

Form of order sought

— Annul letter No 4263 of 20 May 2009 of the European Commission — Directorate General for Regional Policy — concerning ‘Regional Operational Programme “Campania” 2000-2006. Request for payment No Sysfin 2009/0154 Adonis A/723 of 12 January 2009’, containing the following decision: ‘The sum of EUR 18 544 968,79 relating to expenditure incurred after 17 May 2006 in relation to measure 1.7 concerning the regional waste management and disposal system is non-eligible’.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those relied on in Case T-99/09 *Italy v Commission*.⁽¹⁾

The applicant submits, in particular:

- Infringement of Articles 32 and 39 of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds,⁽²⁾ in so far as the defendant reduced payment of the expenditure certified in respect of measure 1.7 ‘pending the outcome of Case T-99/09’ and that the fact that there are proceedings pending against previous payment procedure measures is not one of the circumstances in which payment from Structural Funds may be reduced in accordance with the provisions referred to above.
- Infringement of Article 230 EC. It is submitted in this connection that if, as a result of bringing legal proceedings, Member States should fear that subsequent intermediate payments will be reduced, they will no longer have the freedom to exercise the fundamental right to judicial protection.

⁽¹⁾ OJ C 102, 1.5.2009, p. 34.

⁽²⁾ OJ L 161, 26.6.1999, p. 1.

Appeal brought on 4 August 2009 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 20 May 2009 in Case F-73/08, *Marcuccio v Commission*

(Case T-311/09 P)

(2009/C 233/37)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

In any event:

- Annul the judgment under appeal in its entirety.
- Declare that the action which gave rise to the judgment under appeal is perfectly admissible.

Principal claim:

- Annul the respondent’s decision refusing the application dated 27 June 2007.
- Annul the respondent’s decision rejecting the application dated 29 June 2007.
- Annul the respondent decision rejecting the application dated 30 June 2007.
- Annul the respondent’s decision rejecting the application dated 2 July 2007.
- Annul, in so far as necessary, the memorandum dated 29 April 2008 signed by Mr Bernhard Jansen.
- On the basis set out in the application initiating the proceedings, order that the EC pay to the applicant the sum of EUR 4 747,29 or such greater or lesser sum as the Court of First Instance may consider appropriate, together with interest on that sum with effect from 7 November 2007 at the rate of 10 % per annum with annual capitalisation, or at such rate with capitalisation and from such date as the Court of First Instance may consider appropriate.
- Order the EC to reimburse the appellant in respect of all costs, charges and fees incurred by him in the proceedings at first instance and in these appeal proceedings.

In the alternative:

- Refer the case back to the Civil Service Tribunal for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 20 May 2009 in Case F-73/08. That order dismissed as partly inadmissible and partly unfounded an action seeking annulment of the defendant’s decision to reject the appellant’s requests for reimbursement of certain medical expenses at the normal rate and at the ‘additional’ rate, namely 100 %.

In support of his claims, the appellant alleges infringement of the principle that reasons must be given for a Community decision, misapplication of the concept of a challengeable act and breach of the principle of *res judicata*, the principle of the division of powers and of the case-law relating the effects of the annulment by the Community judicature of a decision adopted by a Community institution.

The appellant also alleges infringement of the concepts of *lis pendens* and of a confirmatory decision and of the provisions governing rulings on costs in legal proceedings.