulations, reference is made to the definition of occupational disease in Article 3 of the Insurance Rules. The terms used there are also clearly different from the wording used by the Invalidity Committee since it defines an occupational disease as a disease arising in the course of or in connection with the performance by an official of his duties with the Communities. With regard to the opinion expressed by the applicant's doctor on 6 September 1983, to which the applicant has also referred, the essential element is clearly the finding that the applicant's serious depression and his invalidity were caused by the disciplinary proceedings (which implies a connection with certain aspects of the applicant's employment). Moreover, as regards the fact that the doctors on the Invalidity Committee 'regarded [the applicant's] illness as being on the same footing as an occupation-related ailment', it is significant that this wording again departs from that used in the second paragraph of Article 78 of the Staff Regulations. If, however, in so doing, the doctor sought to indicate that the invalidity stemmed from an occupational disease, it should be stated that the Court is obliged first and foremost to adhere to the wording selected by the Invalidity Committee itself and cannot simply rely on the individual interpretations of *one* member of that Committee.

22. Accordingly, the applicant's view that the Invalidity Committee established that his invalidity arose from an occupational disease cannot be upheld.

23. (b) With regard to the applicant's contention that the statement of reasons is inadequate, it must be pointed out in the first place that the reference in the grounds of the decision of 27 June 1983 to the findings of the Invalidity Committee must be understood as applying only to the finding concerning total permanent invalidity. It may therefore be said that the decision itself does not contain any grounds justifying the application of the third paragraph of Article 78 of the Staff Regulations. However, it is inappropriate to speak of an inadequate statement of reasons since, according to the Court's case-law (judgment in Case 69/83 [1]), all the circumstances of the case and in particular any indications in other documents must be taken into consideration for those purposes. From that point of view it is significant that the letter accompanying the decision of 27 June 1983 states that the wording used by the Invalidity Committee does not correspond to any of the possibilities referred to in the second paragraph of Article 78, with the result that the latter provision cannot be applied to Mr Rienzi. In my view, the requirement that a decision must state the grounds on which it is based is thus met albeit in a summary fashion.

24. If, however, contrary to the wording of the statement of reasons in the decision, the reference to the findings of the Invalidity Committee were to be construed in a general sense, that is to say if it were taken to include the wording referred to at the outset, the conclusion would have to be drawn that the aforesaid reference was meant to signify not that the applicant is suffering from an occupational disease but merely that his invalidity was a consequence of the disciplinary proceedings. It follows from that interpretation that there was no

1 — Judgment of 21 June 1984 in Case 69/83 *Lux* v *Court of Auditors* [1984] ECR 2447.

need either in the decision itself or in an accompanying letter for the appointing authority to state the reasons why it had 'departed' from the conclusions of the Invalidity Committee.

25. (c) Accordingly, there is nothing in the applicant's first submission to bear out his claims.

26. 2. In his second submission the applicant emphasized that it is for the Invalidity Committee alone to determine whether the cause of an illness and the invalidity resulting therefrom can be traced back to the duties carried out. The applicant also maintains that the appointing authority is bound by the terms of reference which it gave to the Invalidity Committee; hence it cannot challenge the correctness of the findings made by the Invalidity Committee concerning the cause of the applicant's illness.

27. In this respect also I see no reason in the final analysis to criticize the Commission's attitude.

28. (a) To begin with, the answer to the fundamental question whether the findings required under the second paragraph of Article 78 of the Staff Regulations are exclusively a matter for the Invalidity Committee, that is to say for doctors, or whether a legal appraisal by the administration of the concept of 'occupational disease' is also necessary, must be in my view that such an appraisal is required. Even though it must be acknowledged that, in that regard, a broad area is reserved for purely medical findings (for instance, whether there is an illness, whether invalidity can be established and whether there is a causal connection between the two), it is equally true that questions of a legal nature also arise (for instance, on the interpretation of the Staff Regulations) and, in particular, whether there is a sufficiently close connection between an illness that has been held to exist and the duties performed. This is sufficiently borne out by certain other factors in the second paragraph of Article 78 (including whether the invalidity arose from a public-spirited act or from the official risking his life to save another human being). Clearly, those are not purely medical questions but also involve a legal appraisal for the purpose of drawing up precise definitions (as is shown for instance by the circumstances in Case 342/82 [2]). Reference may also be made to the Court's judgment in Case 257/81.[3] In that case it is significant that the extremely narrow terms of reference of the Invalidity Committee were confined to establishing the cause of the invalidity, which, as the Court pointed out in the final paragraph of its judgment, amounted to verifying 'whether the applicant's pathological condition has a sufficiently direct relationship with a specific and normal risk inherent in the duties which he performed'. It is also significant that reference is made to the fact that the administration should have considered and determined whether or not the applicant's invalidity had arisen from an occupational disease; the Court would not have expressed itself in those terms if such an assessment by the administration were not called for.

29. There is nothing in Article 13 of Annex VIII to the Staff Regulations, to which the applicant has referred, which militates against that view. That provision, which states that '... an official aged less than 65

2 — Judgment of 24 November 1983 in Case 342/82 *Cohen* v *Commission* [1983] ECR 3829.

3 — Judgment of 12 January 1983 in Case 257/81 *K.* v *Council* [1983] ECR 1, 7.

years who at any time during the period in which he is acquiring pension rights is recognized by the Invalidity Committee to be suffering from total permanent invalidity . . . ', shows only that the task of establishing whether an official suffers from invalidity is a matter for the Invalidity Committee but not that it is also for the committee to determine whether such invalidity arose from an occupational disease where there is merely a link with the service but not with the normal risks inherent therein.

30. (b) It is thus also clear that the task assigned to the Invalidity Committee, as summarized earlier (namely to establish whether the invalidity arises from an occupational disease), naturally cannot divest the administration itself of the power to take further decisions in that connection. It is equally clear — as is already apparent from the observations concerning the first submission — that in the light of the wording selected by the Invalidity Committee and referred to at the outset, the Commission's finding concerning the occupational nature of the applicant's illness cannot be regarded as unlawfully challenging the findings of the Invalidity Committee.

31. (c) Finally, as regards the question which remains to be considered in this context and which was not raised as such initially in connection with the second submission, namely whether the Commission was right to conclude in this case that the applicant's invalidity did not arise from an occupational disease, it must again be borne in mind that the Invalidity Committee reached the — medically unchallengeable — conclusion that the decisive factor in the applicant's illness was the initiation of disciplinary proceedings against him, which are not open to criticism as regards either their course or their outcome, as is clear, moreover, from the Court's judgment in Joined Cases 255 and 256/83 (in which it also considered the objection that those proceedings had been conducted too slowly).

32. On that basis, and contrary to the applicant's view that the concept of 'occupational disease' should be given a broad interpretation (he would define an occupational disease as any illness which manifests itself in the course of or in connection with an official's service), I accept that in fact the Commission's assessment cannot be faulted.

33. Support for that view can be found first of all in Article 3 of the Insurance Rules whose definition of 'occupational disease' differs from that of the applicant and lays emphasis on whether an illness 'arose in the course of or in connection with the performance by the official of his duties with the Communities'. Even clearer is the wording used by the Court in its judgment in Case 257/81, to which reference has already been made and according to which it is necessary to 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. In this case, by contrast, it must be recognized that the cause of the applicant's illness did not lie in the performance of his duties; his illness was attributable not to specific risks inherent in his duties but ultimately to his improper conduct within and outside the service, which led to the disciplinary proceedings against him. Yet to argue that he contracted his illness in the course of his duties merely because the administration has drawn certain consequences from conduct which is essentially unconnected with his duties would unquestionably be to subscribe to an unacceptable confusion of concepts. Moreover, it is difficult to find any support

for that view in the general scheme of Article 78 (which, as the applicant contends, is to be regarded as an exhaustively regulated system under which, as is clear from the last paragraph, only invalidity deliberately brought about by the official may justify a reduction in pension rights). That does not appear to be an overriding consideration; instead it must be recognized that other, improper conduct, which has given rise to disciplinary proceedings against the official and has finally resulted in his invalidity, may certainly be taken into account in connection with an assessment of the question, which is essential for the purposes of the second paragraph of Article 78, whether or not the cause of the invalidity lies in the duties performed. Accordingly, there can be no question of the system established by Article 78 of the Staff Regulations having been disrupted.

34. (d) I must therefore conclude that none of the arguments adduced by the applicant in support of his second submission serves to substantiate his claims. It also follows that there is no need to accede to the applicant's request to call the doctors sitting on the Invalidity Committee as witnesses.

35. *3.* In his third submission the applicant alleges that the statement of reasons in the Commission's decision on his complaint differs from that given in its decision of 27 June 1983. He considers that to be unlawful because his complaint was rejected and the contested decision of 27 June 1983 was upheld. In his view, therefore, the decision of 27 June 1983 may be assessed only on the basis of the grounds originally stated therein (that is to say, taking account of the reference to the findings of the Invalidity Committee establishing the existence of an occupational disease).

36. (a) The preliminary remark may be made that the applicant has misrepresented the reasons stated in the decision of 27 June 1983. As I have already demonstrated, the reference to the findings of the Invalidity Committee is relevant only as regards the finding of invalidity. However, the reasons for the application of the third paragraph of Article 78 of the Staff Regulations are to be found only in the accompanying letter of the same date. It is clear from the reasons set out in that letter that the second paragraph of Article 78 of the Staff Regulations was not applied because on the basis of the words used by the Invalidity Committee and referred to earlier there was no occupational disease. In that regard, however, the decision on the complaint does not really contain any fresh reasons of a different kind. As the Commission has stated, it merely clarifies the reasons set out in the accompanying letter in so far as behind the wording selected by the Invalidity Committee lies the finding, of which the applicant is aware, that his illness was caused by the disciplinary proceedings. The decision on the complaint simply makes it quite clear that the disciplinary proceedings were initiated against the applicant on account of his misconduct and that, in those circumstances, there can be no question of his illness having been caused by the risks inherent in his duties.

37. (b) It follows, therefore, that in fact the statement of reasons in the decision on the complaint should not be regarded as unlawful and left out of account. Furthermore, the applicant's contention that the reasons stated in a decision may not be altered in a decision on a complaint is fundamentally incorrect.

38. There is nothing in the case-law relied upon by the applicant which supports his view since the problem at issue in this case has not actually been dealt with by the

Court. In Cases 121/76[4] and 75/77,[5] the Court has held that the statement of reasons on which an implied decision rejecting a complaint is based is necessarily deemed to be the same as the statement of reasons for the contested decision. It has further held, in Cases 33 and 75/79,[6] that an express decision rejecting an official's complaint after the expiry of the four-month period prescribed by Article 90 (2) of the Staff Regulations merely confirms the implied decision already in existence at the time. The Commission's point of view is also supported by certain unequivocal indications afforded by the scheme of the complaints procedure which is laid down in the Staff Regulations. Its manifest purpose is to enable a detailed exchange of views to take place between the official and the administration before legal proceedings are instituted. It can lead to an amendment of the contested decision and, even if that is not the case, the detailed explanation of the reasons for the decision on the complaint may cause the complainant to refrain from instituting proceedings. That is why Article 90 of the Staff Regulations expressly provides that a decision on a complaint must state the reasons on which it is based. But in fact that provision can only be interpreted in broad terms since, if the applicant's view (that the decision on the complaint may not be based on any reasons other than those stated in the original decision) were correct, the second subparagraph of Article 90 (2) would be utterly meaningless in cases in which the contested decision does not state any reasons at all (with the result that despite the initiation of the complaints procedure the contested decision could be annulled only for failure to state the reasons on which it was based). Furthermore, reference may also be made to the fact that Article 91 (3) provides that the period for lodging an appeal starts to run afresh where a complaint is rejected by an express decision after being rejected by an implied decision. As the Commission has rightly pointed out, that confirms its point of view, since a fresh period for reflection (for that is how the period for lodging an appeal must be viewed) is justifiable only if the decision on the complaint may contain information not already set out in the original decision.

39. (c) Accordingly, the applicant's third submission must also fail.

40. 4. Finally, in his fourth submission, the applicant claims that the Commission has misused its powers inasmuch as, in adopting its decision in connection with the invalidity procedure, it once again penalized the applicant's conduct — which had led to the initiation of disciplinary proceedings — by not recognizing that his invalidity arose from an occupational disease and by not adopting the Invalidity Committee's legally correct decision to that effect.

41. In the light of all the foregoing considerations, it seems quite clear that this submission must also be rejected.

42. Once again it must be borne in mind that the Invalidity Committee did not actually classify the applicant's illness as an occupational disease but made it clear, by the choice of a specific wording, that the matter was to remain open for consideration by the administration. Accordingly, the administration cannot be said to have

4 — Judgment of 27 October 1977 in Case 121/76 *Moli* v *Commission* [1977] ECR 1971.

5 — Judgment of 13 April 1978 in Case 75/77 *Mollet* v *Commission* [1978] ECR 897.

6 — Judgment of 28 May 1980 in Joined Cases 33 and 75/79 *Kuhner* v *Commission* [1980] ECR 1677.

departed from the Invalidity Committee's assessment, inasmuch as it made its autonomous decision on the matter.

43. Nor can there be any question of the applicant being penalized a second time on account of his previous misconduct, for which he was rightly censured. The Commission merely considered the facts of the case (namely invalidity resulting from disciplinary proceedings) in the light of the rules on invalidity and — as I have demonstrated — rightly came to the conclusion that, in those circumstances, the applicant's invalidity arose not in the course of or in connection with the performance of his duties but from some other cause within the meaning of the third paragraph of Article 78 of the Staff Regulations.

44. Accordingly, there can be no question of a misuse of powers by the Commission.

C — 45. Since the applicant has not succeeded in any of his submissions, and the Commission was right to refuse to recognize his illness as an occupational disease, the Court should dismiss the application in its entirety and make an order as to costs in accordance with Article 70 of the Rules of Procedure.