

ORDER OF THE COURT (Third Chamber)
24 May 1988 *

In Joined Cases 78 and 220/87

Giovanni Santarelli, a former official of the Commission of the European Communities, residing at 31 rue des Ménapiens, B-1041 Brussels, represented by Pierre-Paul Van Gehuchten, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of J. Loesch, 2 rue Goethe,

applicant,

v

Commission of the European Communities, represented by Peter Kalbe and Joseph Griesmar, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of the appointing authority's decision of 27 October 1986 referring the applicant's case to the Invalidation Committee and its decision of 24 February 1987 retiring him on grounds of invalidity,

THE COURT (Third Chamber)

composed of: J. C. Moitinho de Almeida, President of Chamber, U. Everling and Y. Galmot, Judges,

Advocate General: C. O. Lenz
Registrar: J.-G. Giraud

makes the following

* Language of the Case: French.

Order

- 1 By application lodged at the Court Registry on 13 March 1987, Giovanni Santarelli, a Commission official in Grade B 2, brought two actions under Article 91 (4) of the Staff Regulations of Officials (hereinafter referred to as 'the Staff Regulations') for the annulment of the appointing authority's decision of 27 October 1986 to refer his case to the Invalidity Committee and for the annulment of the consequences of that decision including, in particular, the decision of 24 February 1987 retiring the applicant on grounds of invalidity.
- 2 By an application lodged on 16 July 1987, Mr Santarelli brought an action under Article 91 (2) of the Staff Regulations also for the annulment of the decision of 27 October 1986 and the subsequent measures resulting from that decision.
- 3 It appears from the documents before the Court that the appointing authority, finding that the applicant had been absent from his duties for health reasons for a total of 390 days between 1 June 1981 and 31 May 1984, decided, pursuant to the fourth subparagraph of Article 59 (1) of the Staff Regulations, to refer his case to the Invalidity Committee. The Committee declared the applicant fit to carry out his duties, but reserved the right to re-examine him at the end of 1985 'if his state of health has not definitively stabilized'. Its conclusions were communicated to the applicant by a memorandum dated 16 October 1984.
- 4 On 27 October 1986 the appointing authority, which had found that the applicant had been absent for health reasons for a further 211 days during the period between 28 September 1984 and 27 October 1986, decided to refer his case back to the Invalidity Committee for it to determine definitively his fitness to carry out his duties normally.
- 5 By a letter of 16 January 1987, Mr Santarelli submitted a complaint pursuant to Article 90 (2) of the Staff Regulations against the decision of 27 October 1986. He stated that the appointing authority had incorrectly calculated the 12-month period of absence which, under Article 59 (1) of the Staff Regulations, is required for referral to the Invalidity Committee.

- 6 By decision of 24 February 1987, the appointing authority, referring to the conclusions of the Invalidity Committee at its meeting on 6 January 1987, according to which the applicant suffered from a permanent invalidity regarded as total and preventing him from carrying out the duties attaching to a post in his career bracket, retired the applicant in accordance with Article 53 of the Staff Regulations.
- 7 By documents lodged at the Court Registry on 8 May 1987 and 2 October 1987, the Commission raised two objections of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure.
- 8 By an order of 4 May 1988, the Third Chamber of the Court ordered that the two cases be joined. Since the written submissions contained all the information necessary to enable the Court to rule on the admissibility of the two applications, it did not consider it necessary to hear oral argument from the parties.
- 9 The Commission contends that the two applications are inadmissible on the grounds that the conditions laid down in Article 59 (1) of the Staff Regulations for referring the applicant's case to the Invalidity Committee were satisfied in this instance and that, in any event, that measure is merely a preparatory step to the decision to retire the official concerned and, consequently, cannot constitute an act adversely affecting the applicant which could be the subject of a complaint and an action separate from those which could lie against the decision retiring him.
- 10 In the Commission's view, the application for the annulment of the decision retiring the applicant is also inadmissible because the applicant failed to submit a preliminary complaint to the appointing authority, as required by Article 90 (2) of the Staff Regulations. The Commission states further that the applications contain no substantive or formal argument relating to that decision.
- 11 In the first case (78/87), the Commission maintains further that having regard to the conditions laid down in Article 91 (4) of the Staff Regulations, the application is inadmissible inasmuch as it was not accompanied by an application for suspension of the operation of the contested act or for other interim measures.

- 12 The applicant submits that the appointing authority's decision of 27 October 1986 was adopted in breach of Article 59 (1) of the Staff Regulations because the appointing authority calculated incorrectly the duration of the 12-months' sickness leave taken by the applicant over the three-year period preceding the referral of his case to the abovementioned committee. He argues that he has an interest in bringing proceedings against the decision in question because, far from being merely a preparatory measure, it was at the origin of the procedure leading to his retirement and because the unlawfulness of that decision necessarily entails the unlawfulness of all the measures taken to implement it. Furthermore, he claims that a preparatory act is not amenable to review as to its legality only in so far as freedom of decision remains as to the action to be taken in consequence thereof. In this case, the appointing authority could only take a decision in accordance with the conclusions of the Invalidity Committee.
- 13 It should be pointed out that the decision to refer the applicant's case to the Invalidity Committee is a preparatory act which is a step in the procedure for retiring an official. Preparatory acts cannot be the subject of an action (see, *inter alia*, the order of the Court of 18 November 1980 in Case 141/80 *Macevicius v European Parliament* [1980] ECR 3509) and it is only in connection with an action brought against the decision taken at the conclusion of this procedure that the applicant can contest the legality of earlier steps which are closely linked to it (see the judgment of 14 December 1966 in Case 3/66 *Cesare Alfieri v European Parliament* [1966] ECR 437).
- 14 Finally, it should be noted that the applicant did not submit a complaint in accordance with Article 90 (2) of the Staff Regulations against the decision retiring him.
- 15 It follows from the foregoing that the actions must be dismissed as inadmissible.

Costs

- 16 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those rules, in proceedings brought by servants of the Communities the institutions are to bear their own costs.

On those grounds,

THE COURT (Third Chamber),

after hearing the views of the Advocate General,

hereby orders as follows:

- (1) The applications are dismissed as inadmissible.**
- (2) The parties shall bear their own costs.**

Luxembourg, 24 May 1988.

J.-G Giraud
Registrar

J. C. Moitinho de Almeida
President of the Third Chamber