

The General Court overlooked the legal infringement constituted by the deficient reasoning of the European Parliament's decision. It instead substituted its own reasoning for the deficient reasons given for the failure to deal with the petition.

The General Court failed to take due account of the fact that the appellant was denied the possibility of presenting his case to the Committee on Petitions in an undistorted way.

⁽¹⁾ Judgment of the General Court of 14 September 2011 (not yet published in the ECR).

Appeal brought on 14 May 2013 by the Kingdom of Spain against the judgment of the General Court (Second Chamber) delivered on 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 Spain v Commission

(Case C-263/13 P)

(2013/C 207/45)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: A. Rubio González, agent)

Other party to the proceedings: European Commission

Form of order sought

— Declare that the present appeal is well founded and set aside the judgment of the General Court of 26 February 2013 in Joined Cases T-65/10, T-113/10 and T-138/10 *Spain v Commission*;

— Annul Commission Decisions C(2009) 9270 of 30 November 2009, C(2009) 10678 of 23 December 2009, and C(2010) 337 of 28 January 2010 reducing the aid from the European Regional Development Fund (ERDF) to Operational Programme 'Andalucía', falling within Objective 1 (1994-1999), under Commission Decision C(94) 3456 of 9 December 1994, Operational Programme 'País Vasco', falling within Objective 2 (1997-1999), under Commission Decision C(1998) 121 of 5 February 1998, and to Operational Programme 'Comunidad Valenciana', falling within Objective 1 (1994-1999), under Commission Decision C(1994) 3043/6 of 25 November 1994, respectively;

— Order the respondent to pay the costs.

Pleas in law and main arguments

— **Error of law in holding Article 24(2) of Regulation 4253/88⁽¹⁾ to be the legal basis for applying financial corrections based on an extrapolation.** This provision is

not a legal basis for applying financial corrections by extrapolation in the event of systematic irregularities, since this power has not been conferred on the Commission.

— **Error of law in the review of the reliability, consistency, relevance and appropriateness of the extrapolation applied by the Commission.** The review by the General Court with respect to the representativeness of the sample used for the application of the financial correction by extrapolation was not carried out in accordance with the *Tetra Laval*⁽²⁾ case-law.

⁽¹⁾ Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments OJ 1988 L 374, p. 1

⁽²⁾ Judgment of 15 February 2005 in Case C-12/03 P *Commission v Tetra Laval* [2005] ECR I-987, paragraph 39

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 15 May 2013 — Provincie Antwerpen v Mobistar NV

(Case C-264/13)

(2013/C 207/46)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Provincie Antwerpen

Respondent: Mobistar NV

Question referred

Must Article 6 and/or Article 13 of Directive 2002/20/EC⁽¹⁾ of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) be interpreted as precluding a public authority of a Member State from being allowed to tax, for budgetary or other reasons, the economic activity of telecommunications operators which arises in the territory or a part thereof through the presence on public or private property of GSM masts, pylons or antennae which are used for that activity?

⁽¹⁾ OJ 2002 L 108, p. 21.