

- infringement of Article 253 EC since the contested decision is inherently contradictory as regards the level of the fine;
- infringement of Article 23 of Regulation No 1/2003 since the Commission erred in its assessment of the gravity and duration of the infringement;
- infringement of the general principle of equal treatment in relation to the gravity and duration of the infringement assumed by the Commission;
- infringement of Article 23 of Regulation No 1/2003 since the Commission failed to take account of the mitigating circumstance that the applicant expressly did not dispute the Commission's findings in the administrative procedure.

In the third part, the applicant applies, in the alternative, for Articles 1 and 3 of the contested decision to be annulled in so far as they concern the applicant, since they are based on the erroneous application of Article 81 EC and Article 7 of Regulation No 1/2003 and are contrary to Article 253 EC.

(¹) Council Regulation No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

Action brought on 6 October 2009 — Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission

(Case T-396/09)

(2009/C 297/41)

Language of the case: Dutch

Parties

Applicants: Vereniging Milieudefensie (Amsterdam, Netherlands) and Stichting Stop Luchtverontreiniging Utrecht (Utrecht, Netherlands) (represented by: A. van den Biesen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- declare the action brought by the applicants to be well founded;
- set aside Commission Decision C(2009) 6121 of 28 July 2009, which is contested in this case;
- order the Commission to examine, as to its substance, the request for an internal review within a period to be determined by the Court of First Instance;

- order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

The applicants are two Netherlands environmental organisations which, on the basis of Article 10(1) of Regulation No 1367/2006, (¹) requested the defendant to carry out a review of the earlier Commission Decision C(2009) 2560 of 7 April 2009, by which the Commission had authorised the Netherlands to defer to a later date compliance with its obligations under Directive 2008/50/EC (²) in respect of improvements to air quality. The applicants are challenging the Commission's decision to declare inadmissible their request for a review of the earlier decision addressed to the Netherlands.

In support of their application, the applicants submit, first, that, in the contested decision, the Commission did not invoke the restriction of the scope of Regulation No 1367/2006 set out in Article 2(1)(c) and that, as a consequence, it did not adopt the decision of 7 April 2009 while acting in a legislative capacity.

The applicants also contend that the decision of 7 April 2009 is individual, and not general, in its scope.

The applicants conclude by submitting that, if secondary Community legislation does not comply with the Aarhus Convention approved by the Council, (³) the legislation in question must be interpreted in accordance with that convention, and that, if this is not possible, the Convention must be applied directly by the organs and institutions of the Community. Article 2(1)(g) of Regulation No 1367/2006 should for that reason, according to the applicants, not be applied.

(¹) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

(²) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

(³) Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).