

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 2 November 2007 by SELEX Sistemi Integrati SpA, formerly Alenia Marconi Systems SpA, against the order of 29 August 2007 of the Court of First Instance (Second Chamber) in Case T-186/05 SELEX Sistemi Integrati SpA v Commission of the European Communities

(Case C-481/07 P)

(2008/C 37/02)

Language of the case: Italian

Parties

Appellant: SELEX Sistemi Integrati SpA, formerly Alenia Marconi Systems SpA (represented by: F. Sciaudone, R. Sciaudone and A. Neri, avvocati)

Other party to the proceedings: Commission of the European Communities

Forms of order sought

The appellant claims that the Court should:

- set aside the order of the Court of First Instance of 29 August 2007 in Case T-186/05, and refer the case back to the Court of First Instance for adjudication on the substance in the light of any guidance which it may please the Court of Justice to provide;
- order the Commission to pay the costs incurred in the present proceedings, together with those incurred in Case T-186/05.

Pleas in law and main arguments

In support of its claims, the appellant alleges that:

- (a) the legal expenses incurred in Case T-155/04 were wrongly excluded from the ambit of recoverable loss. In the appellant's submission, the Court of First Instance erred as follows:

- it wrongly characterised the action for damages as an attempt 'to overturn the order for costs in the judgment' in Case T-155/04;
- it misconstrued Article 87 *et seq* of the Rules of Procedure of the Court of First Instance in relation to the principles relating to compensation for loss;
- it held, wrongly, that *Montorio* was applicable to the case before it;

- (b) the Court of First Instance erred in excluding from the ambit of recoverable loss the legal costs incurred in the administrative pre-litigation procedure. In the appellant's submission, that error consists in interpreting and applying Article 87 *et seq* of the Rules of Procedure to an individual action for damages, which is completely outside the scope of those provisions;
- (c) the clear sense of the evidence adduced by the appellant was distorted. The Court of First Instance did not correctly analyse the documentation produced by the applicant in Case T-186/05 or the annexes thereto;
- (d) the grounds stated are illogical and contradictory, and the Community case-law on damages was flouted. The Court of First Instance did not correctly apply the principles set out in Joined Cases C-104/89 and C-37/90 *Mulder* ⁽¹⁾ and Case C-243/05 P *Agraz* ⁽²⁾;
- (e) Article 44 of the Rules of Procedure of the Court of First Instance was infringed. In the appellant's submission, the correct interpretation of that provision does not require that the application must 'necessarily' contain the evidence; on the contrary, that provision is based on the concept of 'possibility', that is to say, it requires the party to provide evidence only when that is possible;
- (f) the reasons stated are inadequate as regards the issue of compensation for the damage suffered by the appellant as a result of the infringement of the principle that the administrative procedure must be of reasonable duration. The Court of First Instance did not, in fact, state the grounds for its rejection of the claim for compensation in relation to the specific infringement alleged by the appellant;

(g) the clear sense of the arguments and the evidence was distorted, and the reasoning is illogical and inconsistent with the Community case-law on compensation for non-material damage. For the purposes of rejecting the claim for damages in relation to breach of the principle that the administrative procedure must be of reasonable duration or of the Commission's duty of vigilance, the Court of First Instance was not entitled to use the arguments exclusively concerning exclusion from the public procurement procedures or failure to award a public supply contract.

⁽¹⁾ [2000] ECR I-203.

⁽²⁾ [2006] ECR I-10833.

Action brought on 14 November 2007 — Commission of the European Communities v Czech Republic

(Case C-496/07)

(2008/C 37/03)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and M. Šimerdová, acting as Agents)

Defendant: Czech Republic

Form of order sought

— Declare that, in so far as Czech domestic legislation reserves the exercise of the post of captain of a ship flying the Czech flag to persons with Czech nationality, the Czech Republic has failed to fulfil its obligations under Article 39 of the EC Treaty;

— Order the Czech Republic to pay the costs.

Pleas in law and main arguments

In the above action the Commission relies on the following pleas:

Czech domestic legislation (Law No 61/2000) places the operator of a ship under an obligation to ensure that the master of a ship flying the Czech flag is a citizen of the Czech Republic.

That clear and completely unconditional requirement to have Czech nationality, in the opinion of the Commission of the European Communities, conflicts with the findings reached by the Court of Justice of the European Communities in Case C-405/01 ⁽¹⁾ and C-47/02 ⁽²⁾. The Commission draws attention in particular to the findings in paragraph 44 of the judgment in Case C-405/01 and paragraph 63 of the judgment in Case

C-47/02. The requirement laid down in Czech law that the master of a ship must be of Czech nationality is absolute. The relevant provisions of Czech law do not take into account the way in which and extent to which the master of a ship in reality exercises the powers conferred by public law, as required by the abovementioned case-law of the Court of Justice of the European Communities. The mere fact that Czech law entrusts masters of ships flying the Czech flag with powers which fall within the ambit of powers conferred by public law is not enough to warrant use of the derogation from the freedom of movement for workers laid down in Article 39(4) of the EC Treaty.

The Commission of the European Communities is of the opinion that the Czech Republic is under an obligation to bring its domestic legislation into conformity with the case-law of the Court of Justice of the European Communities, notwithstanding the fact that (according to the statements of the Czech Republic) there are currently no ships flying the Czech flag.

⁽¹⁾ Case C-405/01 *Colegio de Oficiales de la Marina Mercante Española v Administración del Estado* [2003] ECR I-10391, concerning Spanish legislation reserving the post of master and chief mate on ships flying the Spanish flag to persons with Spanish nationality.

⁽²⁾ Case C-47/02 *Albert Anker, Klaas Ras a Albertus Snoek v Federal Republic of Germany* [2003] ECR I-10447, concerning German legislation reserving the post of captain on ships flying the German flag and engaged in small-scale maritime shipping ('*Kleine Seeschifffahrt*') to persons with German nationality.

Appeal brought on 19 November 2007 by Territorio Energia Ambiente SpA (TEA) against the order made by the Court of First Instance (Fourth Chamber) on 17 September 2007 in Case T-175/07 Territorio Energia Ambiente SpA v Commission of the European Communities

(Case C-500/07 P)

(2008/C 37/04)

Language of the case: Italian

Parties

Appellant: Territorio Energia Ambiente (TEA) (represented by: E. Coffrini and F. Tesauero, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— annul and/or amend in its entirety the order of the Court of First Instance at present under appeal, and rule as appropriate;

— grant the forms of order already sought at first instance.