

The applicant puts forward that the difference between the amounts owed by the Greek State to OA/OAS as approximately assessed in Commission Decision 2003/372/EC<sup>(1)</sup> and the compensation for damages awarded to OA/OAS by the ruling of 20 December 2006 constitutes an advantage within the meaning of state aid rules, granted to the company. The grant of such advantage is attributable, according to the applicant, to the Greek State because the arbitration Court has acted as an organ of the State.

The applicant further submits that the Commission was under a duty to carry out a diligent and impartial examination of the complaint received in order to either adopt a decision declaring that the State measures did not amount to aid within the meaning of Article 87(1) EC, or that those measures were to be classified as aid within the meaning of the said provision but were compatible with the common market under Article 87(2) and (3) EC, or to initiate a procedure under Article 88(2) EC.

The applicant further submits that the period of seven months which elapsed between the applicant's complaint and its letter of formal notice was unreasonably long, and the inaction of the Commission during that period constitutes failure to act within the meaning of Article 232 EC.

<sup>(1)</sup> Commission Decision 2003/372/EC of 11 December 2002 on aid granted by Greece to Olympic Airways (notified under document number C(2002) 4831) (OJ, L 132, p. 1).

**Appeal brought on 30 November 2007 by Nikos Giannopoulos against the judgment of the Civil Service Tribunal delivered on 20 September 2007 in Case F-111/06, Giannopoulos v Council**

(Case T-436/07 P)

(2008/C 22/94)

*Language of the case: French*

**Parties**

*Appellant:* Nikos Giannopoulos (Wezembeek-Oppem, Belgium) (represented by S. Rodrigues and C. Bernard-Glanz, Lawyers)

*Other party to the proceedings:* Council of the European Union

**Form of order sought by the appellant**

- declare the present appeal admissible;
- annul the judgment of the Civil Service Tribunal delivered on 20 September 2007 in Case F-111/06;

- uphold the claims for annulment and for compensation submitted by the appellant at first instance;
- order the defendant at first instance to pay all the costs of the proceedings at first instance and on appeal.

**Pleas in law and main arguments**

In support of his appeal, the appellant puts forward pleas in law alleging failures to state reasons and manifest errors of assessment in the response given by the Civil Service Tribunal in relation to the first plea in law, alleging breach of Article 31(2) of the Staff Regulations, which the appellant put forward in the proceedings at first instance.

**Action brought on 5 December 2007 — Huta Buczek v Commission**

(Case T-440/07)

(2008/C 22/95)

*Language of the case: Polish*

**Parties**

*Applicant:* Huta Buczek sp. z o.o. (Sosnowiec, Poland) (represented by: D. Szlachetko-Reiter, legal adviser)

*Defendant:* Commission of the European Communities

**Form of order sought**

- declare invalid Articles 1, 3(1) and 3(3) of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek;
- in the alternative, declare invalid Articles 1, 3(1) and 3(3) of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek in so far as the Commission orders recovery to be effected from the company Huta Buczek sp. z o.o.;
- declare invalid Articles 4 and 5 of the Commission decision of 23 October 2007 in Case No C 23/2006 (ex NN 35/2006) concerning State aid granted by Poland to the steel producer Grupa Technologie Buczek in so far as those provisions concern the effecting of recovery from Huta Buczek sp. z o.o.;
- order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

In support of its heads of claim, the applicant puts forward the following pleas in law:

- Breach of Articles 88(2) EC and 87(1) EC by reason of what the applicant considers to be an erroneous assumption that a situation consisting in the existence of public-law arrears on the part of the company Technologie Buczek S.A. constitutes aid that is contrary to the common market. The applicant submits that such an assertion on the part of the Commission results from an erroneous assumption that the public-law authorities had desisted from enforcement proceedings against the company Technologie Buczek S.A. The breach of Articles 88(2) EC and 87(1) EC has also resulted, the applicant argues, from the fact that the Polish State was ordered to secure recovery of aid declared incompatible with the common market, even though Poland did not grant aid in the amount indicated in the decision to either the company Technologie Buczek S.A. or the group Technologie Buczek, and from the fact that the amount of aid to be returned was fixed at an arbitrary level without any foundation in law or economic justification. The applicant further submits that Articles 88(2) EC and 87(1) EC were infringed by reason of the fact that the Polish State was ordered to secure reimbursement of aid from the company Huta Buczek sp. z o.o. notwithstanding the fact that there was no basis for assuming that that company could have been the actual beneficiary of aid granted to the company Technologie Buczek S.A. and despite the fact that that aid was not granted to it, and by reason of the acknowledgement that the only actual beneficiaries of the alleged aid were the companies Huta Buczek sp. z o.o. and Buczek Automotive sp. z o.o., even though they benefited only from a portion of the assets of the company Technologie Buczek S.A.
- Infringement of the principle of proper administrative procedure laid down in Article 253 EC and Article 41 of the Charter of Fundamental Rights on the grounds of: lack of appropriate reasoning for the decision such as to allow the applicant to determine why the decision was adopted and, consequently, the issue of a decision that was essentially incomprehensible to the applicant and incomprehensible by reason of the erroneous and inadequate determination of the factual circumstances material to the case.
- Breach of the third paragraph of Article 5 EC and infringement of the principle of proportionality resulting therefrom by reason of the imposition on the company Huta Buczek sp. z o.o. of the obligation to reimburse the aid, even though, in the view of the applicant, such action is neither appropriate nor necessary in order to attain the objectives set out in the Treaty, including in particular the fact that it is not based on any need to cancel aid that is incompatible with the common market.
- Infringement of the principle of legal certainty by reason of the following: imposition, on a party which entered into a contract with an individual in arrears of payment towards public authorities, of the obligation to return aid which that party never received and from which it never benefited; determination, in a manner which the applicant considers to be arbitrary, of the extent to which persons within the group Technologie Buczek S.A. benefited from the aid allegedly distributed; infringement of the right to property by reason of the order to secure recovery of part of the State aid from a person who did not receive any aid whatsoever and was also not the actual beneficiary; misuse of powers by reason of the publication of a decision for a purpose other than to cancel aid incompatible with the common market.

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### Order of the Court of First Instance of 6 December 2007 — Microsoft v Commission

(Case T-271/06) <sup>(1)</sup>

(2008/C 22/96)

*Language of the case: English*

The President of the Court of First Instance (Seventh Chamber) has ordered that the case be removed from the register.

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<sup>(1)</sup> OJ C 294, 2.12.2006.