

On 30 May 1997 a contract was concluded between one of the applicants, Lurgi SpA, and the coordinator of the project, Bioelettrica, relating to the construction of a plant for the atmospheric gasification of biomass. During the engineering works, the applicant identified certain technical difficulties. These difficulties were brought to the attention of the Commission and the other contractors.

On 6 September 2001, the Commission notified Bioelettrica that it was terminating the contract because of the failure to commence the works under the THERMIE contract. Bioelettrica contested this termination of the contract before the Court of First Instance in Case T-287/01, Bioelettrica/Commission.

On 23 July 2002, the Commission sent a further notice indicating that it would terminate the contract due to non-performance by the contractors unless they performed their obligations within 30 days. The Commission mainly criticised the delays of the project. In a letter dated 26 November 2002, the Commission stated that it considered the contract terminated. This termination of the contract is being contested in the present case.

In support of their application, the applicants invoke an infringement of the formal requirements in the decision making procedure of the Commission. According to the applicants, all acts of the Commission have to be taken under the principle of collegiality as set forth in Article 219 of the EC Treaty and Article 1 of the procedural rules of the Commission <sup>(1)</sup>. The applicants submit that the decision terminating the contract had a substantial financial impact for the contractors and involves a difficult technical and legal assessment of the contract and its purpose. Therefore, the applicants claim that the decision to terminate the contract could not be considered as an execution of an act at an administrative or management level and that the decision had to be taken by the College of Commissioners.

Furthermore, the applicants invoke the wrongful application of the THERMIE contract. The applicants submit in this respect that there is no justification for a termination of the contract for non-performance by the contractors. According to the applicants, this provision is not applicable when there are reasonable technical or economic grounds for non-performance. In the present case, there was a need to make modifications to the original technology causing serious economic risks.

Finally, the applicants submit that the behaviour of the Commission prevents the Commission from invoking non-performance as a ground for termination of the contract. In this respect, the applicants invoke Article 1460 of the Italian Civil Code and the principle *inadimplenti non est adimplentum*.

<sup>(1)</sup> Rules of Procedure of the Commission [C(2000) 3614] (OJ L 308 of 8 December 2000, p. 26).

**Action brought on 11 February 2003 by Leali S.p.A. against Commission of the European Communities**

(Case T-46/03)

(2003/C 83/57)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 11 February 2003 by Leali S.p.A., represented by Giovanni Vezzoli and Gianluca Belotti, lawyers.

The applicant claims that the Court should:

- principally, annul the contested decision;
- or, alternatively, reduce the fine imposed,
- order the defendant to pay the costs.

*Pleas in law and main arguments*

This action is directed against the same decision as that contested in Case T-27/03 S.P. v Commission. The pleas in law and main arguments are similar to those in the abovementioned case.

**Removal from the register of Case T-187/94 <sup>(1)</sup>**

(2003/C 83/58)

(Language of the Case: German)

By order of 11 December 2002 the President of the First Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-187/94: Theresia Rudolf v Council of the European Union and Commission of the European Communities.

<sup>(1)</sup> OJ C 174 of 25.6.1994.