

JUDGMENT OF THE COURT (Second Chamber)

19 January 2006 *

In Case C-547/03 P,

APPEAL under Article 56 of the Statute of the Court of Justice, brought on 22 December 2003,

Asian Institute of Technology (AIT), established in Pathumthani (Thailand), represented by H. Teissier du Cros, lawyer, with an address for service in Luxembourg,

applicant,

the other party to the proceedings being:

Commission of the European Communities, represented by P.-J. Kuijper and B. Schöfer, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: French.

THE COURT (Second Chamber),

composed of C. W. A. Timmermans, President of the Chamber, J. Makarczyk, R. Silva de Lapuerta, P. Küris and G. Arestis (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 26 May 2005,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2005,

gives the following

Judgment

- 1 By its appeal, the Asian Institute of Technology (the 'AIT') requests the annulment of the Order of the Court of First Instance of the European Communities of 15 October 2003 in Case T-288/02 *AIT v Commission* (not published in the ECR, the 'contested order'), by which the Court of First Instance dismissed, as manifestly inadmissible, its action for annulment of the decision of the European Commission

of 22 February 2002 to conclude a research contract within the framework of the 'Asia-Invest' programme with the Center for Energy-Environment Research and Development (the 'decision at issue').

Legal framework

- 2 Title II of the Rules of Procedure of the Court of First Instance in the version applicable at the date of the contested order contains a Chapter 3 entitled 'Measures of Organisation of Procedure and Measures of Inquiry'. In Section I of that chapter, entitled 'Measures of organisation of procedure', Article 64 is set out, paragraphs 1 to 4 of which provide:

'(1) The purpose of measures of organisation of procedure shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions. They shall be prescribed by the Court of First Instance, after hearing the Advocate General.

(2) Measures of organisation of procedure shall, in particular, have as their purpose:

- (a) to ensure efficient conduct of the written and oral procedure and to facilitate the taking of evidence;
- (b) to determine the points on which the parties must present further argument or which call for measures of inquiry;

(c) to clarify the forms of order sought by the parties, their pleas in law and arguments and the points at issue between them;

(d) to facilitate the amicable settlement of proceedings.

(3) Measures of organisation of procedure may, in particular, consist of:

(a) putting questions to the parties;

(b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;

(c) asking the parties or third parties for information or particulars;

(d) asking for documents or any papers relating to the case to be produced;

(e) summoning the parties' agents or the parties in person to meetings.

(4) Each party may, at any stage of the procedure, propose the adoption or modification of measures of organisation of procedure. In that case, the other parties shall be heard before those measures are prescribed.

Where the procedural circumstances so require, the Registrar shall inform the parties of the measures envisaged by the Court of First Instance and shall give them an opportunity to submit comments orally or in writing.'

- 3 Title III of those rules of procedure contains a Chapter 2, entitled 'Preliminary Issues'. That chapter includes inter alia Articles 111, 113 and 114, which provide:

'Article 111

Where it is clear that the Court of First Instance has no jurisdiction to take cognisance of an action or where the action is manifestly inadmissible or manifestly lacking any foundation in law, the Court of First Instance may, by reasoned order, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action.

Article 113

The Court of First Instance may at any time, of its own motion, consider whether there exists any absolute bar to proceeding with an action or declare, after hearing the parties, that the action has become devoid of purpose and that there is no need to adjudicate on it; it shall give its decision in accordance with Article 114(3) and (4).

Article 114

...

(3) Unless the Court of First Instance otherwise decides, the remainder of the proceedings shall be oral.

(4) The Court of First Instance shall, after hearing the Advocate General, decide on the application or reserve its decision for the final judgment. It shall refer the case to the Court of Justice if the case falls within the jurisdiction of that Court.

If the Court of First Instance refuses the application or reserves its decision, the President shall prescribe new time-limits for further steps in the proceedings.'

Background to the dispute

- 4 The AIT is a non-profit-making technological instruction and research agency established in Thailand.

- 5 As is apparent from the contested order, the AIT included, until 2001, a department without legal personality known as the 'Center for Energy-Environment Research and Development' (the 'CEERD'), the director of which was, until 31 December 2001, Mr Lefèvre.

- 6 The 'Asia-Invest' programme is part of a series of European Community initiatives designed to promote reciprocal exchanges and agreements between the European Union and Asia by supporting economic cooperation. In the context of that programme, the Commission of the European Communities published, on 10 April 2001, Call for proposals No EUROPEAID/112441/C/G (OJ 2001 C 109, p. 9).

- 7 Following that publication, the Center for Energy-Environment Research and Development — Foundation for International Human Resource Development (the 'CEERD-FIHRD') submitted, on 19 November 2001, a proposal signed by Mr Lefèvre as Director of that agency.

- 8 After examining the documents submitted, the Commission decided to accept, among others, that proposal, and adopted the contested decision. Contract No ASI/B7-301/95/108-174 concluded with the CEERD was signed on 27 February 2002 by Mr Lefèvre holding himself out as Director of that agency. That contract envisaged the payment of an advance of EUR 27 481.88, which was paid into an account opened in the name of the Foundation for International Human Resource Development (the 'FIHRD') at the Thai Farmers Bank.

- 9 By letter of 17 July 2002, the AIT's lawyer requested EuropeAid, the Commission's Office for cooperation ('EuropeAid'), for information on a project entitled 'Facilitating the Dissemination of European Clean Technologies in Thailand'. In that letter, that lawyer pointed out that the CEERD was 'simply a service of the AIT and not a legal entity, with no capacity to contract under that usurped name, above all through Mr ... Lefèvre who [had] not been Director of that body for a long time'.

- 10 In reply to that letter, Mr Muller, Director of EuropeAid, sent the AIT's lawyer a letter on 21 July 2002 with the information that a contract had been signed on 22 February 2002, on behalf of the Commission, by himself and Mr Eich, of the one part, and on 27 February 2002 by Mr Lefèvre, Director of the CEERD, of the other part. That letter stated that a sum of EUR 27 481.88 had already been paid as an advance under that contract and that, as its period of execution was 15 months, the project would be completed on 28 May 2003.
- 11 In the same letter, the Commission also mentioned that it had already signed a similar contract on 4 July 2000, for a duration of 17 months, with Mr Lefèvre, Director of the CEERD, and that the grant envisaged in that contract, amounting to EUR 42 227.50, had been paid in its entirety.

The procedure before the Court of First Instance and the contested order

- 12 By application lodged at the Registry of the Court of First Instance on 23 September 2002, the AIT brought an action for annulment of the decision at issue. That case was registered under number T-288/02.
- 13 The same day, the AIT brought an action for annulment of the Commission's decision of 4 July 2000 to conclude the research contract referred to at paragraph 11 of the present judgment. That case was registered under number T-287/02.
- 14 On 20 December 2002, the Commission submitted defence statements in the *AIT v Commission* cases that gave rise to the Order of the Court of First Instance of 25 June 2003 (T-287/02 [2003] ECR II-2179) and to the contested order (T-288/02, not

published in the ECR), requesting, inter alia, for those cases to be joined. The Registry of the Court of First Instance set a time-limit for the AIT to submit its comments on that request for joinder. The AIT opposed the joinder of the cases.

- 15 In its defence submitted in Case T-288/02, the Commission argued that the action was inadmissible. The first pages of the proposal of the CEERD-FIHRD, signed by Mr Lefèvre as Director of the CEERD-FIHRD on 19 November 2001, and the contract of 27 February 2002 concluded between the Commission and the CEERD were also annexed to that defence.
- 16 By interim application, lodged at the Registry of the Court of First Instance on 23 May 2003, the AIT brought an application to suspend the operation of the decision at issue. By order of 9 July 2003 in Case T-288/02 R *AIT v Commission* [2003] ECR II-2885, the President of the Court of First Instance dismissed that application, reserving the costs of the proceedings. The AIT lodged an appeal against that order, which the President of the Court of Justice, sitting in an interlocutory capacity, dismissed by Order of 30 September 2003 in Case C-348/03 P(R) *AIT v Commission* (not published in the ECR).
- 17 In the case giving rise to the contested order, the Court of First Instance, under Article 64 of its Rules of Procedure, requested the Commission on 30 June 2003 to send it copies of the request for proposals No EUROPEAID/112441/C/G, referred to in paragraph 6 of the present judgment, the documents containing the legal provisions on the granting of subsidies envisaged by the 'Asia-Invest' programme and the CEERD-FIHRD's full proposal of 19 November 2001.
- 18 The Commission having complied with that request on 22 July 2003, the Court of First Instance, under Article 64 of its Rules of Procedure, invited the AIT to comment on the documents produced by that Community institution and to submit its observations on the plea of inadmissibility put forward by the Commission in its defence.

19 On 11 September 2003, the AIT complied with that request. In its observations it stated, inter alia, that it had commenced proceedings for forgery against Mr Lefèvre on 2 September 2003 before the Tribunal de Grande Instance (Regional Court), Paris.

20 By Order of 25 June 2003 in *AIT v Commission* the Court of First Instance, under Articles 113 and 114 of its Rules of Procedure, dismissed the application brought by the AIT in the corresponding case as inadmissible.

21 By the contested order, the Court of First Instance dismissed the action against the decision at issue as manifestly inadmissible under Article 111 of its Rules of Procedure.

22 The findings of the Court of First Instance were in this respect as follows:

‘27 It is apparent from settled case-law that, pursuant to the fourth subparagraph of Article 230 EC, a natural or legal person may challenge only measures which produce binding legal effects capable of affecting that person’s interests by bringing about a distinct change in its legal situation (judgment of the Court in Case 60/81 *IBM v Commission* [1981] ECR I-2639, paragraph 9; judgments of the Court of First Instance in Case T-37/92 *BEUC and NCC v Commission* [1994] ECR II-285, paragraph 27, and Case T-178/94 *ATM v Commission* [1997] ECR II-2529, paragraph 53).

28 It is apparent from the Commission’s pleadings, the documents disclosed to the Court of First Instance and, in particular, from the contract of 27 February 2002

and the proposal of 19 November 2001 made by the [CEERD-FIHRD], that the Commission adopted the decision at issue with full knowledge of the facts, that is to say, knowing perfectly well that the other contracting party was a separate body from the AIT and that the CEERD and its director were no longer associated with the AIT. As the Commission observes in its defence, the proposal of 19 November 2001 and, in particular, Part II, “The Applicant”, explicitly mention the transfer of the CEERD from the AIT to the FIHRD and the fact that Mr T. Lefèvre was no longer employed at the AIT. In addition, the documents in question had notified the Commission, before the contract was concluded, of a completely new set of contact details for the CEERD and for the FIHRD.

- 29 It follows from the preceding that the Commission’s decision to conclude the contract of 27 February 2002 was not vitiated by any error as regards the separate identity of the contracting party, nor by any misleading practice as regards the existence of a connection between that latter and the applicant. The Commission was aware that the contract had been sought by Mr Lefèvre on behalf of the [CEERD-FIHRD], a new and separate body, and it concluded the contract in the knowledge of that fact.
- 30 Accordingly, the contested decision is addressed to the [CEERD-FIHRD] and not to the applicant, and the contract of 27 February 2002 neither imposes any obligations on that latter party nor grants it any rights. The Commission’s decision concluding that contract does not concern the applicant in any way, and its annulment is neither capable of altering the applicant’s legal position nor of benefiting it in any way.
- 31 In view of the preceding, the applicant cannot claim that the decision at issue has produced any binding legal effects capable of affecting its interests by bringing about a distinct change in its legal situation.

The first plea

- 27 In this plea, the AIT submits, first, that the Court of First Instance has misapplied Article 111 of its Rules of Procedure because, as in this instance, it had already determined the measures of organisation of procedure in accordance with Article 64 of the same rules before giving judgment pursuant to Article 111.
- 28 It must be noted, on the one hand, that Article 111 of the Rules of Procedure allows the Court of First Instance to dismiss an action by reasoned order, without taking further steps in the proceedings, when that action is not capable of succeeding, on the grounds set out in that provision.
- 29 On the other hand, Article 64(1) of the Rules of Procedure of the Court of First Instance provides that the purpose of the measures of organisation of procedure determined under that article shall be to ensure that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions.
- 30 Therefore, since the purpose of the measures of organisation of procedure envisaged in Article 64 of the Rules of Procedure of the Court of First Instance is to ensure, as provided in that article, that cases are prepared for hearing, procedures carried out and disputes resolved under the best possible conditions, the application of such measures is not, in itself, capable of precluding an order from being adopted under Article 111 of the same rules.

- 31 In that regard, the AIT maintains, specifically, that Article 111 was misapplied in the present case on the ground that the action which it had brought was not manifestly inadmissible within the meaning of that article. The inadmissibility found by the Court of First Instance emerged following the measures of organisation of procedure, which were determined a year after the originating application was lodged, and after a first exchange of pleadings.
- 32 As appears from paragraphs 30 and 31 of the contested order, the action brought before the Court of First Instance was dismissed as manifestly inadmissible on the ground that the AIT could not show a legal interest in bringing proceedings. That plea of inadmissibility had already been set out in the Commission's defence. Furthermore, the documents on which the Court of First Instance based its reasoning, namely the CEERD-FIHRD's proposal of 19 November 2001 and the contract of 27 February 2002, were included for the most part in the procedural documents annexed to the Commission's defence.
- 33 Therefore, the AIT's claim that the action would not have been declared inadmissible were it not for the production of certain documents, referred to expressly in the contested order and for whose provision the Court of First Instance had given the Commission a time-limit, is, in any event, unfounded and, consequently, must be rejected.
- 34 Secondly, the AIT submits that the adoption of the contested order under Article 111 of the Rules of Procedure of the Court of First Instance, after a first exchange of pleadings, prejudices its procedural rights, since it has not had the opportunity to be heard. On that basis, the AIT maintains that the inadmissibility alleged in the present case falls within the scope of Article 113 of those rules, which grants it more rights, in particular the right to oral proceedings.

35 The Court observes in this connection that the application of Article 113 does not guarantee that an oral procedure will take place, as the Court of First Instance may, under Article 114(3) of its Rules of Procedure, to which Article 113 of those rules refers, give judgment following a solely written procedure.

36 Although in its claims the AIT essentially relies on the infringement of its procedural rights, in that it has not had the opportunity to be heard, the Court of First Instance in any event requested the AIT to submit its observations on the pleas of inadmissibility raised by the Commission in its defence, and the AIT responded to that request.

37 As a result, the second set of arguments relied on by the AIT in support of the present plea must also be rejected.

38 If follows from the preceding that the Court of First Instance did not make any error of law in the application of Article 111 of its Rules of Procedure and, consequently, the first plea must be rejected.

The second plea

39 The AIT submits that, by applying the Court's judgment in Case 60/81 *IBM v Commission* [1981] ECR I-2639, the Court of First Instance infringed the fourth

paragraph of Article 230 EC. According to the AIT, the admissibility of its action should be examined in the light of the Court's judgment in Case 25/62 *Plaumann v Commission* [1963] ECR 95. The AIT submits that all the conditions laid down in that case are satisfied in the present case. Taking as a basis the judgment in Case C-309/89 *Codorniu v Council* [1994] ECR I-1853, it maintains that the decision at issue prejudices, inter alia, its entitlement to use the name and logo 'CEERD' which appear in a number of documents in the case, thereby distinguishing its situation in relation to that of all other economic operators.

40 The Court finds that, in this plea, the AIT has not put forward any arguments capable of establishing that the finding of the Court of First Instance in paragraph 31 of the contested order that the decision at issue has not had any binding legal effects capable of affecting its interests by bringing about a distinct change in its legal situation, is incorrect.

41 Firstly, the AIT has not rebutted the Court's findings, set out in paragraphs 28 and 30 of the contested order respectively, that the Commission adopted the decision at issue knowing full well that the other party to the contract was a separate body from the AIT, and that that decision was addressed to the CEERD, and not to itself. Nor does it dispute that, when the contract at issue was signed, the CEERD and its director were no longer associated with the AIT.

42 Secondly, the AIT does not offer any argument to rebut the finding, in paragraph 30 of the contested order, that the decision at issue neither imposes any obligations on it nor grants it any rights.

43 As regards the claim that the name and the logo 'CEERD', which appear in various documents produced before the Court of First Instance, were usurped by Mr Lefèvre, that information does not justify a finding that the AIT has a legal interest in bringing proceedings before the Court against the decision at issue.

44 In any case, as the Court correctly noted in paragraph 32 of the contested order, if the AIT considers itself harmed by the alleged underhand conduct of Mr Lefèvre, it is for the AIT to assert its rights before the competent national courts.

45 As is apparent from the observations submitted by the AIT following its receipt of the documents lodged by the Commission under the measures of organisation of procedure before the Court of First Instance, the AIT stated that it had summoned Mr Lefèvre to appear before the Tribunal de Grande Instance de Paris on 2 September 2003, in proceedings alleging forgery.

46 It follows from the preceding considerations that the second plea must also be rejected.

The third plea

47 In the alternative, the AIT maintains that the dismissal of its action as inadmissible under Article 230 EC infringes its right to an effective judicial remedy, such as ensured by Article 47 of the Charter of fundamental rights. In this respect, the AIT

maintains that an action before national courts, in contrast to what is stated in paragraph 32 of the contested order, does not fulfil the conditions required by case-law for a remedy to be regarded as effective. While the Court, in its judgment in Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, refused to follow the Advocate General's Opinion, the reasons for so doing are not valid as regards a legal person which is not established in a Member State of the Union, such as the AIT.

48 This plea must be rejected. After having found, in paragraph 31 of the contested order, that the AIT could not claim that the decision at issue had any binding legal effects capable of affecting its interests by bringing about a distinct change in its legal situation, the Court of First Instance found in paragraph 32 of the same order that, in so far as the AIT considered itself to be harmed by the alleged unlawful conduct of Mr Lefèvre and by the alleged 'usurpation' of the logo 'CEERD', it was still in a position to assert its rights before the competent national courts.

49 In this connection, it is common ground that the AIT summoned Mr Lefèvre to appear before the Tribunal de Grande Instance de Paris on 2 September 2003, in proceedings alleging forgery.

50 Therefore, in the present case, the AIT cannot, on any view, rely on an infringement of its right to effective judicial protection.

51 It follows from the preceding considerations that the third plea must also be rejected as unfounded and, consequently, the claims for annulment of the contested order must be dismissed.

52 The other claims in the appeal having been submitted on the assumption that the Court would annul the contested order, the appeal must be dismissed in its entirety.

Costs

53 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118 of those rules, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleadings. Since the Commission has asked for costs and the AIT has been unsuccessful, it must be ordered to pay the costs.

On those grounds, the Court (Second Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders the Asian Institute of Technology (AIT) to pay the costs.**

[Signatures]