

3. Third plea in law (in the alternative to the foregoing pleas and exclusively in the case of contracts for works and services the subject of correction), alleging an infringement of Article 20(2)(f) of Directive 93/38, on the ground that all the requirements were met for the Spanish authorities to use the unpublicised negotiated procedure to award contracts for the additional works carried out in the five phases of the project affected by the correction.

Appeal brought on 4 May 2011 by Luigi Marcuccio against the judgment of the Civil Service Tribunal of 15 February 2011 in Case F-81/09, Marcuccio v Commission

(Case T-238/11 P)

(2011/C 186/57)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Set aside the judgment under appeal, in so far as the court at first instance: (a) rejected the action brought before it by the appellant; (b) ordered the appellant to bear three quarters of the costs incurred by him in the proceedings at first instance; and

(B.1.1.) grant all the appellant's claims in the proceedings at first instance, except for those relating to the payment of costs;

(B.2.2.) order the Commission to pay to the appellant three quarters of the costs incurred by him, which the appellant was ordered to bear in the proceedings at first instance;

or, in the alternative:

(B.2) refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision on each of the claims referred to at (B.1.1.) and (B.2.2.).

Pleas in law and main arguments

The present appeal is brought against the judgment of the Civil Service Tribunal of 15 February 2011 in Case F-81/09. That judgment dismissed an action for, first, annulment of the decision of the Commission of the European Communities rejecting in part the appellant's request for payment of default interest on arrears of the invalidity allowance paid to him by that institution and, second, an order that the Commission pay to him a sum corresponding to the difference between the total amount of default interest calculated in accordance with rules which, in his view, should have been applied and that actually paid.

1. First plea in law, alleging total failure to state the reasons for the decision referred to in paragraph 32 of the judgment under appeal, and infringement of the obligation to state reasons incumbent upon every institution of the European Union (paragraphs 41 to 47 of the judgment under appeal).
2. Second plea in law, alleging incorrect and unreasonable interpretation and application of the content of the communication of 8 March 2003, referred to at paragraph 53 of the judgment under appeal.
3. Third plea in law, alleging incorrect and unreasonable interpretation and application of the notion that a rule may be applied by analogy and of the related rules of law and case-law (paragraphs 57 and 58 of the judgment under appeal).
4. Fourth plea in law, alleging infringement of the legal principle *patere legem quam ipse fecisti*, the effect of which is to vitiate irredeemably the judgment under appeal, and total failure to state reasons in rejecting the argument concerning infringement of the principle *patere legem quam ipse fecisti* (in particular, paragraph 59 of the judgment under appeal).
5. Fifth plea in law, alleging that the rejection (paragraphs 69 and 70 of the judgment under appeal) of the 'order for costs' sought was unlawful, if only on account of the failure to rule on a claim made by the appellant for compensatory interest.
6. Sixth plea in law, alleging that the rejection (paragraphs 73 and 76 of the judgment under appeal) of the claim for compensation for damage was unlawful.
7. Seventh plea in law, alleging that the order requiring the appellant to bear three quarters of the cost of the proceedings was unlawful.