Order of the President of the General Court of 29 July 2011 — Cementos Portland Valderrivas v Commission

(Case T-296/11 R)

(Interim relief — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for stay of execution — Lack of urgency)

(2011/C 282/50)

Language of the case: Spanish

Parties

Applicant: Cementos Portland Valderrivas, SA (Pamplona, Spain) (represented by: L. Ortiz Blanco, lawyer)

Defendant: European Commission (represented by: F. Castilla Contreras, C. Urraca Caviedes and C. Hödlmayr, acting as Agents, and J. Rivas, lawyer)

Re:

Application for a stay of execution of Commission Decision C(2011) 2363 final of 30 March 2011 concerning a proceeding pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products)

Operative part of the order

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Order of the President of the General Court of 29 July 2011 — HeidelbergCement v Commission

(Case T-302/11 R)

(Interim relief — Competition — Request for information — Article 18(3) of Regulation (EC) No 1/2003 — Application for stay of execution — Lack of urgency)

(2011/C 282/51)

Language of the case: German

Parties

Applicant: HeidelbergCement AG (Heidelberg, Germany) (represented by: U. Denzel, T. Holzmüller and P. Pichler, lawyers)

Defendant: European Commission (represented by: M. Kellerbauer, R. Sauer and C. Hödlmayr, acting as Agents)

Re:

Application for a stay of execution of Commission Decision C(2011) 2363 final of 30 March 2011 concerning a proceeding pursuant to Article 18(3) of Council Regulation (EC) No 1/2003 (Case COMP/39.520 — Cement and related products)

Operative part of the order

1. *The application for interim relief is rejected.*

2. *Costs are reserved.*

Appeal brought on 14 June 2011 by Ioannis Vakalis against the judgment of the Civil Service Tribunal of 13 April 2011 in Case F-38/10, Vakalis v Commission

(Case T-317/11 P)

(2011/C 282/52)

Language of the case: French

Parties

Appellant: Ioannis Vakalis (Luvinate, Italy) (represented by S.A. Pappas, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Annul the contested judgment;

— Uphold the claims submitted at first instance, except that correctly held to be inadmissible by the Tribunal;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present appeal seeks the annulment of the judgment of the Civil Service Tribunal (First Chamber) of 13 April 2011, delivered in Case F-38/10 *Vakalis* v *Commission*.

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging inconsistency in the reasoning of the Civil Service Tribunal in that no conclusions are drawn from its findings, since it found that it is for the Commission to take account of exchange rate movements. The Commission does not take that question into account. The contested judgment is therefore vitiated by inconsistent reasoning.

2. Second plea in law, alleging that the Civil Service Tribunal misconstrued the question put to it. It is apparent from the contested judgment that the Tribunal understood that the applicant asked it whether the difference in treatment of officials subject to the general implementing provisions in Articles 11 and 12 of Annex VIII to the Staff Regulations ('the GIPs') of 1969 and those subject to those of 2004 was unlawful, while the question asked of the Tribunal was whether 'the new GIPs are discriminatory in that they treat different factual situations identically'. In that regard, the applicant submits that the Tribunal was incorrect to reject the plea in law alleging infringement of the principle of equal treatment.

3. Third plea in law, alleging a substitution of grounds by the Tribunal. The applicant submits, firstly, that the budgetary grounds for the GIPs emerged only at the hearing and, secondly, that that ground is different from that given to the applicant in the rejection of his claim (a ground which the Tribunal, moreover, accepted was inadequate). In accordance with the case-law, it is not for the Tribunal to remedy any lack of grounds or to supplement the Commission's grounds by adding to them or by substituting for them elements which are not apparent from the contested decision itself.

4. Fourth plea in law, alleging a manifest error of assessment, since the Civil Service Tribunal rejected the ground relating to the principle of equal treatment since the applicant failed to show that there was an unjustified difference in treatment. The applicant demonstrated that the difference in treatment at issue was not justified by the introduction of the Euro, the original ground for rejection of the claim.

Action brought on 23 June 2011 — Régie Networks and NRJ Global v Commission

(Case T-340/11)

(2011/C 282/53)

Language of the case: French

Parties

Applicants: Régie Networks (Lyon, France) and NRJ Global (Paris, France) (represented by: B. Geneste and C. Vannini, lawyers)

Defendant: European Commission

Form of order sought

The applicant submits that the Court should:

— establish the liability of the European Union for:

  — the European Commission's unlawful decision of 10 November 1997 concerning State aid N 679/97;

  — the Commission's failure to act following the formal establishment of that unlawfulness in the letter addressed to the French authorities on 8 May 2003;

— order the European Commission to compensate in full for the loss resulting for the applicants from the wrongful acts referred to in the application, which loss encompasses:

  — the amount of the tax paid for the period from 1 January 1998 to 31 December 2000;

  — the fees incurred for the legal proceedings brought in order to obtain reimbursement of the tax paid for the period from 1 January 2001 to 31 December 2002;

  — the fees incurred for the present legal proceedings;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging wrongful acts committed due to the unlawfulness of the Commission decision of 10 November 1997. In examining the radio broadcasting aid scheme in 1997, the Commission declared it to be compatible with the Treaty rules, without examining the manner in which that aid scheme was financed, which it was however required to do according to the Court of Justice's well-established case-law in the area, since the financing was an integral part of the aid scheme in question. The decision thus adopted by the Commission is unlawful and is a wrongful act entailing non-contractual liability on the part of the European Union.

2. Second plea in law, alleging infringement of the principle of sound administration resulting from the Commission's failure, in 2003, to compensate for the harmful effects of its 1997 decision. The Commission found that its decision of 19 November 1997 was unlawful at the latest on 8 May 2003, when it addressed a letter to the French authorities, stating that the detailed rules for financing the radio broadcasting aid scheme, as approved most recently by the decision of 10 November 1997, were contrary to the Treaty rules. However, the Commission did not take any measures to remedy the unlawful situation thus established. It is on that basis that the applicants consider that the Commission's failure to compensate for the harmful effects of the unlawful decision of 1997 infringes the principle of sound administration, which is a general principle of European Union law, and is therefore such as to entail liability on the part of the European Union.

Action brought on 7 July 2011 — Makhlouf v Council

(Case T-359/11)

(2011/C 282/54)

Language of the case: French

Parties

Applicant: Hafez Makhlouf (Damas, Syria) (represented by: P. Grollet and G. Karouni, lawyers)

Defendant: Council of the European Union