

# Case C-245/92 P

Chemie Linz GmbH

v

Commission of the European Communities

(Appeal — Rules of Procedure of the Court of First Instance — Reopening of the oral procedure — Commission's Rules of Procedure — Procedure for the adoption of a decision by the College of Members of the Commission)

Opinion of Advocate General Cosmas delivered on 15 July 1997 . . . . . I-4647  
Judgment of the Court (Sixth Chamber), 8 July 1999 . . . . . I-4660

## Summary of the Judgment

1. *Procedure — Intervention — Admissibility — May be re-examined even where a previous order has held the intervention admissible*  
(EC Statute of the Court of Justice, Art. 37, second para.)
2. *Procedure — Intervention — Application in support of the form of order sought by one of the parties but relying on a different argument — Whether admissible*  
(EC Statute of the Court of Justice, Art. 37, fourth para.)

3. *Appeals — Pleas in law — Plea alleging incorrect appraisal of the facts — Inadmissible — Whether the Court of Justice may review the appraisal of the evidence — Possible only where the clear sense of the evidence has been distorted — Refusal to reopen the oral procedure — Review by the Court — Limits*  
(EC Treaty, Art. 168a (now Art. 225 EC); EC Statute of the Court of Justice, Art. 51, first para.)
4. *Procedure — Measures of organisation of procedure — Where the request is made after the oral procedure has been closed — Conditions*  
(Rules of Procedure of the Court of First Instance, Art. 64)
5. *Procedure — Requests for measures of inquiry — Where the request is made after the oral procedure has been closed — Request that the oral procedure be reopened — Conditions for admissibility*  
(Rules of Procedure of the Court of First Instance, Art. 62)
6. *Procedure — Oral procedure — Reopening — Whether the Court of First Instance is obliged to raise of its own motion issues concerning the regularity of the procedure by which the contested decision was adopted — No such obligation*  
(Rules of Procedure of the Court of First Instance, Art. 62)
7. *Acts of the institutions — Presumed lawful — Legally non-existent acts — Concept*  
(EC Treaty, Art. 189 (now Art. 249 EC))
8. *Appeals — Jurisdiction of the Court — Whether it may order measures of inquiry — Excluded*  
(EC Statute of the Court of Justice, Art. 54, first para.; Rules of Procedure of the Court of Justice, Art. 113(2))

1. The fact that the Court has, by a previous order, given a person leave to intervene in support of the form of order sought by a party does not preclude a fresh examination of the admissibility of the intervention.
 

not prevent an intervener from using arguments different from those used by the party it is supporting, provided the intervener seeks to support that party's submissions.
2. The fourth paragraph of Article 37 of the Statute of the Court of Justice does
3. Pursuant to Article 168a of the Treaty (now Article 225 EC) and the first paragraph of Article 51 of the Statute

of the Court of Justice, an appeal may rely only on grounds relating to the infringement of rules of law, to the exclusion of any appraisal of the facts. The appraisal by the Court of First Instance of the evidence put before it does not constitute, save where the clear sense of that evidence has been distorted, a point of law which is subject, as such, to review by the Court of Justice.

It follows that, in so far as they challenge the appraisal by the Court of First Instance of the evidence placed before it in connection with the request that the oral procedure be reopened, an appellant's complaints cannot be examined in an appeal.

On the other hand, the Court of Justice must examine the question whether the Court of First Instance committed an error of law in refusing a party's request that it reopen the oral procedure and order measures of organisation of procedure and inquiry.

4. A party is entitled to ask the Court of First Instance, as a measure of organisation of procedure, to order the opposite party to produce documents which are in its possession. However, when

such a request is made after the oral procedure is closed, the Court of First Instance need only rule on the request if it decides to reopen the oral procedure.

5. If made after the oral procedure is closed, a request for measures of inquiry can be admitted only if it relates to facts which may have a decisive influence on the outcome of the case and which the party concerned could not put forward before the close of the oral procedure. The same applies with regard to the request that the oral procedure be reopened. It is true that, under Article 62 of its Rules of Procedure, the Court of First Instance has discretion in this area. However, the Court of First Instance is not obliged to accede to such a request unless the party concerned relies on facts which may have a decisive influence on the outcome of the case and which it could not have put forward before the close of the oral procedure.
6. The Court of First Instance is not obliged to order that the oral procedure be reopened on the ground of an alleged duty to raise of its own motion issues concerning the regularity of the procedure by which a Commission decision was adopted. Any such obligation to raise matters of public policy could exist only on the basis of the factual evidence adduced before the Court.

7. Acts of the Community institutions are in principle presumed to be lawful and accordingly produce legal effects, even if they are tainted by irregularities, until such time as they are annulled or withdrawn.
8. A request by a party that the Court of Justice order measures of inquiry for the purpose of ascertaining the circumstances in which the Commission adopted the decision which was the subject of the contested judgment goes beyond the scope of an appeal, which is limited to questions of law.

However, by way of exception to that principle, acts tainted by an irregularity whose gravity is so obvious that it cannot be tolerated by the Community legal order must be treated as having no legal effect, even provisional, that is to say they must be regarded as legally non-existent. The purpose of this exception is to maintain a balance between two fundamental, but sometimes conflicting, requirements with which a legal order must comply, namely stability of legal relations and respect for legality.

From the gravity of the consequences attaching to a finding that an act of a Community institution is non-existent it is self-evident that, for reasons of legal certainty, such a finding is reserved for quite extreme situations.

On the one hand, measures of inquiry would necessarily lead to the Court ruling on questions of fact and would change the subject-matter of the proceedings commenced before the Court of First Instance, in breach of Article 113(2) of the Rules of Procedure of the Court of Justice.

On the other hand, an appeal relates only to the contested judgment and it is only if that judgment were set aside that the Court of Justice could, in accordance with the first paragraph of Article 54 of the Statute of the Court of Justice, deliver judgment itself in the case and examine possible defects in the decision that was challenged before the Court of First Instance.