

Appeal brought on 26 November 2009 by Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-30/01 to T-32/01 and T-86/01 to T-88/01 Territorio Histórico de Álava — Diputación Foral de Álava and Others v Commission of the European Communities

(Case C-470/09 P)

(2010/C 37/12)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Guipúzcoa — Diputación Foral de Guipúzcoa (represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya, Territorio Histórico de Álava — Diputación Foral de Álava, Comunidad Autónoma del País Vasco — Gobierno Vasco, Confederación Empresarial Vasca (Confebask), Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

- declare the appeal to be admissible and well founded;
- set aside the judgment under appeal;
- grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;
- alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;
- order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding that the conclusion of the preliminary examination procedure with respect to the tax measure at issue, prior to the entry into force of Regulation (EC) No 659/1999, required the existence of an express decision by Commission decision to that effect (addressed to the Member State).
2. The CFI misinterpreted the decision of 28 November 2000 by holding that that decision put an end to the preliminary examination procedure of the tax measure at issue which arose out of a complaint lodged in April 1994. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 was carried out within the framework of the procedure laid down for existing aid.
3. The CFI erred in law by failing to comply with the procedural rules concerning the burden of proof and the assessment of evidence, in particular with respect to the documentary evidence consisting of the decision of 28 November 2000 (its credibility and probative force). The CFI also infringed the right to a fair trial.
4. The CFI erred in law by infringing the procedural rules relating to the assessment of evidence and the burden of proof with respect to the objective, relevant, corroborative and conclusive evidence in the case-file and which proves that, prior to the decision of 28 November 2000, the Commission had conducted a preliminary examination of the tax measure at issue and had closed that examination. The CFI erred in law by not holding that the re-examination of the tax measure at issue in 2000 had to be conducted within the framework of the procedure laid down for existing aid.
5. The CFI erred in law by confirming the finding that the tax measure at issue, adopted in 1993, constituted operating aid, by applying the definition of investment aid laid down in the directives on regional aid of 1998. The CFI breached the principle of legal certainty and, in particular, the principle of non-retroactivity.
6. The CFI erred in law as regards the concept of 'relevant information' for the preliminary examination of a tax system in the field of State aid which led the CFI to hold that the duration of the preliminary procedure was not unreasonable.
7. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable period of time for a preliminary examination procedure with respect to the tax measure at issue, and by holding, that therefore there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of legal certainty.
8. The CFI erred in law by holding that a period of 79 months, in the instant case, is not unreasonable for a preliminary examination procedure for the tax measure at issue and by holding, therefore, that there was no infringement of Article 14(1) of Regulation (EC) No 659/1999 as regards the principle of sound administration.

9. The CFI erred in law by holding that, in the instant case, there are no exceptional circumstances which justify the legitimate expectation that the tax measure at issue is lawful, which could preclude the recovery of the aid, in accordance with Article 14(1) of Regulation No 659/1999. The decision was also misinterpreted.

10. The CFI erred in law by holding that, in this case, there was no infringement of the principle of equal treatment which could preclude recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999.

11. The CFI erred in law by failing to comply with the procedural rules regarding the assessment of evidence and by deciding not to require disclosure of the evidence requested by the applicant with respect to certain Commission documents that, in the light of the arguments used by the CFI in order to dismiss the applicant's application, are essential to the defence of its interests. The CFI also infringed the right to a fair trial, the principle of equality of arms and the rights of defence.

Appeal brought on 26 November 2009 by Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya against the judgment of the Court of First Instance (Fifth Chamber, extended composition) delivered on 9 September 2009 in Joined Cases T-227/01 to T-229/01 and T-265/01, T-266/01 and T-270/01 Territorio Histórico de Álava — Diputación Foral de Álava and Comunidad Autónoma del País Vasco — Gobierno Vasco and Others v Commission of the European Communities

(Case C-471/09 P)

(2010/C 37/13)

Language of the case: Spanish

Parties

Appellant: Territorio Histórico de Vizcaya — Diputación Foral de Vizcaya

(represented by: I. Sáenz-Cortabarría Fernández and M. Morales Isasi, lawyers)

Other parties to the proceedings: Comunidad Autónoma del País Vasco — Gobierno Vasco, Territorio Histórico de Álava — Diputación Foral de Álava, Territorio Histórico de Guipúzcoa —

Diputación Foral de Guipúzcoa, Confederación Empresarial Vasca (Confebask), Cámara Oficial de Comercio, Industria y Navegación de Vizcaya, Cámara Oficial de Comercio e Industria de Álava, Cámara Oficial de Comercio, Industria y Navegación de Guipúzcoa, Commission of the European Communities and Comunidad Autónoma de la Rioja

Form of order sought

- declare the appeal to be admissible and well founded;
- set aside the judgment under appeal;
- grant the form of order sought at first instance, that is the alternative claim to annul Article 3 of the contested decision;
- alternatively, refer the case back to the Court of First Instance and, order it to examine the evidence rejected;
- order the Commission to pay the costs of the proceedings at first instance and on appeal and the intervener, the Comunidad Autónoma de la Rioja to pay the costs of the proceedings at first instance.

Pleas in law and main arguments

1. The CFI erred in law by holding, in this case, that there are no exceptional circumstances which give rise to a legitimate expectation that the tax measure at issue is lawful, so as to preclude the recovery of the aid in accordance with Article 14(1) of Regulation No 659/1999⁽¹⁾ as regards the principle of the protection of legitimate expectations. The CFI distorted the issues in the case and infringed the rule that the parties should be heard. It also misinterpreted the case-law concerning the duty to give reasons for a decision. The Court of First Instance erred in law by failing to comply with the procedural rules relating to the assessment of evidence in that it disregarded the substantive content of documents submitted for the purposes of the written procedure.

Neither the formal difference between the tax measure at issue and the measure which is the subject of Decision 93/337⁽²⁾, nor the fact that the Commission could have justified the selectivity criterion on information other than that which is explicitly mentioned in Decision 93/337, nor the finding of incompatibility in Decision 93/337, constitute sufficient reasons in law for the CFI not to determine whether there existed an exceptional circumstance that by itself or in combination with other circumstances in this case could preclude the Commission from ordering the recovery of the aid to which the contested decision relates.