Case C-130/91

ISAE/VP (Instituto Social de Apoio ao Emprego e à Valorização Profissional) and Interdata (Centro de Processamento de Dados Ld.ª)

v

Commission of the European Communities

(Inadmissibility)

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Summary of the Order

1. *Action for annulment — Absence of a challengeable act — Inadmissibility*
   (EEC Treaty, Art. 173)

2. *Action for failure to act — Failure to comply with the procedural requirements laid down in the second paragraph of Article 175 of the Treaty — Inadmissibility*
   (EEC Treaty, Art. 175)

ORDER OF THE COURT
14 January 1992 *

In Case C-130/91,

ISAE/VP (Instituto Social de Apoio ao Emprego e à Valorização Profissional), a company incorporated under Portuguese Law and having its registered office in Lisbon,

and

* Language of the case: Portuguese.

Interdata (Centro de Processamento de Dados Ld.ª), a company incorporated under Portuguese Law and having its registered office in Lisbon,

represented by Agostinho Amado Rodrigues, of the Lisbon Bar, with an address for service in Luxembourg at the Chambers of Albert Rodesch, 7-11 Route d'Esch,

applicants,

v

Commission of the European Communities, represented by Herculano Lima, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of a Commission decision alleged to have been adopted on a date unknown and to have refused payment of contributions from the European Social Fund which had previously been approved and which concerned applications for assistance Nos 87.0730/P1, 88.0705/P1 and 88.0706/P1,

THE COURT,

composed of: O. Due, President, Sir Gordon Slynn, R. Joliet, F. A. Schockweiler, F. Grévisse, and P. J. G. Kapteyn (Presidents of Chambers), G. F. Mancini, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, Díez de Velasco, M. Zuleeg and J. L. Murray, Judges,

Advocate General: M. Darmon,
Registrar: J.-G. Giraud,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 10 May 1991, the companies ISAE/VP (Instituto Social de Apoio ao Emprego e à Valorização Profissional) and Interdata (Centro de Processamento de Dados Ld.ª) brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of a Commission decision alleged to have been adopted on a date unknown and to have refused payment of contributions from the European Social Fund which had previously been approved and which concerned applications for assistance Nos 87.0730/P1, 88.0705/P1 and 88.0706/P1.

2 Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC on the tasks of the European Social Fund (Official Journal 1983 L 289, p. 1, hereinafter referred to as 'the regulation') defines the types of expenditure which may be the subject of Fund assistance. Article 5 provides for the payment of advances of the assistance approved. According to Article 6(1), when Fund assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may suspend, reduce or withdraw the aid after having given the relevant Member State an opportunity to comment.

3 The Department for the Affairs of the European Social Fund (hereinafter referred to as 'the Department'), Lisbon, submitted, in the name of the Portuguese Republic and in favour of the applicants, three applications for assistance from the Fund for the financial years 1987 and 1988. It is apparent from the documents before the Court that those applications were approved by three Commission decisions and, pursuant to Article 5(1) of the regulation, advances from the Fund and the Institute for the Financial Management of Social Security of the Portuguese Republic were paid to each of the applicants. Subsequently, final claims for payment of the balance were submitted to the Department together with assessment reports in accordance with Article 5(4) of the regulation.

4 Since they had not received payment, the applicants sent various letters in January 1990 seeking the intervention of the Portuguese authorities. On 25 October 1990

the first applicant sent to the Commission by registered letter a request for payment but it never received a reply.

5 The applicants therefore brought the present action for annulment accompanied by an application for legal aid.

6 The Commission states in its defence that, as was stated in a letter dated 3 June 1991 from Directorate General V, payment of the contributions in question was suspended following information forwarded to the Commission by the Portuguese authorities. Consequently, no decision to reduce or withdraw the aid has been taken and therefore no decision has been communicated to the applicants. For that reason, the application for annulment is without purpose and is therefore inadmissible.

7 According to the Commission, if the action were to be considered as an action for failure to act brought on the ground of absence of a payment decision, it would also be inadmissible for failing to satisfy the essential procedural requirements laid down in the second paragraph of Article 175 of the Treaty. Even supposing that the letter of 25 October 1990 could be regarded as constituting a request to act addressed to the Commission, the action would have been out of time.

8 In their reply the applicants do not furnish any evidence of the existence of the alleged decisions at issue.

9 Article 92(2) of the Rules of Procedure provides that the Court may at any time consider whether there exists any absolute bar to proceeding with a case and is to give its decision in accordance with Article 91(3) and (4) without opening the oral procedure.

10 Since the documents before the Court contain everything needed to enable the Court to give a decision, it has decided to do so without opening the oral procedure.

11 Since the applicants have not established the material existence of a decision adopted by the Commission, the action for annulment is inadmissible on the ground of absence of any act challengeable under Article 173 of the Treaty.

12 For the rest, even if the action should be regarded as an action for failure to act brought, pursuant to the third paragraph of Article 175 of the Treaty, against the absence of a payment decision, it would be inadmissible on the ground of failure to comply with the essential procedural requirements laid down in the second paragraph of Article 175 of the Treaty.

13 It follows from the foregoing that the application must be dismissed as inadmissible.

14 Since the application is inadmissible, there is no need to rule on the application for legal aid submitted by the applicants.

Costs

15 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

(1) The application is dismissed as inadmissible;

(2) The applicants are ordered to pay the costs.

Luxembourg, 14 January 1992.

J.-G. Giraud
Registrar

O. Due
President