In support of its claims, the applicants argue that the contested decision is in breach of the applicants' fundamental rights, including the rights of defence, the right to a fair legal process, the privilege against self-incrimination and the presumption of innocence and right to privacy. Furthermore, they submit that in the execution of the contested decision the Commission went beyond the scope of the investigation.

(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty; OJ L 1, p. 1

Action brought on 7 April 2009 — Commission v Galor

(Case T-136/09)

(2009/C 141/102)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: A.-M. Rouchaud-Joët, F. Mirza, agents, assisted by B. Katan and M. van der Woude, lawyers)

Defendant: Benjamin Galor (Jupiter, United States of America)

Form of order sought

— order Galor to pay the Community EUR 205 611, to be increased by the statutory interest pursuant to Article 6 119 DCC as of 1 March 2003 up to the date the Community will have received full payment;

— order Galor to pay the Community the statutory interest pursuant to Article 6.119 DCC on EUR 9 231,25 as of 2 September 2003 (or, alternatively, as of 10 March 2007) up to the date the Community will have received full payment;

— order Galor to pay the costs of the current proceedings, provisionally estimated at EUR 17 900, to be increased by the statutory interest pursuant to Article 6.119 DCC as of the date of judgment up to the date the Community will have received full payment.

Pleas in law and main arguments

On 23 December 1997 the European Community, represented by the Commission, entered into a contract IN/004/97 with Prof. Benjamin Galor and three companies for the implementation of the project 'Self-Upgrading of Old-Design Gas Turbines in Land & Marine Industries by Energy-Saving Clean Jet-Engine Technologies' under the Community activities in the field of non-nuclear energy (1). Pursuant to the contract provision, the Commission made an advance payment of its contribution for the project to the contractors. The payment was received by the leader of the project, Prof. Benjamin Galor.

For reasons related to the difficulties for the contractors to find an associated contractor for the project and because no progress had been made in the implementation of the project, the Commission decided to terminate the contract. In its letter to the contractors, the Commission specified that the Community contribution could only be paid (or kept by the contractors) as far as it was related to the project and justified through the final technical and financial report.

The final report submitted by the contractors was not approved by the Commission and the Commission started the procedure for recovering the advance payment.

In its application, the Commission submits that the defendant did not reimburse the amount received, but instead demanded that the Commission pays him a foreseen contribution under the contract minus the advance payment. Furthermore, the defendant started legal proceedings before the Dutch courts to recover this amount. The jurisdiction of the Dutch courts was disputed by the Commission on the basis of the jurisdiction clause in the contract designating the Court of First Instance to decide on any disputes between the contracting parties.

In its application, the Commission seeks the recovery of the advance paid. The Commission claims that it was entitled to terminate the contract in application of the contract's provisions as the defendant acted in breach of his contractual obligations because, inter alia: there was an important delay in commencement of the project and the project showed no progress, the defendant was not able to engage technical means required for the research that the funding had been provided for and the technical and financial reports did not meet the contractual requirements.

Therefore, the Commission contends that it is entitled to demand reimbursement of the advance payment.

(1) Council Decision 94/806/EC of 23 November 1994 adopting a specific programme for research and technological development, including demonstration, in the field of non-nuclear energy (1994 to 1998) OJ 1994 L 334, p. 87

Action brought on 8 April 2009 — France v Commission

(Case T-139/09)

(2009/C 141/103)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and A.-L. During, Agents)

Defendant: Commission of the European Communities

Form of order sought

— Annul Commission Decision C(2009) 2003 final of 28 January 2009 on the contingency plans in the fruit and vegetable sector implemented by France, in so far as it refers to the part of the measures taken under the contingency plans which was financed by sectoral contributions;

— In the alternative, were the Court to find that application for partial annulment inadmissible, annul Decision C(2009) 2003 final in its entirety;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment in part of Commission Decision C(2009) 203 final ([1]) of 28 January 2009, by which the Commission declared incompatible with the common market State aids granted by the French Republic to producers of fruit and vegetables under the 'contingency plans' aimed at facilitating the marketing of agricultural products harvested in France.

The applicant seeks annulment of the contested decision, to the extent that the Commission found that the measures taken in favour of the producers of fruit and vegetables constituted State aid, whereas those measures were in part financed by voluntary contributions from the producers which do not, according to the applicant, amount to State resources or resources attributable to the State.

In support of its action, the applicant relies on two pleas based on:

— breach of the obligation to state reasons, to the extent that the Commission did not justify the extension of the finding of State aid to measures financed by voluntary contributions from the producers in the sector concerned;

— an error of law, since the Commission regarded as State aid measures financed by private resources paid voluntarily and without State intervention. Those measures cannot be regarded as advantages granted through State resources.

([1]) That is the number stated in the contested decision, whereas the applicant consistently refers to the number C(2009) 2003 final.

Action brought on 7 April 2009 — Prysmian, Prysmian Cavi and Sistemi Energia v Commission

(Case T-140/09)

(2009/C 141/104)

Language of the case: Italian

Parties

Applicants: Prysmian (Milan, Italy), Prysmian Cavi and Sistemi Energia (Milan, Italy) (represented by: A. Pappalardo, lawyer, F. Russo, lawyer, M.L. Stasi, lawyer, C. Tesauro, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Decision of 9 January 2009 by which the Commission ordered the inspection (Case COMP/39610 — Surge);

— Declare the Commission's decision to extract a copy of the entire contents of the hard disks of some of the directors of Prysmian and to analyse the content thereof in its own offices in Brussels to be unlawful and contrary to Article 20(2) of Regulation No 1/2003;

— In the alternative, declare the conduct of the inspectors to be abusive in that, in interpreting incorrectly the powers of inspection conferred on them by the Decision, they acquired copies of the entire content of hard disks in order to inspect the content thereof in the Commission's offices in Brussels;

— Order the Commission to return to Prysmian all documents obtained unlawfully in the inspections at its Milan head office or extracts from the hard disks analysed in its own offices in Brussels;

— Order the Commission to refrain from using in any manner the documents unlawfully obtained and, in particular, from using them in proceedings initiated for investigating alleged anti-competitive conduct in the electrical cable sector contrary to Article 81 EC;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The present action has been brought in relation to the Commission Decision of 9 January 2009 concerning the investigation into possible anti-competitive conduct in the electrical cable sector contrary to Article 81 EC, by which the applicants were ordered to submit to an inspection pursuant to Article 20(4) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. ([1])

It is stated in that regard that, during the implementation phase of the abovementioned decision, the representatives of the applicants were informed that the defendant had decided to produce forensic images of the hard disks of some computers, in order to continue the investigation in the Commission's offices in Brussels.

The applicants put forward the following in support of its action:

— Regulation No 1/2003 provides expressly that the powers of inspection are to be exercised at the premises of the undertaking, providing for the possibility that those premises may be sealed should the inspection extend over a number of days, and no legislative provision authorises the Commission to make copies of entire hard disks, transport them outside the premises of the undertaking and analyse those documents in its own offices;

— The defendant unduly prolonged the duration of the inspection by roughly one month, placing the applicants in a situation of uncertainty as to the actual scope of the investigation;

— The Commission also prevented them, for some weeks, from making a fully-informed assessment as to whether it might avail itself of the Leniency Notice;

— The defendant's conduct complained of constitutes a clear infringement of the limits the Community legislature placed on its powers of inspection, such as to significantly jeopardise the possibility for the undertakings subject to the inspections to prepare their defence.

([1]) OJ 2003 L 1, p. 1.