

Action brought on 5 June 2009 — CEVA v Commission**(Case T-224/09)**

(2009/C 205/74)

*Language of the case: French***Parties**

Applicant: Centre d'étude et de valorisation des algues SA (CEVA) (Pleubian, France) (represented by: J.-M. Peyrical, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- principally, declare that no contractual link exists between the European Commission and CEVA (European Research Center for Algae) and, consequently,
- annul enforcement order No 3230900440 of the European Commission of 6 April 2009;
- in the alternative, find that no statement of reasons has been provided for enforcement order No 3230900440 of the European Commission of 6 April 2009;
- declare that there is a risk of unjust enrichment of the Commission in the event that CEVA reimburses the sum of EUR 179 896 together with default interest;
- consequently, annul enforcement order No 3230900440 of the European Commission of 6 April 2009.

Pleas in law and main arguments

By this action, the applicant seeks annulment of the enforcement order by which the Commission demanded reimbursement of all the payments made on account to the applicant in the framework of contract PROTOP No EVK3-CT-2002-30004 relating to a research and technological development project.

In support of its action, the applicant puts forward three pleas alleging:

- that the enforcement order is inadmissible since no contractual link exists between the applicant and the Commission;
- failure to provide a sufficient statement of reasons, since the Commission relied on an alleged infringement of the contractual obligations by the applicant without however setting out the legal and factual reasons in support of that claim;

- infringement of the principle of unjust enrichment, since the reimbursement in full of the sum demanded by the Commission means that it would be unjustly enriched insofar as it has obtained work and studies by the applicant without however paying for them to be carried out.

Action brought on 12 June 2009 — Access Info Europe v Council**(Case T-233/09)**

(2009/C 205/75)

*Language of the case: English***Parties**

Applicant: Access Info Europe (Madrid, Spain) (represented by: O. Brouwer and J. Blockx, lawyers)

Defendant: Council of the European Union

Form of order sought

- annul the contested decision;
- order the Council to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the Court of First Instance, including the costs of any intervening parties.

Pleas in law and main arguments

The applicant seeks, pursuant to Regulation (EC) No 1049/2001⁽¹⁾, the annulment of the Council's decision to refuse full access to document 16338/08, a note from the General Secretariat to the Working Party on Information concerning the Proposal for a Regulation of the European Parliament and the Council regarding public access to European Parliament, Council and Commission documents. The Council has allegedly only granted the applicant access to a redacted version of this document, excluding those parts which enable the delegations making proposals for modifications to be identified.

The applicant submits that the contested decision should be annulled on the following grounds:

First, the applicant claims that the Council breached Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 in that

- (a) it failed to show how the disclosure of the names of the delegations would seriously undermine the institution's decision-making process;
- (b) it did not substantiate the risk that the delegations' views would cease to be submitted in writing nor how this would seriously undermine the institution's decision-making process; and in that
- (c) it failed to take into account the overriding public interest in disclosure of the identity of the national delegations.

Second, the applicant submits that the Council violated the duty to state reasons as required by Article 253 EC and Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001.

(¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

Action brought on 16 June 2009 — Nikolaou v Court of Auditors

(Case T-241/09)

(2009/C 205/76)

Language of the case: Greek

Parties

Applicant: Kalliopi Nikolaou (Athens, Greece) (represented by: V. Christianos)

Defendant: Court of Auditors

Form of order sought

The Court is asked to:

- order the Court of Auditors to compensate Mrs Nikolaou for the non-material damage she has suffered by the following means:
 - by issuing a formal communication, cooperating with Mrs Nikolaou as to its content, which will be notified to her as well, to all the Community authorities, in particular to the European Parliament, the European Commission and the other Community institutions and bodies, concerning the fact that Mrs Nikolaou has been cleared of the allegations against her;
 - by issuing a formal communication for publication in those newspapers in Luxembourg, Germany, Greece, France, Spain and Belgium which published negative comments on Mrs Nikolaou, the source of which was

the Court of Auditors, and in the European Voice, concerning the fact that the applicant has been cleared of the allegations against her;

- in the alternative, if the Court of Auditors does not restore Mrs Nikolaou's public image by the above means, order it to pay her the amount of EUR 100 000 as compensation for non-material damage, together with interest from the date of notification to it of her Request for compensation to the date of settlement, which Mrs Nikolaou undertakes to use to ensure the above publication and communications;
- order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the non-material damage she suffered owing to the proceedings before the Luxembourg judicial authorities the amount of EUR 40 000, together with interest from the date of notification to it of her Request for compensation to the date of settlement.
- order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the financial damage to which she was subjected owing to the proceedings before the Luxembourg judicial authorities, specifically before the Juge d'instruction and the Tribunal d'arrondissement de Luxembourg, the sum of EUR 57 771,40 in respect of the fees of her lawyer, Maître Hoss, for appearing in the above, and the amount of EUR 4 000 in respect of her travelling expenses to appear in the above, more specifically EUR 1 500 to appear before the Juge d'instruction and EUR 2 500 to appear before the Tribunal d'arrondissement de Luxembourg, together with interest on all the above sums from 14 April 2009, the date of notification to the Court of Auditors of her Request for compensation to the date of settlement;
- order the Court of Auditors to pay Mrs Nikolaou's costs in these proceedings.

Pleas in law and main arguments

The applicant maintains that the Court of Auditors flagrantly infringed specific provisions which confer rights on individuals and the fundamental rights which the Court of Auditors should respect in exercising its powers.

First, the applicant maintains that the Court of Auditors flagrantly infringed Article 4 of Regulation No 45/2001, (¹) Article 2 of Decision 99/50 of the Court of Auditors and was in breach of its duty to provide assistance, because it allowed various allegations against Mrs Nikolaou to be leaked to third parties before any formal investigation had been conducted. The Court of Auditors took no steps, in the applicant's view, to prevent those leaks, nor, moreover, at any later point was it concerned to review the allegations and to withdraw them, the result being that significant non-material damage was caused to the applicant.