

The Court of First Instance failed to ascertain whether the judicial system provides a means of redress that would enable the chairman of a committee to apply for a declaration of unlawfulness in respect of the conduct of the President of the European Parliament where the latter exceeds his powers under the Rules of Procedure and thereby infringes the participation rights of a committee chairman or of the Parliament as a whole.

Appeal brought on 24 January 2008 by Commission of the European Communities against the judgment of the Court of First Instance (Third Chamber) delivered on 8 November 2007 in Case T-194/04: Commission of the European Communities v The Bavarian Lager Co. Ltd, European Data Protection Supervisor (EDPS)

(Case C-28/08 P)

(2008/C 79/36)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: C. Docksey and P. Aalto, Agents)

Other parties to the proceedings: The Bavarian Lager Co. Ltd, European Data Protection Supervisor

Form of order sought

The appellant claims that the Court should:

- to quash the contested judgment in full;
- to give final judgment in the matters that are the subject of this appeal; and
- to order the Applicant in Case T-194/04 to pay the costs of the Commission arising from that case and from the present appeal, or, in the event of a ruling against the Commission upon appeal, to order that the Commission should pay half the costs of the Applicant in Case T-194/04 arising from that case.

Pleas in law and main arguments

This appeal concerns the interpretation of the exceptions relating to the protection of privacy and data protection and investigations set forth respectively in Articles 4(1)(b) and 4(2), 2nd indent of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.

The Court of First Instance the Court held that Article 8(b) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾ may not be applied in the case of personal data in documents held by an institution falling under Regulation 1049/2001. However no provision of either Regulation 45/2001 or Regulation 1049/2001 requires or permits this provision to be disabled in order to permit a norm under Regulation 1049/2001 to have effect. The CFI has therefore erred in law in interpreting Article 4(1)(b) of Regulation 1049/2001 so as require a provision of Community law to be set aside.

Second, the Court held that, notwithstanding the specific reference in Article 4(1)(b) to Community legislation on data protection, personal data in documents shall be disclosed to the public under Regulation 1049/2001 except in cases where there is a clear risk of undermining the protection of the right of privacy and integrity of the individual.

By limiting the scope of the exception under Article 4(1)(b) to such cases, the Court has adopted a restrictive interpretation of the exception in Article 4(1)(b) which deprives the additional requirement in the second part of that exception ('in particular in accordance with Community legislation on data protection') of its *effet utile*. The Court has erred in law in limiting the said exception to exclude Community legislation on data protection from its scope in cases where access is requested to personal data contained in a document.

Third, the Court adopted an interpretation of the exception relating to the protection of 'investigations' which casts doubt on the ability of the Commission to carry out its functions effectively by relying on information received on a confidential basis from third parties in order for them to assist the Commission in conducting its inquiries.

The CFI has erred in law by interpreting the exception relating to investigations in Article 4(2), third indent, of Regulation 1049/2001 to the effect that the Commission may not provide assurances of confidentiality made in the course of its investigations of an alleged violation of Community law, nor respect such assurances in the future.

Finally, the Commission has appealed on costs.

⁽¹⁾ OJ L 145, p. 43.

⁽²⁾ OJ L 8, p. 1.