

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
10 February 2000 *

In Case T-5/99,

Pantelis Andriotis, residing in Thessaloniki, Greece, represented by S. Ioannidou, of the Thessaloniki Bar, with an address for service in Luxembourg at the Chambers of E. Korn, 21 Rue de Nassau,

applicant,

v

Commission of the European Communities, represented by D. Triantafyllou, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

and

* Language of the case: Greek.

European Centre for the Development of Vocational Training (Cedefop), represented by H. Kallipolitis, of the Thessaloniki Bar, and B. Wägenbaur, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the Commission's Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for the annulment of the defendants' implied decisions of refusal to inform the applicant in writing of the publication in the *Official Journal of the European Communities* of the award of a contract subsequent to Cedefop's contract notice APO/97/005 (OJ 1997 S 139, p. 44),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: J. Pirrung, President, A. Potocki and A.W.H. Meij, Judges,

Registrar: H. Jung,

makes the following

Order

Facts

- 1 In July 1997, the European Centre for the Development of Vocational Training (Cedefop) published in the *Official Journal of the European Communities* of 19 July 1997 (OJ 1997 S 139, p. 44) contract notice APO/97/005 for the services of architect or engineer/architect/adviser responsible for monitoring and verifying construction work on the new Cedefop building.
- 2 The applicant submitted an offer as a tenderer.
- 3 The parties agree that during November 1997 the applicant was informally notified that the contract in question had been awarded to another tenderer.
- 4 Having asked Cedefop to inform him officially of the results of the procedure and the reasons for rejection of his tender, the applicant received a letter from Cedefop on 4 December 1997 confirming that his application had not been accepted for reasons based essentially on his lack of experience in the construction of office buildings and on the limited infrastructure of his architect's office.

- 5 On 8 January 1998, the applicant lodged a complaint with the Commission of infringement of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) in which he requested that he be informed of the name of the successful tenderer and that he be sent a copy of the written report on the award procedure and the corresponding decision of the Management Board of Cedefop.
- 6 The applicant then brought proceedings, on the one hand, before the Greek Council of State in order to obtain the annulment of the contract award decision and, on the other hand, before the Court of First Instance of Thessaloniki in order, firstly, to have the award procedure suspended and, secondly, to obtain the production of certain documents which he maintained that Cedefop had not yet provided to him.
- 7 The applicant acknowledges that he had sight of the documents requested in the proceedings before the Thessaloniki court.
- 8 Thus in its judgment of 30 March 1998, the Court of First Instance of Thessaloniki considered, according to a retranscription appearing in Cedefop's defence, not contested by the applicant: '[W]ith regard to the applicant's last claim concerning the submission of documents which he cites by name... this claim is also unfounded on the substance and must be rejected, given that the Centre has never refused to produce these documents but has, in fact, produced in particular (a) the tender of August 1997 from the architectural firm of Georges and Anne Zoïdis, the successful tenderers in the invitation to tender, and also the tenders of the Heupel and Nanou firms, (b) the decision of 14 November 1997 of the Management Board of [Cedefop], translated from French, (c) the contract of 16 December 1997 between [Cedefop] and the Zoïdis architectural firm and, finally, (d) the explanatory note of 14 November 1997 on the decision relating to the choice of architect/adviser by the Director of the Centre, Mr Johan van Rens...'.

- 9 On 6 October 1998, the applicant formulated a new complaint which was sent this time to the Commission President, Mr Santer.
- 10 As no notice of the award of the contract in question was published in the Official Journal, the applicant wrote again to the Commission President on 17 November 1998, asking him to confirm that the publication in question had taken place.
- 11 Finally, on 8 January 1999, Cedefop sent a letter to the applicant in which it stated: '[T]he total value of the contract concluded on the basis of the tender of the G. and A. Zoidis architectural firm is ECU 140 000... However, we note that, as you were able to discover at least from a reading of the pleadings and corresponding documents of the Centre in the proceedings for interim relief which you brought without success before the Court of First Instance of Thessaloniki, a translation in Greek of both the full decision of the Management Board and of the detailed reasons for its decision was displayed on Cedefop's noticeboard outside the office where the award procedure took place, and each tenderer could consult those documents and obtain a copy thereof. Moreover, this information was also included in the case-file, in particular in the aforementioned interim proceedings of 9 March 1998, and was made available to the court (and to you), as expressly indicated in the grounds of Decision No 7715 of 30 March 1998 and in particular in the passage giving the reasons for rejection of your application.'

Procedure

- 12 Those were the circumstances in which the applicant commenced this action, by an application lodged at the Registry of the Court of First Instance on 4 January 1999.

- 13 On 15 February 1999, the Commission raised a plea of inadmissibility in accordance with Article 114(1) of the Rules of Procedure of the Court of First Instance.
- 14 On 1 March 1999, Cedefop lodged a defence in which it essentially alleges that the action is inadmissible, without, however, formally raising a plea of inadmissibility in accordance with the aforementioned Article 114(1).
- 15 On 20 April 1999, the applicant submitted his observations on the plea raised by the Commission.
- 16 On 3 June 1999, the applicant submitted his reply containing his observations on Cedefop's argument on the inadmissibility of the action.

Forms of order sought by the parties

- 17 The applicant claims that the Court should:

— declare the action admissible;

— order the defendants to inform him in writing either of the precise notification in the Official Journal of the results of contract award procedure APO/97/005 or that there has been no such notification;

— order the defendants to pay the costs of the action.

18 Cedefop contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

19 The Commission contends that the Court should:

— declare the action manifestly inadmissible or devoid of purpose without ruling on the substance;

— order the applicant to pay the costs.

The applicant's right to a fair hearing

Arguments of the applicant

- 20 The applicant considers, in his observations on the plea of inadmissibility raised by the Commission, that his right to a fair hearing has been infringed in that he was invited to reply to the plea of inadmissibility raised by the Commission without having seen the content of Cedefop's observations.

Findings of the Court

- 21 By letter of 21 April 1999, the applicant was invited to submit his observations on Cedefop's defence. Moreover, he lodged a reply to this defence on 3 June 1999. Given these circumstances, his right to a fair hearing has not been infringed.

Admissibility

Arguments of the parties

- 22 The applicant observes that the award of a public contract must be published in the Official Journal pursuant to Articles 16 and 17(2) of Directive 92/50. Failure to publish the award decision compromises the validity of this award and of the contract subsequently concluded.

- 23 He states that, in his capacity as a candidate, in the tender procedure and having submitted the most economically advantageous tender, he has a manifest legal interest in ensuring compliance with the aforementioned Articles 16 and 17 in the present case. Moreover, he was able to examine the documents in question only as a result of these being included as uncertified annexes to Cedefop's defence in the proceedings for interim relief before the Court of First Instance of Thessaloniki.
- 24 In addition to this formal legal interest, he also claims to have a substantive interest in having the failure to publish the award being declared illegal, for two reasons. Firstly, the failure to publish the award affects the validity of the award of the contract in question which the applicant is preparing to contest before the competent national civil courts. Secondly, this constitutes a factor liable to engage the non-contractual liability of the Community within the meaning of the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) in the context of a subsequent action for compensation.
- 25 The applicant also points out in this respect that publication in the Official Journal constitutes the only sure way of providing interested third parties with the information allowing the validity of the disputed award decision to be reviewed. Those requirements cannot be satisfied either by displaying the information at the offices of the contracting authorities or by the submission or filing of unauthenticated photocopies.
- 26 With regard to the Commission's attitude in this case, the applicant maintains that, in accordance with Articles 17 and 18 of Regulation (EEC) No 337/75 of the Council of 10 February 1975 establishing a European Centre for the Development of Vocational Training (OJ 1975 L 39, p. 1), the Commission was obliged to provide confirmation of the publication of the award decision within one month of the request made to it. The Commission's failure to reply within this period is therefore equivalent to an implied decision of refusal.

- 27 Cedefop points out firstly that the applicant acknowledges having been informed in November 1997 and subsequently in writing on 4 December 1997 of the rejection of his application. He did not contest this decision within the prescribed time-limits, as his challenge is dated 8 January 1998. Under these circumstances, the action is inadmissible due to the failure to comply with the time-limits of the pre-litigation procedure.
- 28 Cedefop also points out that the applicant admits in any event that he has examined the documents which he is trying to obtain in this action. He has brought this action as if he had never seen these documents. As the success of his action cannot improve his position, the applicant does not in this case have any current legal interest in bringing proceedings.
- 29 Finally, Cedefop points out that it applied the provisions of Directive 92/50 of its own accord, given that this directive is not applicable in this case as the contract signed with the successful tenderer involved an amount of less than ECU 200 000 excluding VAT.
- 30 The Commission maintains, firstly, that an action brought against acts or omissions of Cedefop should be exclusively directed against the latter and not against other Community bodies. Consequently, in so far as this action is directed against the Commission, it is manifestly inadmissible.
- 31 Secondly, and in the alternative, the Commission observes in particular that, in so far as the action is directed against its implied refusal to carry out a review of the legality of Cedefop's acts, which power is entrusted to it by Regulation No 337/75, the applicant did not challenge this implied refusal within the time-limits specified by the pre-litigation procedure.

- 32 Thirdly, the Commission states that on 8 January 1999 Cedefop notified the result of the award procedure to the applicant. He therefore does not have any current interest in bringing this action.

Findings of the Court

- 33 Under Article 114 of the Rules of Procedure, if a party requests this, the Court may rule on the inadmissibility of the action without considering the substance. In accordance with paragraph 3 of that article, the remainder of the proceedings is to be oral, unless the Court otherwise decides. The Court may therefore decide that there is no need to open the oral procedure and may rule on the application in the form of a reasoned order.
- 34 Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible, the Court may, without taking further steps in the proceedings, rule in the form of a reasoned order.
- 35 In this case, the Court considers that it has sufficient information from the documents in the file and rules, in so far as the action is directed against the Commission, that there is no need to open the oral procedure and, in so far as it is directed against Cedefop, that there is no need to take further steps in the proceedings.
- 36 According to settled case-law, the admissibility of an action brought by a natural or legal person is conditional on the latter proving that it has a legal interest in bringing proceedings (see Case T-117/95 *Corman v Commission* [1997] ECR II-95, at paragraph 83).

- 37 It is apparent from the documents in the file that the applicant asked Cedefop to inform him of the result of the procedure for the award of the contract at issue and of the reasons for rejection of his tender and that he received a reasoned letter from Cedefop, dated 4 December 1997, confirming that his offer had not been accepted.
- 38 Moreover, the applicant accepts in his documents that, before bringing this action, he was able, in the context of the national pre-litigation procedures, that is by 30 March 1998 at the latest, to discover all the information on the award of the contract in question which might have appeared in the publication of the award decision in the Official Journal.
- 39 As the applicant has already obtained all the information which could be published in the Official Journal and had therefore, before bringing this action, already achieved the result which he is essentially pursuing by means of these proceedings, namely to obtain the necessary information allowing him to bring an action against the decision to award the contract in question and the concomitant rejection of his tender, it must be concluded that he has no legal interest in bringing proceedings.
- 40 Consequently, this action must be regarded as manifestly inadmissible.
- 41 In any event, it is apparent from settled case-law that it is not for the Court to issue directions to the Community institutions (see the order in Case T-106/99 *Meyer v Commission* [1999] ECR II-3273, paragraph 21). As a result, the applicant's pleadings aimed at having the defendants ordered to inform him in writing either of the precise notification in the Official Journal of the results of contract award procedure APO/97/005 or that there has been no such notification are, on this basis too, manifestly inadmissible.

Costs

- 42 Pursuant to Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if these have been applied for. As the applicant has been unsuccessful and the defendants have applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as manifestly inadmissible.
2. The applicant shall bear his own costs and those incurred by the Commission and Cedefop.

Luxembourg, 10 February 2000.

H. Jung
Registrar

J. Pirrung
President