Judgement of the Court of Justice, Vidrányi, Case C-283/90 P (1 October 1991)

Caption: Excerpt from the 'grounds' of the Vidrányi judgment as an example of an appeal brought by an official of the European Communities against a judgment of the Court of First Instance.
One of the claims in the appeal (for compensation by the Commission for the loss suffered by the appellant) is inadmissible for the reason that the subject matter of the proceedings before the Court of First Instance may not be changed in the appeal. The Court of Justice then examines the appellant's second claim (the annulment of a Commission decision), this examination being limited to points of law, excluding any evaluation of facts.
Source: Reports of Cases before the Court of Justice and the Court of First Instance. 1991. [s.l.].

URL: http://www.cvce.eu/obj/judgement_of_the_court_of_justice_vidranyi_case_c_283_90_p_1_october_1991-en-0a7614e2-ec14-4886-8cc4-ada8f6d21e2a.html
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Judgment of the Court of 1 October 1991 *
Raimund Vidrányi v Commission of the European Communities

Case C-283/90 P

(Officials - Recognition of the occupational origin of a disease – Appeal)

Summary of the Judgment

Officials - Social security - Insurance against accidents and occupational diseases - Establishing the existence of an occupational disease - Access by the official to documents in the medical file - Indirect access - Exception - Documents also having to appear in the personal file
(Staff Regulations, Arts 26 and 73; Rules on Insurance against the Risk of Accident and of Occupational Disease, Arts 21 and 23(1))

In the context of a procedure for the recognition of an occupational disease, observance of the rights of the official is ensured, having regard to the particular nature of the documents in question, by the possibility for him to acquaint himself with the particulars in the file prepared by the appointing authority by the interposition of the doctor of his choice and to appoint a doctor to defend his interests within the Medical Committee.

Documents drawn up within the framework of that procedure need be placed in the personal file, to which the official has direct access pursuant to Article 26 of the Staff Regulations, only where those documents are used for the appraisal or alteration of the official's administrative status by the institution to which he belongs.

[…]

In Case C-283/90 P,

Raimund Vidrányi, represented by H.-J. Moritz, of Mahlberg, Wenning und Partner, Bonn, with an address for service in Luxembourg at 25a, Rue de Schoenfels, L-8151 Bridel,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 12 July 1990 in Case T-154/89 between Raimund Vidrányi and the Commission of the European Communities, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by its Legal Adviser, M. J. Griesmar, acting as Agent, assisted by C. Verbraeken and D. Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the chambers of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg, which contends that the appeal should be dismissed as inadmissible in part and as completely unfounded,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, F. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 May 1991,

after hearing the Opinion of the Advocate General at the sitting on 27 June 1991,

gives the following

Judgment

1 By an application lodged at the Court Registry on 17 September 1990, Mr Raimund Vidrányi brought an appeal under Article 49 of the EEC Statute and the corresponding provisions of the ECSC and Euratom Statutes of the Court of Justice against the judgment of 12 July 1990 whereby the Court of First Instance dismissed his application for the annulment of the Commission's decision of 13 January 1989 refusing to recognize that the appellant's mental disease resulted from his occupation.

2 By his appeal, Mr Vidrányi is seeking to have the judgment of the Court of First Instance set aside and the Commission ordered to compensate for the loss which the appellant has suffered due to the Commission's breach of its duty to have regard for his interests.

3 In support of the appeal, the appellant puts forward three pleas in law, the first of which is based on the alleged irregularity of the procedure followed for the purpose of applying the Rules on the Insurance of Officials of the European Communities against the Risk of Accident and Occupational Disease (hereinafter referred to as 'the Insurance Rules') referred to by Article 73 of the Staff Regulations of Officials of the European Communities (hereinafter referred to as 'the Staff Regulations'), the second on the incorrect appraisal by the Court of First Instance of the contents of the report of the Medical Committee and the third on the breach of the first and second paragraphs of Article 24 of the Staff Regulations.

4 In his first plea, Mr Vidrányi challenges first the conclusion reached by the Court of First Instance that the documents relating to the inquiry held among his immediate superiors in application of Article 17(2) of the Insurance Rules were of a medical nature and could therefore not be communicated to him, whereas he maintains that those documents related to his administrative status, which meant that he should have had the possibility of commenting on them. The appellant then disputes the appraisal of the Court of First Instance according to which his hearing by the Medical Committee was adequate, in particular in view of the fact that that committee had a complete file at its disposal, whereas he maintains that he did not have the possibility of commenting on the factors which contributed to the aggravation of his disease, namely the working atmosphere, his relations with his superiors and the tasks given to him within the Commission.

5 In his second plea, Mr Vidrányi essentially claims that the Court of First Instance based its decision on the conclusion of the Medical Committee's report attributing the appellant's disease to the make-up of his personality, whereas there was no logical link between that conclusion and the medical findings contained in the report.

6 In his third plea, Mr Vidrányi complains that the Court of First Instance did not answer the plea invoked at first instance to the effect that the Commission did nothing to remedy the situation after his disease was known to the Medical Service. Mr Vidrányi considers that that failure by the Commission in its duty to have regard for his interests, a duty laid down by the first and second paragraphs of Article 24 of the Staff Regulations, means that he is entitled to compensation for the loss suffered.

7 Reference is made to the Report for the Hearing for a fuller account of the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 In order to determine the appeal brought by Mr Vidrányi, it should be pointed out, first of all, that in the words of Article 113 of the Rules of Procedure,

'1. An appeal may seek:

- to set aside, in whole or in part, the decision of the Court of First Instance;

- the same form of order, in whole or in part, as that sought at first instance and shall not seek a different form of order.

2. The subject-matter of the proceedings before the Court of First Instance may not be changed in the appeal.'

9 The application which Mr Vidrányi brought before the Court of First Instance had as its subject-matter the annulment of the Commission's decision refusing to recognize the occupational nature of his disease.

10 It follows that the claim in the appeal for compensation by the Commission for the loss allegedly suffered by the appellant due to its breach of its duty to have regard for his interests must be dismissed as inadmissible.

11 It should be pointed out in the second place that according to Article 168a of the EEC Treaty and the corresponding provisions of the ECSC and EAEC Treaties, appeals are limited to points of law. That restriction is confirmed in the first paragraph of Article 51 of the Statute of the Court of Justice of the EEC and the corresponding provisions of the Statutes of the Court of Justice of the ECSC and the EAEC which go on to set out the grounds on which an appeal may lie, namely lack of competence of the Court of First Instance, a breach of the procedure before it which adversely affects the interests of the appellant and the infringement of Community law by the Court of First Instance.

12 It follows that the appeal may rely only on grounds relating to the infringement of rules of law by the Court of First Instance, to the exclusion of any appraisal of the facts (see Order in Case C-115/90 P *Turner v Commission* [1991] ECR I-1423).

13 The appeal is therefore admissible only in so far as it is claimed that the decision of the Court of First Instance is incompatible with the rules of law the application of which it had to ensure.

14 As far as the second branch of the appellant's first plea is concerned, it is sufficient to state that Mr Vidrányi makes no reference to infringement of any rule of law but confines himself to disputing the appraisal by the Court of First Instance of the facts.

15 Consequently, the second branch of Mr Vidrányi's first plea must be dismissed as inadmissible.

16 With regard to the appellant's second submission, it is sufficient to point out that Mr Vidrányi disputes the Court of First Instance's appraisal of the facts which led it to declare that the medical report established a comprehensible link between the findings which it made and the conclusion to which it led.

17 As has been pointed out in paragraphs 11 to 13 of this judgment, such an appraisal of the facts cannot be reviewed by the Court, which has jurisdiction only to examine whether the contested judgment complied with the rules of law.

18 It follows that that plea is also inadmissible.

19 With regard to the appellant's first plea, in so far as it complains that the Court of First Instance wrongly described the reports drawn up following the inquiry within the framework of the Insurance Rules as documents of a medical nature, whereas they were documents relating to Mr Vidrányi's administrative status which ought to have been communicated directly to him, it may be understood only as a criticism of the Court of First Instance for having failed to criticize an infringement of the general principle of the observance of the rights of the defence.

20 In accordance with that principle, an official must have the possibility of commenting on every document which the institution intends to use against him.

21 That principle is to be found in particular in the second paragraph of Article 26 of the Staff Regulations, pursuant to which documents concerning an official's administrative status and all reports relating to his ability, efficiency and conduct may not be used or cited by the institution against that official unless previously communicated to him.

22 In the particular sphere of proceedings brought by an official to establish the occupational nature of the disease which brought about his retirement, that principle is governed by Articles 21 and 23(1) of the Insurance Rules. Article 21 provides that an official or those entitled under him may request first that the full medical report be communicated to a doctor chosen by them and then that the Medical Committee deliver its opinion before the appointing authority takes a decision regarding the occupational nature of the official's disease. In accordance with Article 23(1), the official or those entitled under him have the possibility of appointing a doctor to the Medical Committee.

23 In these proceedings, which were instigated by the official and are not directed against him, the observance of the rights of the defence have been ensured, having regard to the particular nature of the documents in question, by the possibility for the official concerned to acquaint himself with the particulars in the file prepared by the appointing authority through the interposition of the doctor of his choice and to appoint a doctor to defend his interests within the Medical Committee.

24 As the Court pointed out in its judgment in Case 140/86 *Strack v Commission* [1987] ECR 3939, in the first place, the file which serves as a basis for the doctors or the Medical Committee to appraise the occupational nature of a disease is of a medical nature and, accordingly, may be consulted only indirectly through the interposition of a doctor appointed by the official, and, in the second place, factors of an administrative nature which may appear in that file and have an influence on the administrative status of the official must also appear in the personal file where, pursuant to Article 26 of the Staff Regulations, the official may consult them directly.

25 All the documents submitted to the doctors or to the Medical Committee thus come within the scheme of Article 21 of the Insurance Rules and it is necessary to place some of them in the official's personal file, making it possible for him to acquaint himself with them, only where those documents are used for the appraisal or alteration of the official's administrative status by the institution to which he belongs.

26 As is apparent from the judgment of the Court of First Instance, it is not disputed that the reports drawn up following the inquiry in question were in this case an integral part of a procedure of a medical nature and appeared in the file submitted to the Medical Committee, so that the appellant could have access to those documents through the intermediary of his chosen doctor within that committee. Moreover, the Court of First Instance declared that it was not established in this case that the documents in question had served purposes other than those of the procedure laid down by the Insurance Rules.

27 In those conditions, the Court of First Instance was able, rightly and without accepting an infringement of the appellant's rights of defence, to consider that the reports of the appellant's immediate superiors, intended to establish whether, as Mr Vidrányi maintained in his request, the working conditions within the Commission could be the cause of the disease which led to his incapacity for work, were of a medical nature. The drawing up of those reports, even while they themselves are not covered by medical secrecy, constitutes, pursuant to the first subparagraph of Article 17(2) of the Insurance Rules, the act by which the procedure initiated by the official with a view to ascertaining the occupational origin of his disease is commenced.

28 It follows that the first branch of the appellant's first plea is not well founded.

29 With regard, finally, to the complaint in the third plea that the Court of First Instance failed to rule on the plea regarding the infringement of the first and second paragraphs of Article 24 of the Staff Regulations, it must be said that although he does not claim the infringement of any precise rule of law, it may be understood as alleging an irregularity amounting to a failure to state reasons, and hence failure to observe a general principle which places on every court the obligation to state the reasons on which its decisions are

based, by indicating in particular the reasons which led it not to uphold a complaint expressly raised before it.

30 In that respect, it should be pointed out that that complaint was formulated, as a criticism directed against the contents of the report of the Medical Committee, in proceedings seeking confirmation of the existence of an occupational disease, and not a declaration that there had been a breach of Article 24 of the Staff Regulations. Furthermore, the appellant has himself recognized in his appeal that the forms of order sought at first instance 'have almost nothing to do with Article 24 of the Staff Regulations'.

31 In those conditions, Mr Vidrányi, in claiming that there had been a breach by the Commission of Article 24 of the Staff Regulations, was not putting forward a distinct plea in support of his application but advancing an additional argument seeking to challenge the contents of the report of the Medical Committee concerning the nature of his disease. The Court of First Instance, by dismissing Mr Vidrányi's application, clearly and necessarily indicated that his disease could not be attributed to causes other than the make-up of his personality, such as an alleged failure by the Commission's Medical Service.

32 Accordingly, that complaint of Mr Vidrányi is also not well founded.

33 It follows from the foregoing considerations that Mr Vidrányi's appeal must be dismissed in its entirety.

Costs

34 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Under Article 70 of those Rules, in proceedings brought by officials, institutions are to bear their own costs. However, under Article 122 of the Rules of Procedure, Article 70 is not to apply to appeals brought by officials or other servants of the institutions. Since Mr Vidrányi has failed in his submissions, he must be ordered to pay the costs of these proceedings.

On those grounds,

THE COURT

hereby:

1. Dismisses the appeal;
2. Orders Mr Vidrányi to pay the costs.

Due
Mancini
O'Higgins
Moitinho de Almeida
Rodríguez Iglesias
Slynn
Kakouris
Schockweiler
Grévisse
Zuleeg
Kapteyn

Delivered in open court in Luxembourg on 1 October 1991.

J. G. Giraud
Registrar

O. Due

President

* Language of the case: French