

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
28 April 1994

Case T-35/93

Vincent Cucchiara and Others
v
Commission of the European Communities

(Officials – Claims officers in an office for settling claims under the Joint
Sickness Insurance Scheme of the European Community institutions –
Classification in Category C – Posts falling, in the applicants' opinion, within
Category B)

Full text in French II - 413

Application for: Regularization of the administrative situation of claims officers
classified in Category C and assigned to an office for settling
claims under the Joint Sickness Insurance Scheme of the
European Community institutions.

Decision: Application dismissed.

Abstract of the Judgment

The applicants, who are Commission officials in Category C, are claims officers in an office responsible for settling claims under the Joint Sickness Insurance Scheme. As such, they examine, check and classify claims for reimbursement of medical expenses submitted by beneficiaries of the Joint Scheme.

In particular, claims offices are entrusted with the task of receiving and validating claims for reimbursement of medical expenses and making the payments relating thereto. Such payments are authorized and supervised by the Commission in accordance with the Financial Regulation applicable to the general budget of the European Communities (OJ 1977 L 356, p. 1), as amended by Council Regulation No 610/90 (OJ 1990 L 70, p. 1), in which Articles 40 to 46 are the relevant provisions.

Under Article 4 of the Commission's internal rules for the implementation of the general budget of the European Communities, the validation of expenses, authorization of payments and issuing of recovery orders may be subdelegated only to officials of Categories A or B.

Each applicant brought an action in the same form, alleging that, in breach of Article 41 of the Financial Regulation and Article 4 of the internal rules, he or she was being asked to perform tasks reserved exclusively for officials of Categories A and B. The applicants requested written confirmation that they had to undertake tasks which neither had been nor could have been lawfully subdelegated to them, that that irregular situation be brought to an end, and that an internal competition be organized for transfer from Category C to Category B.

The Commission rejected those requests on the ground that the classification work of claims officers was preparatory to validation within the meaning of the Financial Regulation and thus fell within the scope of executive duties in Category C.

Admissibility

Whether the pre-litigation procedure laid down by Articles 90 and 91 of the Staff Regulations was properly followed

The Court considers this point of its own motion, since the conditions of admissibility of an action are a matter of public policy (paragraph 15).

See: *6/60 Humblet v Belgium* [1960] ECR 559, 570; *T-130/89 B v Commission* [1990] ECR II-761, para. 13

Whilst any official may request the appointing authority to take a decision relating to him, that right does not allow the time-limits laid down in Articles 90 and 91 of the Staff Regulations to be set aside by indirectly calling in question by means of a request a decision which has not been challenged within the period prescribed. That does not apply in the present case, however, since the applicants intend to rely on new facts which might substantially change the conditions prevailing when the decisions concerning their original classifications and assignments were taken and which may justify the submission of requests for review (paragraphs 15 and 16).

See: *231/84 Valentini v Commission* [1985] ECR 3027, para. 14

The subject-matter of the relief sought

The Court dismisses the Commission's objection of inadmissibility in relation to the subject-matter of the relief sought, lodged on the ground that the Court does not have jurisdiction to address injunctions to the administration. Since the applicants have applied for annulment of the decision dismissing their request for regularization, which effectively envisaged a number of specific measures to be taken by the Commission, it will be for the Commission, in the case of annulment, to take all the necessary steps to give effect to the judgment in accordance with the first paragraph of Article 176 of the EC Treaty, without there being any question

of the Court exceeding its jurisdiction by addressing direct injunctions to the institution (paragraphs 17 and 20).

See: 121/76 *Moli v Commission* [1977] ECR 1971, para. 24; 225/82 *Verzyck v Commission* [1983] ECR 1991, para. 19

The applicants' single plea in law

The Court takes the view, contrary to what the Commission maintains, that the absence of an express reference in the application to a legal provision or principle whose infringement gives rise to a plea in the action does not render the action inadmissible, since the applicants' argument enables the institution to defend its interests effectively and enables the Community judicature to exercise its power of review (paragraph 26).

See: 62/65 *Serio v Commission* [1966] ECR 561, 568; 74/74 *CNTA v Commission* [1975] ECR 533, para. 4; T-18/90 *Jongen v Commission* [1991] ECR II-187, para. 13; T-109/92 *Lacruz Bassols v Court of Justice* [1994] ECR-SC II-105, para. 67

Moreover, in determining the level of the applicants' duties, all the relevant factors have to be taken into account, including the provisions on which the applicants rely contained in the Joint Scheme, the Financial Regulation and the internal rules of the Commission. Those provisions cannot, therefore, contrary to what the Commission alleges, be regarded as a purely internal matter with no relation to the proceedings brought by the officials (paragraph 28).

Substance

As the applicants have never claimed that their regular duties include the issuing of payment orders, which falls within the technical meaning of authorization given by Articles 43 and 44 of the Financial Regulation, or that they assume the disciplinary and financial responsibility which characterizes the work of an authorizing officer,

the Court concludes that the level of the applicants' duties must be assessed on the basis that authorization tasks do not form part of those duties (paragraph 45).

As for validation tasks, the Court finds that the applicants have not claimed that they regularly check, under Article 40 of the Financial Regulation, whether rights to reimbursement really exist. Moreover, under Article 41(2) of the Financial Regulation an authorizing officer may have supporting documents examined by other officials who come under his financial and disciplinary responsibility, provided that he does at least carry out spot checks. Such a working arrangement cannot, therefore, by itself have the effect of conferring the status of authorizing officer on the person who actually carries out the examination in question, regardless of the autonomy which each claims officer may in fact have in carrying out those tasks (paragraphs 46 and 47).

The analytical report drawn up by a private management consultancy company and relied upon by the applicants does not contain any factual findings which would allow the conclusion that, by going outside the legal framework laid down by the Financial Regulation, the applicants' tasks acquired the character of validation and authorization duties (paragraph 49).

The Court declines to recognize the probative value which the applicants attribute to the staff report of one of them. The statement in that report by the person concerned that 'commitments of expenditure, recording of payments due and validation of expenditure are carried out in accordance with the provisions of the Financial Regulation' represents the subjective assessment by the official on whom the report was made concerning the tasks he is required to perform and cannot have acquired an objective character even if such statement has not been contradicted by the competent authorities of the Commission (paragraph 52).

Since the applicants have failed to establish that their administrative situation is irregular, their single plea in law must be dismissed as unfounded.

Operative part:

The application is dismissed.

