

Appeal brought on 26 September 2014 by Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis against the judgment delivered by the General Court (First Chamber) on 16 July 2014 in Case T-59/11 Isotis v Commission

(Case C-450/14 P)

(2014/C 395/34)

Language of the case: Greek

Parties

Appellant: Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis (represented by: S. Skliris, dikigoros)

Other party to the proceedings: European Commission

Form of order sought

- set aside in its entirety the judgment of the General Court of the European Union of 16 July 2014 in Case T-59/11 *Kinonia tis Pliroforias Anikhti stis Eidikes Anagkes — Isotis v European Commission*;
- uphold the company's action in its entirety;
- dismiss the Commission's counterclaim in its entirety;
- order the Commission to pay the appellant's costs.

Pleas in law and main arguments

1. Incorrect application of Article 1315 of the Belgian Civil Code regarding allocation of the burden of proof
 - Dismissal of the action does not automatically mean that the factual basis of the counterclaim is proven. The Commission bore the burden of proving the counterclaim.
2. Defective statement of reasons as regards the substantive merits of the counterclaim
 - Lack of reasoning as regards the affirmation of the substantive merits of the Commission's counterclaim.
 - Contradictory reasoning by reason of taking into account as the only piece of evidence the audit report which was disputed and constituted the matter to be proven.
3. Error of law by reason of failure to apply the international auditing standards
 - Failure to apply the international auditing standards in breach of national accounting legislation and of the obligation to interpret the contracts at issue in accordance with the common intention of the parties (Article 1156 of the Belgian Civil Code) and with the principle of good faith (third paragraph of Article 1134 of the Belgian Civil Code).
4. Incorrect interpretation of the principle of equality of arms
 - The principle of equality of arms is not the same as the *audi alteram partem* rule.
5. Incorrect interpretation and application of the principle of good faith and breach of the rights of the defence because of the language of the case
 - The correct interpretation of the principle of good faith requires the contractual provision to be interpreted in accordance with the Charter of Fundamental Rights of the European Union and the fundamental principle of EU law regarding observance of the rights of the defence.
6. Incorrect interpretation of the terms of the contracts at issue, incorrect application of Greek law and failure to take account of a material submission
 - Under Article II 19.1 of the FP6 contracts, Article II.16 of the e-Ten contracts and Article II 20.1 of the CIP contracts, the checks are to cover only the expenditure and receipts which relate to performance of the projects at issue, and not other entries.
 - Breach of the principle, laid down by case-law, that in Greek accounting and tax law financial years are independent.

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- Failure to take account, and absence of judicial appraisal, of the applicant's material submission in paragraphs 61 to 64 of the application.
7. Incorrect interpretation of the terms of the contracts at issue, failure to take account of a material submission and distortion of the clear sense of documents
- Incorrect interpretation and application of the term 'overall statement of accounts', contrary to good faith and Greek law, and of the term 'receipts', contrary to the contracts' express terms.
 - Failure to take account, and absence of judicial appraisal, of the applicant's material submission regarding recording the advance payment for the Access e-Gov project in its accounts before the end of the on-the-spot check.
 - Distortion of the clear sense of Annexes A3, A6, A9, A11, A14 and A17 to the application.
8. Lack of reasoning, breach of the law applicable to the contracts at issue and distortion of the clear sense of a document
- Lack of reasoning (paragraphs 127, 129) and contradictory reasoning (paragraphs 128, 129).
 - Breach of the principle of good faith, of the international auditing standards and of Greek accounting legislation (paragraph 127).
 - Distortion of the clear sense of Annex B101 which was adduced by the Commission.
9. Taking account of a submission which was not put forward and not taking account of a submission which was put forward
- Taking account of a submission which the applicant did not put forward (paragraph 165) and absence of judicial appraisal of its submissions to the contrary (paragraphs 88, 89, 91 of the application).
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