

C/2024/2956

6.5.2024

Action brought on 23 February 2024 – Lattanzio KIBS and Others v Commission**(Case T-113/24)**

(C/2024/2956)

*Language of the case: English***Parties***Applicants:* Lattanzio KIBS SpA (Milan, Italy), CY, CV and CW (represented by: B. O'Connor and M. Hommé, lawyers)*Defendant:* European Commission**Form of order sought**

The applicants claim that the Court should:

- annul the Commission decision of 13 December 2023 relating to the proceedings for the exclusion of the first applicant from participating in award procedures for public procurements and grants governed by Regulation (EU, Euratom) 2018/1046 ('the Financial Regulation')⁽¹⁾ and Regulation (EU) 2018/1877⁽²⁾ or from being selected for implementation of funds governed by them (Ref. Ares (2023)8545235);
- order the European Commission (and any possible intervener) to bear the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicants rely on eight pleas in law.

1. First plea in law, alleging that the Commission made a manifest error of assessment of the facts and law by classifying the judgment of the Criminal Court of Milan of 13 July 2021 ('the Milan Ruling') as a final judgment of guilt which convicted the second and third applicants of corruption.
 - The Commission, it is argued, made manifest errors of assessment which formed the basis for the erroneous finding that the Milan Ruling constituted a final judgment of guilt.
 - The applicants also allege that the Commission made key manifest errors of assessment with respect to Italian law.
2. Second plea in law, alleging that the Commission violated Article 136(1)(d)(ii) of the Financial Regulation by finding, on the basis of a manifest error of assessment, that the Milan Ruling constituted a valid basis upon which to exclude the first applicant from participation in award procedures governed by Regulation 2018/1046 and Regulation 2018/1877.
 - The said Article 136(1)(d)(ii) provides that exclusion requires that there is a final judgment of guilt establishing that the entity or person is guilty of corruption.
 - The Milan Ruling, it is argued, cannot be considered a final judgment of guilt and did not convict the second and third applicants of corruption; consequently, the Commission could not legally exclude the first applicant under Article 136(1)(d)(ii) of the Financial Regulation.

⁽¹⁾ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).

⁽²⁾ Council Regulation (EU) 2018/1877 of 26 November 2018 on the financial regulation applicable to the 11th European Development Fund, and repealing Regulation (EU) 2015/323 (OJ 2018 L 307, p. 1).

3. Third plea in law, alleging that the Commission failed to fulfil its obligations to consider the content and nature of national law.
 - The Commission claimed in the contested decision that the term ‘final judgment of guilt’ has an autonomous meaning in EU law and yet, the applicants argue, it failed to provide a definition or indicate a legal basis for this assessment.
 - It is, furthermore, alleged that the Commission failed to consider the classification of the Milan Ruling in Italian law.
4. Fourth plea in law, alleging that the Commission infringed Article 136(4) of the Financial Regulation by excluding the first applicant on the basis of a finding, vitiated by a manifest error of assessment, that the second and third applicants had powers of decision-making or control over it.
 - The elements assessed by the Commission under Article 136(4) of the Financial Regulation were, in the applicants’ view, insufficient to establish that the conditions of this provision were met and were tainted by the Commission’s erroneous interpretation of the Milan Ruling.
5. Fifth plea in law, alleging that the Commission failed to state reasons to substantiate the conclusions drawn in the contested decision.
 - The applicants maintain in this regard that the Commission breached Article 296 TFEU and Article 47 of the Charter of Fundamental Rights of the European Union.
 - It is also argued that the Commission failed to state reasons in relation to the two conclusions that had a decisive influence over the final decision.
6. Sixth plea in law, alleging that the Commission breached the principle of proportionality, recognised by Article 136(3) of the Financial Regulation, and as a general principle of EU law under Article 5(4) TEU, by adopting Articles 2 and 3 of the contested decision.
 - The decision to publish the exclusion decision on the website of DG NEAR and to register the names and personal information of the second and third applicants in the Early Detection and Exclusion System database was, according to the applicants, manifestly disproportionate.
 - The Commission, it is also argued, failed to consider factors in Article 136(3) of the Financial Regulation.
7. Seventh plea in law, alleging the Commission breached Article 136(6) of the Financial Regulation by failing to consider remedial measures submitted by the first applicant.
 - It is asserted that the Commission failed to consider requests from the applicants during the adversarial proceedings to seek clarification as to the possible remedial measures available to them.
 - The Commission failed to consider ample evidence provided to it by the applicants which was capable of being considered as remedial measures.
8. Eighth plea in law, alleging that the Commission infringed the fourth applicant’s right to be heard, guaranteed by Article 41 of the Charter of Fundamental Rights of the EU.
 - The Commission, it is thus finally argued, violated Article 41(2) of the Charter of Fundamental Rights by not informing the fourth applicant that it was carrying out an assessment on his person and by not providing him with the right to a defence.