

**Appeal brought on 25 November 2011 against the Order of the General Court (Sixth Chamber) delivered on 20 September 2011 in Case T-267/10 Land Wien v European Commission**

(Case C-608/11 P)

(2012/C 25/80)

*Language of the case: German*

**Parties**

*Appellant:* Land Wien (represented by: W.-G. Schärf, Rechtsanwalt)

*Other party to the proceedings:* European Commission

**Form of order sought**

The appellant claims that the Court of Justice should:

- revise the order of the General Court of the European Union (Sixth Chamber) of 20 September 2011 in Case T-267/10 so as to take full account of the substance of its claim;
- order the European Commission to pay the costs of the proceedings at first instance and on appeal.

**Grounds of appeal and main arguments**

The appeal has been brought against the order to the General Court of 20 September 2011, by which that court dismissed the appellant's action seeking, essentially, the annulment of the Commission's decision of 25 March 2010 to discontinue the procedure relating to the appellant's complaint concerning a plan to expand units 3 and 4 of the Mochovce nuclear power plant in the Slovak Republic, and a declaration that the Commission has failed to act, within the meaning of Article 265 TFEU, since it failed to communicate all of the documents requested in that regard in infringement of 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.<sup>(1)</sup>

The General Court infringed the Euratom Treaty in failing to interpret it in the light of the TFEU. The General Court failed to recognise that the TFEU declares as a legally enforceable right the right of access to documents laid down in Article 42 of the Charter of Fundamental Rights, on which the appellant may rely directly to obtain from the Commission all the information which it retained in relation to the expansion of the nuclear power station in Mochovce.

Contrary to what the General Court found, the Commission's letter in response to the question put by the appellant constitutes a challengeable decision for the purposes of Article 263 TFEU. This results from the settled case-law of the Court of Justice and in particular from its judgment of 11 November 1981 in Case 60/81 (IBM).

**Appeal brought on 1 December 2011 by Luigi Marcuccio against the judgment of the General Court (Fourth Chamber) delivered on 14 September 2011 in Case T-236/02 Marcuccio v Commission**

(Case C-617/11 P)

(2012/C 25/81)

*Language of the case: Italian*

**Parties**

*Appellant:* Luigi Marcuccio (represented by: G. Cipressa, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought**

- Set aside the judgment of 14 September 2011 in Case T-236/02 in so far as it rejected the claims seeking compensation and reparation made by the appellant in his written submissions at first instance;
- Order the Commission to pay the costs and allow in their entirety and without any exception whatsoever the claims seeking compensation and reparation;
- In the alternative, refer the case back in part to the General Court for a fresh decision on the claims seeking compensation and reparation.

**Pleas in law and main arguments**

- Errors of procedure so serious as to damage irreparably the interests of the appellant;
- total failure to state grounds, as well irrational, tautological, illogical and inconsistent reasoning, and misinterpretation and misapplication of Annex X to the Staff Regulations of Officials of the European Union, of the rules on the interpretation of laws and of the conditions governing the liability of a European Union institution for payment of compensation for damage;
- confused and arbitrary reasoning and distortion and misrepresentation of the facts;
- distortion and misrepresentation of the facts and misinterpretation and misapplication of the rules on the admissibility of documents instituting proceedings.

<sup>(1)</sup> OJ 2001 L 145, p. 43.