

**Action brought on 23 June 2004 by CESTAS (Centro di Educazione Sanitaria e Technologie Appropriate Sanitarie) against the Commission of the European Communities**

**(Case T-260/04)**

(2004/C 217/64)

*(Language of the case: Italian)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 June 2004 by CESTAS (Centro di Educazione Sanitaria e Technologie Appropriate) (Centre for Health Education and Appropriate Health Technologies), represented by Nicoletta Amadei and Charles Turk, lawyers.

The applicants claim that the Court should:

- annul the contested decision in its entirety;
- order the Commission to pay the costs.

*Pleas in law and main arguments:*

This action seeks the annulment of the decision of the Commission (Republic of Guinea delegation) of 21 April 2004 under which the applicant, an NGO operating in Guinea since 1987, was ordered to pay the sum of 959 543 835 Guinean francs (equivalent to EUR 397 126.02) as costs considered unjustified in the carrying out of projects for which it is responsible.

In support of its claims, the applicant argues:

- infringement of essential procedural requirements for failure adequately to state reasons, contradictory reasons and lack of legal basis. It is claimed that the contested debit note refers only to the agreement 'Amélioration des conditions de vie à l'intérieur du pays ("Improvement of living conditions within the country") – 7 ACP GUI 019-4-AT CESTAS', when no agreement with that name exists, which is why it is not clear to which agreement or agreements set up between the applicant and the Guinean government the contested decision refers. On the other hand, CESTAS notes the absence of any legal basis whatsoever on which the contested decision might rest. Finally, the debit note gives no explanation of the accounting standards by which the Commission determined the sum in dispute;
- it would also seem possible for the contested decision to be annulled inasmuch as the order for the applicant to pay the sum in question was made by the Commission, which is a third party to the contracts signed in the various projects in Guinea;
- infringement of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>(1)</sup>, insofar as no action was taken in respect of the applicant's request to obtain a copy of the Ernst & Young report on which the contested decision is based;
- infringement of the defendant's rights of defence;

- infringement of the principles of the right to be heard and of proper administration. In the latter respect, it is noted in particular that the examination of the applicant's alleged deficits was wholly carried out by an external body, Ernst & Young, which was not entirely a third party as regards the main parties, but a body paid by the Guinean Government and, as such, cannot be regarded as impartial.

<sup>(1)</sup> OJ L 145 of 31.05.2001, p. 43.

**Action brought on 1 July 2004 by the Kingdom of Spain v the Commission of the European Communities**

**(Case T-266/04)**

(2004/C 217/65)

*(Language of the case: Spain)*

An action against the Commission of the European Communities was brought before the Court of First Instance on 1 July 2004 by the Kingdom of Spain, with an address for service at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais, Luxembourg, represented by Fernando Díez Moreno, lawyer, acting as Agent.

The applicant claims that the Court should:

- Annul the Commission decision of 29 April 2004 as regards, in respect of Spain, the exclusion from financial compensation for withdrawal of fruit and vegetables (EUR 5 253 604.00); and the exclusion in respect of the arable crops sector and cattle premiums, with the exception of the sum relating to the 2000/2001 marketing year in La Rioja, in the arable crops sector (EUR 1 659 053.00), and
- Order the Commission to pay the costs.

*Pleas in law and main arguments*

The contested decision, in so far as it affects the applicant, involves four exclusions: (a) financial compensation for withdrawals of fruit and vegetables; (b) aid for the processing of lemons; (c) supplies of foodstuffs deriving from intervention stocks, intended for distribution to persons most in need; and (d) arable crops and cattle premiums. The present action relates only to the exclusion from financial compensation relating to withdrawals of fruit and vegetables (EUR 5 253 601, because of allegedly defective controls in Murcia and Valencia), and to the exclusion applied in relation to arable crops and cattle premiums, with the exception of the sum corresponding to the marketing year 2000/2001 in La Rioja in respect of arable crops, as a result of which the sum of which the exclusion is considered inappropriate in that sector is EUR 1 659 053.