



Reports of Cases

ORDER OF THE PRESIDENT OF THE GENERAL COURT

10 September 2019*

(Interim measures — Financial provisions (budget, financial framework, own resources, combating fraud) — Enforcement — Application for suspension — Admissibility — No urgency)

In Case T-762/18 R,

Sofia Athanasiadou, residing in Athens (Greece),

Konstantinos Soulantikas, residing in Athens,

represented by M. Lappa, lawyer,

applicants,

v

European Commission, represented by A. Katsimerou and A. Kyratsou, acting as Agents,

defendant

APPLICATION under Article 299 TFEU for suspension of the enforcement of Commission Decision C(2017) 5883 final of 22 August 2017, of the payment order of 30 October 2018 at the bottom of the copy of the writ of execution issued under Commission Decision C(2017) 5883 final of 22 August 2017, and of any other related enforceable measure,

THE PRESIDENT OF THE GENERAL COURT

gives the following

Order¹

Background to the dispute, procedure and forms of order sought

...

- 2 The applicants set up ECOSE on 24 January 1994 for an initial period of 10 years. ECOSE's period of operation was extended until 2018 by private deed amending the statutes in 2002 and 2007.

...

* Language of the case: Greek.

¹ Only the paragraphs of the present order which the Court considers it appropriate to publish are reproduced here.

4 On 28 November 2007, the Education, Audiovisual and Culture Executive Agency (EACEA), acting under the powers delegated to it by the Commission of the European Communities, and ECOSE signed Grant Agreement 2007-3567/001-001 to implement project 133962-LLP-1-GR-GRUNDTVIG-GMP, entitled ‘Seniors in Action’.

...

6 In March 2012, the Commission carried out a financial audit of ECOSE covering the period from 11 November 2007 to 31 October 2009. The audit report recommended the recovery of EUR 59 696.98 of ineligible expenses. ECOSE was informed of the findings of the audit by letter of 1 August 2013, and was given the opportunity to submit its observations within two weeks of receipt of that letter.

...

8 By private deed of 25 October 2013, the applicants wound up ECOSE without informing the EACEA.

...

11 On 16 April, 19 May and 20 November 2014, the EACEA sent registered reminder letters to ECOSE, which were returned to it as ‘unclaimed’.

12 On 22 August 2017, the Commission adopted Decision C(2017) 5883 final relating to the recovery from ECOSE of the sum of EUR 59 696.98 plus interest due (‘the contested decision’). It is clear from the case file, however, that that decision, which was sent to the ECOSE headquarters, was not received.

13 In accordance with the Greek Code of Civil Procedure, the Commission served the contested decision and the payment order using the services of a bailiff. On 30 October 2018, the bailiff attended the applicants’ place of residence with a writ of execution, but Mr Soulantikas refused to receive and sign the documents. The bailiff then served the contested decision by attaching it to the door of the residence, in front of a witness, pursuant to the provisions of the Greek Code of Civil Procedure applicable in the event of refusal to receive a document.

14 On the same day, the applicants lodged a statement of opposition with the Monomeles Protodikeio Athinon (Court of First Instance (Single Judge), Athens, Greece). The date of the hearing before that court has been set for 6 October 2020.

15 On 31 December 2018, the applicants lodged, inter alia, an application to suspend the enforcement of the contested decision before the General Court.

...

Law

...

The admissibility of the application for interim measures

29 In its observations of 18 January 2019, the Commission argued that the application for interim measures is inadmissible on the ground that there had been no main action for annulment of the contested decision, in breach of Articles 161 and 156 of the Rules of Procedure.

- 30 In that regard, it must be noted, first, that, in accordance with Article 299 TFEU, read in conjunction with Article 256(1) TFEU, the first paragraph of Article 39 and the first paragraph of Article 53 of the Statute of the Court of Justice of the European Union, enforcement of the contested decision may be suspended only by a decision of the President of the General Court. The national courts concerned have jurisdiction only over complaints that enforcement is being carried out in an irregular manner.
- 31 Second, as stated in paragraph 23 above, under Article 161(1) of the Rules of Procedure, the provisions of Section 2 of those rules, entitled ‘Suspension of operation or enforcement and other interim measures’, are to apply to applications to suspend the enforcement of a measure adopted by the Commission made pursuant to Article 299 TFEU. In that context, it is appropriate to note that Article 156 of those rules lays down procedural rules which differ according to the legal basis of the application for interim measures. Thus, the requirement laid down in Article 156(1) of the Rules of Procedure, in accordance with which an application to suspend the operation of a measure adopted by an institution is to be admissible only where the applicant has challenged that measure in a main action brought prior to or concurrently with that application, is expressly limited to applications made pursuant to Article 278 TFEU and Article 157 TEAEC. Therefore, contrary to the Commission’s contention, that requirement does not necessarily apply in this case.
- 32 Third, the requirement to satisfy such an obligation in the present case would deprive the applicants of the right to an effective remedy, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union and guaranteed in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950. In the circumstances of the present case, in order to allow the national courts the time necessary to exercise their jurisdiction over complaints that enforcement is being carried out in an irregular manner, under the fourth paragraph of Article 299 TFEU, it must be possible to request that the EU Courts, which alone have the jurisdiction to do so, order the suspension of enforcement, where appropriate.
- 33 In that situation, it is also necessary to point out that, consequently, the pleas raised in the context of proving the existence of a *prima facie* case must fall within the jurisdiction of the national courts and appear to be well founded. Pleas concerning the legality of the decision are ineffective unless they are raised in the context of an application under Article 278 TFEU alongside a main action brought under Article 263 TFEU, in so far as the merits of an enforceable decision can be disputed only before the court hearing the proceedings for annulment, on the basis of Article 263 TFEU (see judgment of 4 July 2017, *Systema Teknolotzis v Commission*, T-234/15, EU:T:2017:461, paragraph 90 and the case-law cited).
- 34 In that regard, without there being any need at this stage to rule on whether the pleas appear to be well founded and as the Commission noted in its observations of 26 February 2019, it can be observed that, in this case, some of the grounds put forward by the applicants to support the claim that the condition relating to the existence of a *prima facie* case has been satisfied concern, specifically, the enforcement procedure in Greece and the regularity of the enforcement measures, and therefore, do fall within the jurisdiction of the national court.
- 35 The present application is, therefore, indeed intended to enable the national court to exercise its jurisdiction under Article 299 TFEU.
- 36 It follows from all the foregoing that the plea of inadmissibility relating to the absence of a main action must be dismissed.

...

Costs

- 53 Under Article 158(5) and Article 134(1) of the Rules of Procedure, the applicants must, in accordance with the forms of order sought by the Commission, be ordered to bear their own costs and to pay those incurred by the Commission.

On those grounds,

THE PRESIDENT OF THE GENERAL COURT

hereby orders:

- 1. The application for interim measures is dismissed.**
- 2. Ms Sofia Athanasiadou and Mr Konstantinos Soulantikas shall bear their own costs and pay those incurred by the European Commission.**

Luxembourg, 10 September 2019.

E. Coulon
Registrar

M. Jaeger
President