

Case T-283/02

EnBW Kernkraft GmbH

v

Commission of the European Communities

(TACIS Programme — Services provided in connection with a nuclear power station in Ukraine — Not paid for — Jurisdiction of the Court of First Instance — Action for compensation — Non-contractual liability)

Judgment of the Court of First Instance (Fourth Chamber), 16 March 2005 II - 915

Summary of the Judgment

- 1. Non-contractual liability — Conditions — Sufficiently serious breach of a superior rule of law conferring rights on individuals — No discretion for institution — Mere infringement of Community law sufficient
(Art. 288, second para., EC)*
- 2. Community law — Principles — Protection of legitimate expectations — Conditions*

1. As regards the liability of the Community for damage caused to individuals, the conduct alleged against the institution must involve sufficiently serious breach of a rule of law intended to confer rights on individuals. The decisive test for finding that a breach of Community law is sufficiently serious is whether the Community institution concerned has manifestly and gravely disregarded the limits on its discretion. Where the institution has only a considerably reduced or even no discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach.

(see para. 87)

2. The right to claim the protection of legitimate expectations, which is one of the fundamental principles of the Community, extends to any individual in a situation where the Community authorities, by giving him precise assurances, have caused him to entertain legitimate expectations. Such assurances, in whatever form they are given, are precise, unconditional and consistent informa-

tion from authorised and reliable sources. However, a person may not plead breach of that principle unless he has been given precise assurances by the administration.

It follows that an economic operator cannot plead such a principle by relying on verbal assurances, which the Commission denies having made and for which there is no evidence in the file.

Neither can he plead that principle when, in the absence of final agreement concerning conclusion of a contract with the Commission, the Commission asked him to produce various contract drafts, where that request forms an integral part of normal contractual negotiations and where the Commission did not encourage the operator concerned to exceed the risks inherent in its business activity.

(see paras 89, 92, 100)