

- breach of the principle of non-discrimination: applications by other officials in circumstances similar to those of the applicant were admitted to the procedure;
- defective statement of reasons and error of assessment, in that it was not considered that the applicant's role and the duties carried out by him, albeit under the formal title of Adviser resident in Guatemala, were B since he undertook tasks relating to the management of the Guatemala Delegation on the basis of full managerial and economic autonomy B equivalent to those of a Head of Unit.

**Action brought on 22 June 2004 by the Hellenic Republic against the Commission of the European Communities**

(Case T-251/04)

(2004/C 217/61)

(Language of the case: Greek)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 22 June 2004 by the Hellenic Republic, represented by V. Kontolaimos and I. Khalkias.

The applicant claims that the Court should:

- annul Decision 2004/457/EC of 29 April 2004 (OJ 2004 L 156, p. 47).

*Pleas in law and main arguments*

In the contested decision the Commission, in clearing the accounts in accordance with Regulation (EEC) No 729/70, excluded from Community financing various expenditure effected by the Hellenic Republic in the fruit and vegetables sector and in the sector of public storage, with the result that it is not recognised as legitimate Community expenditure and is chargeable to the Hellenic Republic.

More specifically, certain of that expenditure relates to the public storage of rice for the financial years 1999-2001. The Commission cited as the reason for non-recognition the late bringing into intervention of part of the quantity of rice. In support of its action against the part of the decision concerning that expenditure, the Hellenic Republic claims that the principle of proportionality was infringed by the Commission's refusal to recognise force majeure owing to a lorry-drivers' strike. It also claims that the principle of protection of legitimate expectations is infringed by reason of the failure of the Commission's services to state the Commission's position on the notification that it was envisaged that the bringing into intervention would be late for reasons of force majeure. The Hellenic Republic also alleges inadequate reasoning on the particular question of failure to keep within guidelines VI/5330/97 which provide for application of flat rate corrections when the actual level of the irregular payments cannot be determined.

Another part of the expenditure which was excluded from financing concerns the correction for failure to pay the minimum price to producers of peaches. On that point of the contested decision, the Hellenic Republic acknowledges that producer organisations were paid directly rather than the processor, but cites exceptional circumstances which, in its view, justify that action, which it considers to be in keeping with the aim of the common agricultural policy and the common organisation of the market, asserting further that this did not occasion any harm. The Hellenic Republic maintains in addition that the amount of the correction was wrongly calculated.

As regards the correction of 2 % in relation to the programme for helping deprived persons, the Hellenic Republic alleges that Articles 1, 2 and 9 of Regulation No 3149/92 <sup>(1)</sup> were misinterpreted, that the circumstances were wrongly assessed, and that there was inadequate reasoning.

As regards the correction made to the three-year restructuring programme for fruit and vegetables, Greece alleges misinterpretation of Article 2 of Regulation No 3816/92 <sup>(2)</sup>, mistaken assessment of the circumstances in the particular sense that what was achieved within the three-year period had to be paid for rather than what was functioning, just as restructuring action had to be paid for; this took place six months after the end of the three-year period and was paid for in the first six-month period of 2000.

Lastly, the Hellenic Republic puts forward a general plea in support of annulment concerning all parts of the contested decision, asserting that the Commission did not have the power at the time to impose corrections for the periods at issue in accordance with the provisions of Article 7(4) of Regulation No 1258/99 <sup>(3)</sup>, in conjunction with Article 8 of Regulation No 1663/1995 <sup>(4)</sup>. These require that an evaluation of the expenditure to be corrected must be contained in the communication under Article 8 of Regulation No 1663/95 with a view to calculating the 24-months preceding that communication in order for corrections to be imposed.

<sup>(1)</sup> Commission Regulation (EEC) No 3149/92 of 29 October 1992 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community (OJ L 313 of 30.10.1992, p. 50).

<sup>(2)</sup> Council Regulation (EEC) No 3816/92 of 28 December 1992 providing for, in the fruit and vegetables sector, the abolition of the compensation mechanism in trade between Spain and the other Member States and allied measures (OJ L 387 of 31.12.1992, p. 10).

<sup>(3)</sup> Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy (OJ L 160 of 26.06.1999, p. 103).

<sup>(4)</sup> Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Council Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section (OJ L 158 of 8.7.1995, p. 6).