



## Reports of Cases

### Case C-506/13 P

#### Lito Maieftiko Gynaikologiko kai Cheirurgiko Kentro AE v European Commission

(Appeal — Contract granting Community financial assistance for a project in the field of medical collaboration — Commission decision to recover in part an advance payment made — Action for annulment — Inadmissibility)

Summary — Judgment of the Court (First Chamber), 9 September 2015

- 1. Actions for annulment — Action relating in reality to a contractual dispute — Annulment of a debit note issued by the Commission — No jurisdiction of the EU judicature — Inadmissibility*  
*(Arts 263 TFEU, 272 TFEU, 274 TFEU, 288 TFEU and 299 TFEU)*
- 2. Fundamental rights — Right to effective judicial protection — Limits — Compliance with the conditions governing the admissibility of an action*  
*(Art. 6(1), third para., TEU; Art. 263, fourth para., TFEU; Charter of fundamental rights of the European Union, Arts 47 and 52(7))*
- 3. EU law — Principles — Protection of legitimate expectations — Conditions — Specific assurances given by the authorities*
- 4. Appeals — Grounds of appeal — Mere repetition of the pleas and arguments put forward before the General Court — Inadmissibility*  
*(Art. 256(1), second para., TFEU; Statute of the Court of Justice, Art. 58, first para.; Rules of Procedure of the Court of Justice, Art. 168(1)(d))*
- 5. EU law — Principles — Rights of defence — Right to a judicial hearing — No obligation to incorporate in the decision all the submissions of the parties*
- 6. Appeals — Grounds of appeal — Plea submitted for the first time in the context of the appeal — Inadmissibility*  
*(Art. 256 TFEU; Statute of the Court of Justice, Art. 58; Rules of Procedure of the Court of Justice, Art. 170(1))*
- 7. Judicial proceedings — General Court seised under an arbitration clause — Grounds of appeal — Misuse of powers — Invalid grounds of appeal — Rejection*  
*(Arts 263 TFEU and 272 TFEU)*

8. *Judicial proceedings — General Court seised under an arbitration clause — Grounds of appeal — Lack of or inadequate statement of reasons — Invalid grounds of appeal — Rejection*

*(Arts 272 TFEU and 296 TFEU)*

1. Although it is true that it would be inconsistent with the objective of an action for annulment under Article 263 TFEU to interpret the conditions under which the action is admissible so restrictively as to limit the availability of this procedure merely to the categories of measures referred to by Article 288 TFEU, the fact remains that that power of interpretation and application of the provisions of the Treaty by the EU judicature does not apply where the applicant's legal position falls within the contractual relationships whose legal status is governed by the national law agreed to by the contracting parties.

Were the EU judicature to hold that it had jurisdiction to adjudicate on the annulment of acts falling within purely contractual relationships, not only would it risk rendering Article 272 TFEU — which grants the Courts of the European Union jurisdiction pursuant to an arbitration clause — meaningless, but would also risk, where the contract does not contain such a clause, extending its jurisdiction beyond the limits laid down by Article 274 TFEU, which specifically gives national courts or tribunals ordinary jurisdiction over disputes to which the European Union is a party. It follows from this that, where there is a contract between the applicant and one of the institutions, an action may be brought before the European Union judicature on the basis of Article 263 TFEU only where the contested measure aims to produce binding legal effects falling outside of the contractual relationship between the parties and which involve the exercise of the prerogatives of a public authority conferred on the contracting institution acting in its capacity as an administrative authority.

In that regard, a debit note issued by the Commission in the framework of Community financial assistance falls within a contractual relationship since the note's purpose is the recovery of a debt which is grounded on the provisions of the contract entered into between that institution and the beneficiary of that financial assistance. That debit note must be understood as a formal demand for payment setting out the maturity date and also the payment terms and it cannot be equated to an enforcement order, even though it refers to enforcement pursuant to Article 299 TFEU as a possible option among others open to the Commission where a party fails to perform an obligation by the delivery date laid down. Moreover, in the event that an institution, specifically the Commission, chooses to allocate financial contributions by means of a contract falling within the framework of Article 272 TFEU, it is bound to stay within that framework. Accordingly, the institution is obliged, in particular, to ensure that it does not use, in the context of relationships with its counterparties, ambiguous formulations which might be understood by the parties to the contract as constituting unilateral decision-making powers going beyond the contractual provisions.

(see paras 17-21, 23)

2. See the text of the decision.

(see para. 26)

3. See the text of the decision.

(see paras 27, 43)

4. See the text of the decision.

(see paras 39, 62, 69-71, 91)

5. See the text of the decision.

(see para. 48)

6. See the text of the decision.

(see paras 80, 81)

7. There is a misuse of powers where an institution exercises its powers with the exclusive or, at the very least, main purpose of achieving ends other those that stated or evading a procedure specifically prescribed by the Treaty for dealing with the circumstances of the case. Accordingly, the misuse of powers is one of the elements against which the EU judicature examines the legality of the contested measure in an action for annulment on the basis of Article 263 TFEU. By contrast, in the context of an action brought on the basis of Article 272 TFEU, the applicant can only complain that the institution party to the contract infringed the terms of the contract or of the law applicable to it.

(see paras 94-96)

8. An argument alleging failure to state reasons on the basis of Article 296 TFEU cannot be admitted as part of an action brought pursuant to Article 272 TFEU.

(see para. 104)