JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
5 November 1997

Case T-26/89 (125)

Henri de Compte
v
European Parliament

(Officials – Application for revision – Admissibility)

Application for: revision of the judgment of the Court of First Instance of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781.

Decision: Application dismissed.

Abstract of the Judgment

Mr de Compte, a former official of the European Parliament, in retirement, was the subject, while serving as an accounting officer with that institution, of disciplinary proceedings, at the conclusion of which the appointing authority imposed on him,

by decision of 18 January 1988, the sanction of downgrading from Grade A 3 to Grade A 7 (the disciplinary decision).

By judgment of 17 October 1991 in Case T-26/89 *De Compte* v *Parliament* [1991] ECR II-781, the Court dismissed as unfounded the action brought by Mr de Compte against the disciplinary decision. That judgment was the subject of an appeal, which was dismissed by judgment of the Court of Justice of 2 June 1994 in Case C-326/91 P *De Compte* v *Parliament* [1994] ECR I-2091.

By decision of 19 December 1991, the President of the Parliament refused to grant Mr de Compte a final discharge for the 1982 financial year in regard to the transactions connected with the encashment in 1981 of two cheques drawn on the Midland Bank in London (the case of the members' cash office). By judgment of 14 June 1995 in Case T-61/92 *De Compte* v *Parliament* [1995] ECR-SC II-449, the Court dismissed the action which Mr de Compte had brought against that decision.

On 28 June 1995, the Rapporteur of the Parliament's Budgetary Control Committee, Mr Jean-Claude Pasty, drew up a draft report providing for discharge in regard to the implementation of the Parliament's budget for the 1993 financial year. In that draft report, Mr Pasty made reference to the case of the members' cash office.

By letter of 16 August 1995, the Director-General of Personnel, the Budget and Finance for the Parliament submitted to him his comments on the draft, in particular on the section concerning the case of the members' cash office.

By letter of 13 February 1996, Mr Pasty replied to the Director-General's comments (the letter of 13 February 1996).

In the interim period, the Budgetary Control Committee adopted, at its meeting on 26 September 1995, the draft report providing for discharge in regard to the implementation of the Parliament's budget for the 1993 financial year. The section of the draft document dealing with the case of the members' cash office, as drawn up by Mr Pasty, was not approved by the Committee. It was for that reason replaced by an affirmation stating that 'the difference of BFR 4 136 125 between the cash office and the accounts [concerning the 1982 financial year] will have to be rectified once the Luxembourg Tribunal de Commerce has delivered its decision in the case brought ... by the Parliament against Royale Belge SA ...'. On 12 October 1995, the Parliament, sitting in plenary session, adopted that draft, as approved by the Committee.

The admissibility of the application for revision

It follows from Article 41 of the EC Statute of the Court of Justice, rendered applicable to the procedure before the Court of First Instance by the first paragraph of Article 46 thereof, that revision is not an appeal procedure but an exceptional review procedure that allows the authority of *res judicata* attaching to a final judgment to be called in question on the basis of the findings of fact relied on by the court. Revision presupposes the discovery of elements of a factual nature which existed prior to the judgment and which were unknown at that time to the court which delivered it as well as to the party applying for revision and which, had the court been able to take them into consideration, could have led it to a different determination of the proceedings (paragraph 15).

See: C-185/90 P-Rev. *Gill* v *Commission* [1992] ECR I-993, para. 12; C-130/91 REV II *ISAE/VP and Interdata* v *Commission* [1996] ECR I-65, para. 6

In accordance with that case-law, the above provisions and Articles 125 and 126 of the Rules of Procedure, it is thus necessary for the Court to consider the admissibility of the application for revision of the judgment of 17 October 1991 (paragraph 16).

Relying on the letter of 13 February 1996, the applicant puts forward, in support of his application, several allegedly new facts. These shall be examined in turn (paragraph 17).

Regarding a first set of facts relied on by the applicant, the Court finds that these are bare assertions, mere unfounded assumptions, elements of a factual nature incapable of leading the Court to a different determination of the proceedings, facts of which the applicant was not unaware, facts in respect of which the applicant, as required under Article 126(1)(d) of the Rules of Procedure, has failed to adduce supporting evidence, or facts which are not presented in a sufficiently clear and precise manner, pursuant to the requirements of Article 126(1)(c) of the Rules of Procedure, to enable the defendant to prepare its defence and the Court to give a ruling (paragraphs 18 to 39).

It is not for the Court to seek to find the alleged new facts in the documents submitted by the applicant (paragraph 50).

See: T-56/92 *Koelman* v *Commission* [1993] ECR II-1267, para. 21; T-387/94 *Asia Motor France and Others* v *Commission* [1996] ECR II-961, para. 106

More particularly, paragraphs 170 to 180 of the letter of 13 February 1996 simply set out Mr Pasty's personal assessment of factual matters which led the Court to consider that the appointing authority's view that there was a link between the appearance of a deficit of BFR 4.1 million in the members' cash office and the encashment of the two disputed cheques drawn on the Midland Bank was supported by successive opinions of the Court of Auditors and the Disciplinary Board and that the disciplinary decision was properly entitled to consider as established that the absence of supporting documents was connected to the encashment of the two cheques (judgment of 17 October 1991, paragraphs 200 and 201) (paragraph 40).

It follows from the case-law that a judgment delivered subsequent to another judgment and containing a legal assessment of facts which may be described as new cannot in any case itself constitute a new fact. That case-law applies *a fortiori* in the present case, with the result that the mere assessments of Mr Pasty, which are not supported by any evidence, cannot constitute new facts for the purposes of Article 41 of the Statute (paragraph 41).

See: C-403/85 Rev. *Ferrandi* v *Commission* [1991] ECR I-1215, para. 13

In regard to other facts relied on by the applicant, the Court finds that these relate to assessments of facts already examined by the Court in its judgment of 17 October 1991 or are facts of which the applicant was not unaware prior to delivery of that judgment (paragraphs 42 to 45).

The applicant further argues that neither the cash office nor the accounts were closed at the date of his transfer, and that there was no entry transfer between him and his successor. He also argues that the loss of which he stands accused was not the subject of a written record. The authorities of the Parliament, he argues, had

never admitted that a written record had not been drawn up with regard to the deficit in the members' cash office (paragraph 46).

The applicant is not entitled, in the present case, to put forward factual matters contained in the first claim, since the application for revision was not submitted within three months of the date on which the applicant, at the latest, became aware of those matters (paragraph 47).

So far as concerns the claim that the Parliament did not draw up a written record confirming a deficit in the members' cash office in 1982, the applicant referred to this in letters which he himself wrote to the Secretary-General of the Parliament and to the Chairman of the Parliament's Budgetary Control Committee on 13 January 1995 and 6 June 1995 respectively. The application for revision was not lodged until 19 June 1996, that is to say, more than three months after those letters had been written. It follows that, since it failed to comply with the period laid down by Article 125 of the Rules of Procedure, the present application cannot rely on the fact that the Parliament had not drawn up a written record (paragraph 48).

See: T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, para. 22

It follows that the applicant has failed to adduce proof of the existence of elements of a factual nature predating the judgment and which were unknown at that time to the court which delivered it as well as to the party applying for revision, and which, had the court been able to take them into consideration, could have led it to a different determination of the proceedings (paragraph 53).

Operative part:

The application for revision is dismissed as being inadmissible.