

Pleas in law and main arguments

By this action, the applicant requests that the defendant be ordered to repay the balance of the advance disbursed to it by the Community, together with default interest, following its failure to perform the part of the cost reimbursement contract EP No 26970 concluded with the consortium of which it was a member, concerning the project 'Neutral Archiving of EDA Data (ARCHIVE)', implemented within the framework of the Fourth European Strategic Programme for Research and Development in Information Technologies (ESPRIT) (1994-1998).

Action brought on 4 January 2008 — Kinotita Grammatikou v Commission

(Case T-13/08)

(2008/C 79/57)

Language of the case: Greek

Parties

Applicant: Kinotita Grammatikou (Community of Grammatiko) (Athens, Greece) (represented by: A. Papakonstantinou and M. Khaintarlis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- annul Commission Decision C(2004) 5509 of 21 December 2004 relating to the grant of assistance from the Cohesion Fund for the project 'Construction of a Landfill Site at the Integrated Waste Management Facility of North-East Attica at the location "Mavro Vouno Grammatikou", in the Hellenic Republic';
- in the event of doubt, order an on-the-spot inspection in the project area and seek independent technical opinions to corroborate the applicant's submissions;
- order the Commission to pay the applicant's costs.

Pleas in law and main arguments

As regards its locus standi to bring the action for annulment on the basis of Article 230 EC, the applicant considers that the contested decision, which seeks the creation of a landfill site on an area which is within the boundaries of the Community of Grammatiko, is of direct and individual concern to it because it is a public body responsible for the protection of public health

and the environment in the area where the project that is being financed is located.

The applicant submits that the contested decision, the content of which it maintains came to its notice on 9 November 2007, infringes a number of provisions of primary Community law for the protection of health and the environment as well as provisions of secondary Community law giving concrete expression to the primary law.

Specifically, the applicant claims that the financing of the project contravenes the aims of maintaining, protecting and improving the quality of the environment, of protecting public health and of using natural resources in a wise and rational manner. In addition, in the applicant's view the contested Commission decision infringes first and foremost Articles 3, 4 and 6 of Directive 75/442 ⁽¹⁾ and Articles 3 and 4 of Directive 91/156 ⁽²⁾, which lay down specific obligations in the areas of prevention or reduction of waste production and its harmfulness.

Lastly, according to the applicant, it is clear that the creation of a waste management and disposal facility within a protected area cannot in any circumstances be regarded as a project eligible for financing by a financial instrument such as the Cohesion Fund, which by definition should finance only works complying with the requirements of protection of the environment.

⁽¹⁾ Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39).

⁽²⁾ Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32).

Action brought on 18 January 2008 — Liga para a Protecção da Natureza v Commission of the European Communities

(Case T-29/08)

(2008/C 79/58)

Language of the case: Portuguese

Parties

Applicant: Liga para a Protecção da Natureza (LPN) (Lisbon, Portugal) (represented by: P. Vinagre e Silva, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the decision of the General Secretariat of the European Commission, in response to a confirmatory application, rejecting the LPN's application for access to the documents concerning the procedure for the construction of the dam in the lower Sabor.
- order the European Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

The information requested by the LPN from the Commission should be regarded, from the outset, as information which can and must be made available to it given the significant environmental interest which that entity seeks to defend and take charge of in the context of the project to construct the dam in the lower Sabor (Regulations Nos 1367/2006 ⁽¹⁾ and 1049/2001 ⁽²⁾).

The derogation from the presumption that there is an overriding public interest in disclosure (Article 6(1) of Regulation No 1367/2006) does not relieve the Commission of the obligation to weigh up the basis of that interest in each individual case. Any grounds for refusal must be interpreted restrictively by the Commission.

It is not sufficient for the Commission to rely on a theoretical model that the exception related to inspections and audits prevails, without giving any additional, concrete reasons on a document by document basis, in order to adopt a decision refusing access to all of the documents requested by the LPN.

The Commission refused partial access, basing that refusal on general reasons without making any effort to divide the documents into 'confidential and non-confidential parts', on the basis that access may not be given to any of the documents relating to the inspection and investigation proceedings. However, the Commission also has to make a concrete assessment here of the information contained in the documents to which access is sought.

⁽¹⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

⁽²⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 23 January 2008 — Winzer Pharma v OHIM — Oftaltech (OFTASIL)

(Case T-30/08)

(2008/C 79/59)

*Language in which the application was lodged: German***Parties**

Applicant: Dr. Robert Winzer Pharma GmbH (Berlin, Germany) (represented by: S. Schneller, Rechtsanwalt)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal of OHIM: Oftaltech S.A. (L'Hospitalet de Llobregat, Spain)

Forms of order sought

- Annulment of the decision of the Board of Appeal of OHIM of 29 October 2007 (R 599/2007-2) and the decision of the Opposition Division of OHIM of 19 February 2007 (B 925 554);
- rejection of Community trade mark application No 4 229 274 'OFTASIL';
- holding of oral proceedings;
- an order that OHIM pays the costs of the proceedings;
- in the alternative, a referral of the case back to OHIM.

Pleas in law and main arguments

Applicant for a Community trade mark: Oftaltech S.A.

Community trade mark concerned: the figurative trade mark 'OFTASIL' for goods in Class 5 (application No 4 229 274)

Proprietor of the mark or sign cited in the opposition proceedings: the applicant

Mark or sign cited in opposition: the word mark 'Ophtal' for goods in Classes 5 and 10 (Community trade mark No 489 948), the word mark 'Ophtal' for goods in Class 5 (German trade mark No 800 702) and the word mark 'OPHTAN' for goods in Classes 5, 29 and 30 (German trade mark No 303 349 033)

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal