

Action brought on 11 January 2005 by Antonello Violetti and Others against Commission of the European Communities

(Case T-22/05)

(2005/C 82/67)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 January 2005 by Antonello Violetti, residing in Cittiglio (Italy), and 12 other officials, represented by E. Boigelot, lawyer.

The applicants claim that the Court should:

1. order the production of all the files concerning the applicants and sealed by the European Anti-Fraud Office (OLAF);
2. order the production of the report which concludes the internal investigation into the applicants;
3. annul the investigation into the applicants;
4. annul the Note from OLAF containing the notification of the investigation and the information of the Italian judicial authorities;
5. annul the report of the investigation sent to the Italian judicial authorities;
6. annul all measures which may be taken subsequently to the bringing of this action following and/or relating to those decisions;
7. order the Commission to pay damages and interest, assessed on an equitable basis at EUR 30 000 for each applicant, subject to increase and/or decrease in the course of the proceedings;
8. in any event, order the defendant to pay the costs.

Pleas in law and main arguments

OLAF notified the applicants that an internal investigation had been opened concerning the application of the accident insurance scheme. Following that notification, the officials concerned applied for access to their medical files. That access was refused them.

The plea in law alleges infringement of Article 73 of the Staff Regulations, Article 28 of the Conditions of employment of other servants, infringement of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, disregard of the general prin-

ciples of law, such as the principle of sound administration and the principle of equal treatment, and disregard of the duty to have regard for the welfare of officials and of the principles which require OLAF and the Commission to adopt decisions only on the basis of lawful grounds, that is to say grounds which are relevant and not vitiated by a manifest error of assessment.

The applicants submit also that Regulation 1073/1999 ⁽¹⁾ and Commission Decision 1999/396/EC of 2 June 1999 ⁽²⁾ are illegal and, as a result, plead their illegality within the meaning of Article 241 of the EC Treaty.

⁽¹⁾ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (OJ 1999 L 136, p. 1).

⁽²⁾ Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ 1999 L 149, p. 57).

Action brought on 10 January 2005 by Eric Gippini Fournier against Commission of the European Communities

(Case T-23/05)

(2005/C 82/68)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 10 January 2005 by Eric Gippini Fournier, residing in Brussels, represented by A. Theissen, lawyer.

The applicant claims that the Court should:

1. annul the decisions to award zero 'DG priority points' to the applicant in the 2003 promotion procedure; to reject his appeal to the Promotions Committee seeking the award to the applicant of 'DG priority points' (or of 'appeal' points or of priority points by whatever description); to refuse to award priority points for work in the interest of the institution under Article 9 of the General Provisions implementing Article 45 of the Staff Regulations;

2. order the Commission to pay the applicant the sum of EUR 2 500 as compensation for non-material loss suffered;
3. order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a Commission official seconded to the Court of Justice in the interests of the service from 1 March 2002 to 6 October 2003, raises an objection of illegality against the General Provisions implementing Article 45 of the Staff Regulations because of a lack of comparison of his merits with those of other officials in other Directorates General. He also claims that most of the categories of priority points are illegal because they are contrary to Article 45 of the Staff Regulations and to the principle of non-discrimination.

The applicant pleads infringement of Articles 5, 25, 43 and 45 of the Staff Regulations, of the second subparagraph of Article 2(1) of the General Provisions implementing Article 43 of the Staff Regulations, as well as of Article 2(1) and Article 6(3), (4) and (5) of the General Provisions implementing Article 45 of the Staff Regulations. The applicant also pleads infringement of the principles of proportionality, non-discrimination, equal treatment and protection of legitimate expectations. The applicant claims finally that there were also procedural irregularities, misuse of powers, failure to state reasons and to inform him of various measures and decisions, as well as manifest errors of assessment.

Action brought on 21 January 2005 by Standard Commercial Corporation, Standard Commercial Tobacco Corporation and Trans-Continental Leaf Tobacco Corporation against the Commission of the European Communities

(Case T-24/05)

(2005/C 82/69)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 January 2005 by Standard Commercial Corporation, established in Wilson, North Carolina (USA), Standard Commercial Tobacco Corporation, established in Wilson, North Carolina (USA) and Trans-Continental Leaf Tobacco Corporation established in Vaduz (Liechtenstein), represented by M. Odriozola, M. Marañón and A. Emch, lawyers.

The applicants claim that the Court should:

- annul the Decision of the Commission of the European Communities of 20 October 2004 in Case COMP/C.38.238/B.2 - Raw Tobacco Spain, insofar as it relates to the applicants;
- order the Commission to pay the applicants' legal fees and expenses.

Pleas in law and main arguments

In the contested decision the Commission found that the applicants, among other undertakings, infringed Article 81(1) EC by concluding agreements and/or concerted practices, during the period 1996-2001, designed to fix each year the (maximum) average delivery price of each variety of raw tobacco (all qualities) and to share out the quantities of each variety of raw tobacco to be bought. The Commission further found that for the last three years (1999 - 2001) they had also agreed among themselves price brackets per quality grade of each variety of raw tobacco and additional conditions.

In support of their application the applicants claim first of all that the Commission misapplied Article 81(1) EC and Article 23 (2) of Regulation 1/2003 ⁽¹⁾ in holding the applicants liable for the infringement committed by their subsidiary. According to the applicants the Commission proved neither that the applicants were in a position to exercise decisive influence over their subsidiary during the whole duration of the infringement nor that they actually exercised any influence over the subsidiary's policy. In the alternative, the applicants also claim that the Commission stated insufficient reasons for holding them liable for their subsidiary's infringement.

Further, the applicants claim that the Commission violated the principle of equal treatment by failing to apply to the applicants the criteria it had applied in excluding liability of other parent companies for subsidiaries participating in the infringement in question. This includes failing to take into account that one of the applicants' interest in its subsidiary was of purely financial nature even though the Commission had excluded liability of another parent undertaking on exactly these grounds.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, OJ L 1, 4/1/2003 p. 1.