2. Since the choice of form cannot alter the nature of a measure, the court required to interpret a measure described as a recommendation in order to determine its scope must ascertain whether the measure is not in fact, in view of its content, intended to produce binding effects.

3. Recommendations which, according to the fifth paragraph of Article 189 of the Treaty, are not binding are generally adopted by the institutions of the Community when they do not have the power under the Treaty to adopt binding measures or when they consider that it is not appropriate to adopt more mandatory rules. Since they are measures which, even as regards the persons to whom they are addressed, are not intended to produce binding effects, they cannot create rights upon which individuals may rely before a national court.

However, since recommendations cannot be regarded as having no legal effect at all, the national courts are bound to take them into consideration in order to decide disputes submitted to them, in particular where they cast light on the interpretation of national measures adopted in order to implement them or where they are designed to supplement binding Community provisions.

REPORT FOR THE HEARING
delivered in Case C-322/88 *

I — Facts and procedure

1. *Applicable legislation*

According to the Commission recommendation of 23 July 1962 concerning the adoption of a European schedule of occupational diseases (*Journal officiel* 1962, 80, p. 2188),[1] the Member States are recommended:

'(a) to introduce in their laws, regulations and administrative provisions on occupational diseases the European schedule [contained in the annex to the recommendation] as a list of occupational diseases for which compensation is payable under their legislation, supplementing for that purpose their national schedule or their tables of occupational diseases for which compensation is payable;

...

* Language of the case: French.

1 — Not published in English.

(c) in addition, to introduce in their laws, regulations and administrative provisions a right to compensation under the legislation on occupational diseases where adequate proof is provided by the worker concerned that by reason of his work he has contracted an illness which does not appear in the national schedule;'

In addition, Commission Recommendation 66/462 of 20 July 1966 on the conditions for granting compensation to persons suffering from occupational diseases (*Journal officiel* 1966, 147, p. 2696) [1] recommended *inter alia* that the Member States should:

'5. introduce in their legislation a provision enabling compensation for occupational diseases to be paid to workers suffering from diseases contracted as a result of their work but unable to benefit from the legal presumption as to the origin of the disease either because it is not contained in the national schedule or because the conditions laid down by the legislation are not satisfied or are satisfied only in part; the only diseases which may qualify are those of which the risk is inherent in the occupational activity concerned and to which certain workers are exposed to a greater extent than the population at large.

It should be provided that evidence that the disease is an occupational disease must be adduced in each case by the person concerned or established by his insuring body, which must in any event on its own initiative take all steps necessary to ascertain whether the disease is occupational in origin.

The payment of compensation in these specific cases will not constitute general recognition of the disease as an occupational disease, but once a certain number of cases of the same disease in the same occupation have benefited from this provision, the Member States shall initiate the necessary procedure with a view to registering this disease on the national schedule and inform the Commission of the EEC accordingly.'

2. *Background to the dispute*

Salvatore Grimaldi was born in Italy on 15 December 1915. He lived and worked on a family farm in Sicily until 1937, when he commenced his military service. Until 1945 he had military or equivalent status, and worked in particular as a labourer on the construction of a fortress in Tripoli (Libya). On his return to Sicily he worked there as an unskilled worker on the railways from 1945 to 1953, with a brief interruption when he went to France.

On 25 January 1953 Mr Grimaldi arrived in Belgium, where he worked underground as a miner until 1959. From 1959 to 1961 he worked in a demolition company. From 1961 to 1964 he worked on the maintenance of tennis courts and gardens. From 1964 to 1972 he was self-employed, as the owner of an undertaking cleaning offices and commercial premises. Having disposed of his business, he worked as an employed person from 1973 to 1980, when he retired.

On 17 May 1983 Mr Grimaldi requested the Fonds des maladies professionnelles, a public agency subject to the authority of the ministre de la prévoyance sociale (Minister for Social Welfare), to recognize that he was suffering from an industrial disease,

1 — Not published in English

namely an 'osteo-articular or angio-neurotic disease caused by mechanical vibrations', resulting from his use of a pneumatic drill when he was working in the mine and in the demolition undertaking from 1953 to 1961. The Fonds des maladies professionnelles refused that request by decision of 20 October 1984 on the ground that the origin of the disease in question was not occupational in origin, and Mr Grimaldi brought an action before the tribunal du travail, Brussels.

On the basis of an expert opinion ordered by the tribunal, which concluded that the applicant was suffering from Dupuytren's contracture, the plaintiff in the main proceedings requested that that disease should be recognized as an occupational disease on the basis that it was tantamount to a 'disease caused by the overstraining . . . of peritendinous tissue' which appears in Point F.6(b) of the European schedule of industrial diseases annexed to the recommendation of 23 July 1962. In the alternative, the plaintiff requested the national tribunal to refer to the Court of Justice for a preliminary ruling two questions on the effects of the said European schedule in the Member States of the Community and on the possibility of regarding Dupuytren's contracture as a disease caused by the overstraining of the peritendinous tissue, which appears in that schedule.

3. *The preliminary question*

The tribunal du travail, Brussels, considered that the dispute raised a problem of the interpretation of a Community measure, and by judgment of 28 October 1988 requested the Court of Justice under Article 177 of the EEC Treaty for a preliminary ruling on the following question:

'Does a measure such as the "European schedule" of occupational diseases not have direct effect in a Member State on the basis of an interpretation of the fifth paragraph of Article 189 in the light of the spirit of the first paragraph thereof and the teleological approach of the Court's case-law, in so far as the schedule is clear, unconditional, sufficiently certain and unequivocal and does not confer any discretion as to the result to be achieved and in so far as it is annexed to a Commission recommendation which has not been formally implemented in a national legal system *after more than 25 years*?'

In its order for reference, the national court refers to the line of rulings in which the Court recognized that certain directives have direct effect on the basis of their wording, nature and structure. The court states that it appears in particular that although regulations are directly applicable and, consequently, may by their nature have direct effects, it does not follow from this that other categories of acts mentioned in Article 189 of the EEC Treaty can never have similar effects.

As regards occupational diseases, the national tribunal states that the so-called 'list' system adopted in Belgium, whereby an exhaustive list of diseases which are regarded as occupational diseases is drawn up, gives rise to discrimination. Some sick persons are excluded by virtue of the fact that their occupational disease is not recognized. In order for a disease to be included in the list its symptoms and causes must be sufficiently well known. Consequently, diseases due to new industrial processes are not recognized until a certain amount of time has elapsed. Moreover, some occupational diseases which are well known are deliberately omitted from the schedule for financial reasons. In that regard the national court refers to a draft law intended to introduce into Belgian law a

so-called 'mixed' system. That would involve drawing up a schedule of recognized occupational diseases and giving the sick person himself the opportunity to show that there is a causal link between the exercise of an occupation and a disease which is not included in the schedule. Such a system complies with the Commission recommendation of 20 July 1966.

As regards the question whether Dupuytren's contracture may be regarded as a disease of the kind referred to in Point F.6(b) of the schedule annexed to the recommendation of 23 July 1962, the tribunal du travail, Brussels, considers that that is essentially a medical question outside both its jurisdiction and that of the Court of Justice and that it might possibly be answered in the framework of a further expert opinion.

4. *Procedure*

The order for reference was lodged at the Court Registry on 4 November 1988. Only the Commission of the European Communities, represented by its Legal Adviser Jean-Claude Seché, submitted observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Communities.

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

By decision of 17 May 1989 under Article 95(1) and (2) of the Rules of Procedure, the case was assigned to the Second Chamber.

II — Summary of the observations submitted to the Court

First of all, the Commission of the European Communities states that under Belgian law a sick person is not given an opportunity of adducing evidence of a causal link between the disease from which he suffers and exposure to the risk of an occupational disease. The Commission recommendations of 23 July 1962 and 20 July 1966, cited above, expressly requested the Member States to introduce in their law a provision enabling persons to be paid compensation under the legislation on occupational diseases for diseases contracted as a result of their work which did not benefit from the legal presumption as to the origin of the disease.

As regards more specifically the question asked by the national tribunal, the Commission states that it is impossible for a recommendation to have direct effect. It bases that view on the text of the fifth paragraph of Article 189 of the EEC Treaty: 'recommendations . . . shall have no binding force'.

Although the Court has held that directives may have direct effect, that is because they are binding. Recommendations have no binding force, and consequently the Court's reasoning is not applicable to them.

G. F. Mancini
Judge-Rapporteur