

This ground of appeal is divided into three complaints, alleging an infringement of Articles 14 and 106(2) TFEU and Protocol (No 26) and the case-law interpreting them, in that the General Court in its judgment incorrectly interpreted those provisions of the TFEU referring to the SGEI. By the first complaint, the appellants submit that the judgment under appeal disregarded the Member States' margin of discretion to define a SGEI, by carrying out an interpretation, applied to the present case, which ignores and renders meaningless that discretion. The official document empowering the public action in question contains a clear and precise definition of the public service mission, and meets all the requirements laid down by the case-law to be regarded as a valid SGEI. By the second complaint, the appellants submit that the General Court did not examine whether there was a manifest error in the definition of the public service and did not find that the definition given by the public authorities was manifestly erroneous, despite having found that the activity in question was clearly an activity that could be qualified as a SGEI from a substantive point of view. By the third complaint, the appellants submit that the General Court committed errors of law in the judgment under appeal by carrying out an erroneous interpretation of the national legislation as a result of which it did not consider that there was a clear and precise definition of the SGEI as required by the judgment in *Altmark*.<sup>(2)</sup>

<sup>(1)</sup> Commission Decision of 19 June 2013 on State aid SA.28599 (C 23/10 (ex NN 36/10, ex CP 163/09)) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha) (OJ L 217, p. 52).

<sup>(2)</sup> EU:C:2003:415

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**Appeal brought on 12 February 2016 by the Kingdom of Spain against the judgment of the General Court (Fifth Chamber) delivered on 26 November 2015 in Case T-461/13 Spain v Commission**

**(Case C-81/16 P)**

(2016/C 118/22)

*Language of the case: Spanish*

**Parties**

*Appellant:* Kingdom of Spain (represented by: A. Rubio González, acting as Agent)

*Other party to the proceedings:* European Commission

**Form of order sought**

- Grant the appeal and set aside the judgment of the General Court of 26 November 2015 in Case T-461/13 *Spain v Commission*;
- Annul Commission Decision 2014/489/UE<sup>(1)</sup> of 19 June 2013 on State aid SA.28599 (C 23/10) (ex NN 36/10, ex CP 163/09) implemented by the Kingdom of Spain for the deployment of digital terrestrial television in remote and less urbanised areas (outside Castilla-La Mancha);
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

Error of law relating to the control of Member States regarding the definition and application of a service of general economic interest. As regards the first condition laid down in the judgment in *Altmark*,<sup>(2)</sup> the General Court refused to check whether or not the Commission had examined all the relevant factors in assessing the definition of a public service. Likewise, the General Court failed to check whether or not the Commission had examined all the relevant elements in order to assess whether the fourth condition laid down in the judgment in *Altmark* had been fulfilled. Accordingly, the General Court infringed the discretion allowing a Member State to organise its public service.

Error of law relating to judicial control of the compatibility of State aid. In the first place, the General Court failed to check the accuracy of the facts on which the Commission based its analysis. Accordingly, the judgment fails to review the reliability, consistency and relevance of the data used by the Commission. Finally, the General Court failed to check the validity of the Commission's conclusions.

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<sup>(1)</sup> OJ 2014 L 217, p. 52.

<sup>(2)</sup> EU:C:2003:415.

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