Order of the Court of First Instance of 22 June 2009 — Timmer v Court of Auditors

(Case T-340/08 P) [1]

(Appeal — Staff cases — Officials — Staff reporting — New and substantial facts — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2009/C 233/30)

Language of the case: French

Parties

Appellant: Marianne Timmer (Saint-Sauves-d'Auvergne, France) (represented by: F. Rollinger, lawyer)

Other party to the proceedings: Court of Auditors of the European Communities (represented by: T. Kennedy, J.-M. Steiner and G. Corstens, acting as Agents)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 5 June 2008 in Case F-123/06 *Timmer* v *Court of Auditors*, not yet published in the ECR, and seeking annulment of that order.

Operative part of the order

1. *The appeal is dismissed.*

2. *Ms Marianne Timmer is ordered to bear her own costs and to pay those of the Court of Auditors of the European Communities in the present proceedings.*

[1] OJ C 285, 8.11.2008.

Order of the Court of First Instance of 22 June 2009 — Nijs v Court of Auditors

(Case T-371/08 P) [1]

(Appeal — Public service — Officials — Decision to appoint the appellant's superior — Internal competition — Staff Committee elections — Decision not to promote the appellant in 2006 — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2009/C 233/31)

Language of the case: French

Parties

Appellant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger and A. Hertzog, lawyers)

Other party: Court of Auditors (represented by: T. Kennedy, J.-M. Stenier and J. Vermer, agents)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (First Chamber) of 26 June 2008 in Case F-5/07 *Nijs* v *Court of Auditors* [2009] ECR I-0000 seeking that that order be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Bart Nijs to bear his own costs and to pay those incurred by the Court of Auditors of the European Communities in the present proceedings.*

[1] OJ C 301 of 22.11.2008.

Order of the Court of First Instance of 22 June 2009 — Nijs v Court of Auditors

(Case T-376/08) [1]

(Appeal — Public service — Officials — Evaluation report for 2005/2006 — Decision not to promote the appellant in 2007 — Decision of the Court of Auditors to renew the mandate for its Secretary General — Appeal manifestly inadmissible in part and manifestly unfounded in part)

(2009/C 233/32)

Language of the case: French

Parties

Appellant: Bart Nijs (Bereldange, Luxembourg) (represented by: F. Rollinger and A. Hertzog, lawyers)

Defendant: Court of Auditors (represented by: T. Kennedy, J.-M. Stenier and G. Corstens, agents)

Re:

Appeal brought against the order of the Civil Service Tribunal of the European Union (Second Chamber) of 26 June 2008 in Case F-1/08 *Nijs* v *Court of Auditors* [2009] ECR I-0000 seeking that that order be set aside.

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders Bart Nijs to bear his own costs and to pay those incurred by the Court of Auditors of the European Communities in the present proceedings.*

(1) OJ C 301 of 22.11.2008.

Order of the President of the Court of First Instance of 10 July 2009 — TerreStar Europe v Commission

(Case T-196/09 R)

(Application for interim measures — Decision on the selection of operators of pan-European systems providing mobile satellite services — Application for suspension of operation of the measure and interim relief — No urgency)

(2009/C 233/33)

Language of the case: English

Parties

Applicant: TerreStar Europe Ltd (London, United Kingdom) (represented by: R. Olofsson, lawyer and J. Killick, Barrister)

Defendant: Commission of the European Communities (represented by: G. Braun, A. Nijenhuis, K. Platteau and D. Van Liedekerke, lawyers)

Re:

In essence, application for suspension of operation of Commission Decision 2009/449/EC of 13 May 2009 on the selection of operators of pan-European systems providing mobile satellite services (MSS) (OJ 2009 L 149, p. 65).

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Action brought on 22 July 2009 — Evropaïki Dynamiki v EASA

(Case T-297/09)

(2009/C 233/34)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermitzakis, lawyers)

Defendant: European Aviation Safety Agency

Form of order sought

— annul the EASA's decisions to select the bids of the applicant, filed in response to the open Call for Tenders EASA.2009.OP.02 Lot 1, Lot 2, Lot 3 and Lot 5 on ICT services (OJ 2009/S 22-030588) as second and third contractor in the cascade mechanism, communicated to the applicant by four separate letters dated 12 May 2009, 8 July 2009, 13 July 2009 and 15 July 2009 and all further related decisions of EASA including the one to award the contract to the successful contractors;

— order the EASA to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 6 100 000;

— order the EASA to pay the applicant's legal costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the defendant's decision to select its bids submitted in response to a call for an open tender for ITC services (EASA.2009.OP.02) as second and third contractor in the cascade mechanism and to award the contract to the successful contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims, the applicant puts forward the following pleas in law.

First, the applicant claims that the defendant infringed the principle of good administration and equal treatment as it failed to observe the exclusion criteria provided for by Articles 93(1) and 94 of the financial regulation (1) by not excluding from the tender proceeding one of the members of the winning consortium being accused by national authorities and even accepting to be guilty for illegal activities and specifically for fraud, corruption, bribery, in the context of contract awarded from public authorities in the European Union and internationally, as well as for falsifying its books and one other winning contractor being in serious breach of its contractual obligations in its relations with the European Commission. By doing so, the defendant infringed as well Articles 133a and 134 of the implementing rules (2) and Article 45 of directive 2004/18/CE (3).

Furthermore, the applicant invokes the defendant's alleged professional misconduct arising from the potential usage of non WTO/GPA subcontractors by one of the winning tenderers.