ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
18 October 2001 *

In Case T-196/01 R,

Aristoteleio Panepistimio Thessalonikis, represented by D. Nikopoulos, lawyer,

applicant,

v

Commission of the European Communities, represented by M. Condou-Durande, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for suspension of operation of Commission Decision C(2001) 1284 of 8 June 2001 cancelling Community financial assistance,

* Language of the case: Greek.

THE PRESIDENT OF THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

1 Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions on the implementation of Regulation (EEC) No 2052/88 as regards coordination of the activities of different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments (OJ 1988 L 374, p. 1), as amended by Article 1 of Council Regulation (EEC) No 2082/93 of 20 July 1993 (OJ 1993 L 193, p. 20), contains in Title IV (Articles 14 to 16) provisions on the processing of applications for financial assistance from the Structural Funds, eligibility for financial assistance and certain specific provisions.

2 Article 14(3) of Regulation No 4253/88, as amended, provides:

'The Commission shall examine applications with a view in particular:

— to assessing the conformity of the proposed operations and measures with the relevant Community legislation and, where appropriate, with the relevant Community support framework,

— to assessing the contribution of the proposed operation to the achievement of its specific objectives and, in the case of an operational programme, the consistency of the constituent measures,

— to checking that the administrative and financial mechanisms are adequate to ensure effective implementation,

— to determining the precise arrangements for providing assistance from the Fund or Funds concerned on the basis, where appropriate, of the information already given in any relevant Community support framework.

The Commission shall decide on assistance from the Funds, provided the requirements of the Article are fulfilled, as a general rule within six months of receipt of the application. A single Commission decision shall be taken in respect of assistance from all the Funds and other existing financial instruments contributing to the financing of an operational programme, including operational programmes in the form of an integrated approach.'

3 Article 24 of Regulation No 4253/88, as amended, entitled 'Reduction, suspension and cancellation of assistance' provides:

'1. If an operation or measure appears to justify only part of the assistance allocated, the Commission shall conduct a suitable examination of the case in the framework of the partnership, in particular requesting that the Member State or other authorities designated by it to implement the operation submit their comments within a specified period of time.

2. Following this examination, the Commission may reduce or suspend assistance in respect of the operation or measure concerned if the examination reveals an irregularity and a significant change affecting the nature or conditions of the operation or measure for which the Commission's approval has not been sought.

...'

4 On 25 September 1996 the Commission adopted Decision C (96) 2542 ('the decision to grant assistance'), the legal basis for which was Regulation No 4253/88, as amended, and, more specifically, Article 14(3) thereof.

5 Article 1 of the decision to grant assistance provides that an operation in the form of a pilot project to accelerate the regeneration of forests devastated by fire in Greece (within the framework of project 93.EL.06.023), the details of which are described in annex 1 to the decision to grant assistance, is to be implemented. According to that article, responsibility for implementation is entrusted to the Laboratory of Forest Genetics and Plant Breeding, which also benefits from Community financing in accordance with Article 5 of the decision to grant assistance ('the beneficiary'). The beneficiary belongs to the *Aristoteleio Panepistimio Thessalonikis* (Aristotelian University of Thessaloniki in Greece, hereinafter 'the applicant').

6 According to Article 2 of the decision to grant assistance, expenditure eligible for assistance is that incurred after 1 September 1996, the date on which the operation was to begin. It also provided that the operation was to be completed by 28 February 2001 at the latest.

7 Article 3 of the decision to grant assistance envisages that the total amount of eligible costs of the operation will reach EUR 717 532, of which the Community undertakes to pay a maximum of EUR 538 149 by way of financial contribution.

8 According to Article 4 of the decision to grant assistance, 'the conditions attaching to this decision are set out in annex 2'.

9 Annex 1 to the decision to grant assistance contains the description of all the characteristic elements of the project in question: the heading, the general and specific objectives, the implementation timetable, the means by which each operation is to attain the specified objectives, information concerning the beneficiary (in this case, the bank account is in the name of the research committee of the Aristotelian University of Thessaloniki, hereinafter 'the committee'), the importance of the results expected by the Commission, the cost of the project and its total budget, as allocated among the bodies financing it. Community participation amounts to 75% of the total costs.

10 Point 10 of annex 2 to the decision to grant assistance provides that:

'If one of the above cited conditions is not complied with or if operations are undertaken that are not provided for in annex 1, the Community may suspend, reduce or cancel its contributions and recover the payments made by it. It may request payment of interest. In such a case the beneficiary is entitled to send its comments within the time-limit fixed by the Commission prior to the implementation of such suspensions, reductions, cancellations or request for the payment.'

11 The beneficiary received, as of 1 September 1996, a total amount of EUR 215 260 from the Community, being 40% of the Community financing provided for the project.

12 During checks carried out on the spot between 9 and 12 November 1998 the Commission found potential irregularities. As a result, it decided to initiate the procedure provided for in Article 24 of Regulation No 4253/88 and point 10 of annex 2 to the decision to grant assistance.

13 By registered letter, the receipt of which was acknowledged on 25 October 1999, the Commission informed the beneficiary of the elements that it considered likely to amount to irregularities and sent a copy of that letter to the Hellenic Republic. It mentioned that those elements might justify, among other measures, the recovery of the amount of the contribution already paid. The Commission also requested that the beneficiary provide proof, within six weeks, by means of certified copies of administrative and accounting documents, that it had fulfilled its obligations under the decision to grant assistance.

14 The beneficiary replied to the Commission by letter of 3 December 1999.

15 On 8 June 2001 the Commission adopted decision C (2001) 1284 cancelling the contribution granted to the beneficiary by the decision to grant assistance ('the contested decision').

16 Article 2 of the contested decision provides that the beneficiary and 'as the case may be, the persons legally liable for its debts are required to repay the amount of [EUR] 215 260 within 60 days of notification of this decision...'. In accordance

with Article 3 of the contested decision, the contested decision is addressed to both the Hellenic Republic and the beneficiary.

17 By application lodged at the Registry of the Court of First Instance on 20 August 2001 the applicant brought an action for the annulment of the contested decision.

18 By separate document lodged at the Registry of the Court on 3 September 2001 the applicant also made this application for suspension of operation of the contested decision.

19 On 20 September 2001 the Commission submitted its observations on this application.

20 As the case stands, the President of the Court considered that he has all the information necessary to rule on this application for suspension of operation of the contested decision, and considers it unnecessary to hear oral argument from the parties.

Law

21 By virtue of the combined provisions of Article 242 EC and 243 EC and Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988, establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21), the Court of First Instance may, if it considers that the circumstances so require, order suspension of the operation of the contested measure or prescribe such other interim measures as may be necessary.

22 Article 104(2) of the Rules of Procedures of the Court of First Instance provides that an application for the suspension of certain measures or the adoption of other measures must specify the circumstances giving rise to urgency together with the pleas of fact and law establishing a prima facie case for the grant of the interim measures applied for. Those conditions are cumulative, so that a request for suspension of the operation of the contested measure must be rejected should any one of them not be satisfied (order of the President of the Court of Justice in Case C-268/96 P(R) *SCK and FNK* v *Commission* [1996] ECR I-4971, paragraph 30; order of the President of the Court of First Instance in Case T-211/98 R *Willeme* v *Commission* [1999] ECR-SC I-A-15 and II-57, paragraph 18, confirmed on appeal by order of the President of the Court of Justice in Case C-65/99 P(R) *Willeme* v *Commission* [1999] ECR I-1857, and order of the President of the Second Chamber of the Court of First Instance in Case T-143/99 R *Hortiplant* v *Commission* [1999] ECR II-2451, paragraph 15).

23 In the present case, the President of the Court considers it appropriate first to examine whether the condition of urgency is met.

Arguments of the parties

24 The applicant claims that implementation of the contested decision would clearly cause it non-material damage.

25 Firstly, the applicant maintains that the irregularities, the existence of which was allegedly 'confirmed' by the contested decision, harm in a manifest and disastrous way both the public image and reputation of the applicant in its status as an institution managing projects in receipt of public financing.

26 Secondly, the applicant claims that in order to assess the urgency and importance of such highly pernicious consequences linked to that non-material damage it is

necessary to take into account the legal guarantees accorded by the managerial function exercised by the applicant's research committee over the beneficiary's activities. The applicant states that according to the national law in force (Article 50(1), (2) and (4) of Law No 2413/1996, Presidential Decree No 432/1981 and the Common Ministerial Decree KA-679 of 22 August 1996 of the Ministers of National Finance and Education and Greek Forms of Worship), the committee is the principal body responsible for managing the special account created by the applicant. A similar body exists within each higher educational institution in Greece. The purpose of the committee is to administer and manage the donations to cover the costs of scientific research, education, organisation, technological development and of the related services, independently of the applicant, which, however, ensures follow-up and monitoring. The non-material damage to the committee and the university in general must be assessed in direct connection with the complaints formulated in the main action. According to the applicant, those complaints relate to the way the on-the-spot check was carried out, to the absence of any conclusion drawn from that check and to the considerable delay in its completion, particularly in view of the fact that the financing was suspended for a long period, without any decision having been taken by the Commission, and of the new concepts and methods adopted since then by the Community legislature in the field concerned.

27 The immediate implementation of the contested decision would clearly be humiliating for the applicant and, by its severity, would be in contrast to the applicant's reputation while suspension of its operation would maintain the applicant's reputation complete and intact until such time as the Court of First Instance has ruled definitively on the substance of the main action. Moreover, the implementation of the contested decision would constitute a blemish on the applicant's reputation without precedence in the history of the committee and would prevent the public furtherance of the applicant's activities.

28 Finally, the applicant claims that that non-material damage will be objectively irreparable, in particular because implementation of the contested decision will deprive the applicant of its status of responsibility to manage community financing or otherwise, even if only occasionally.

29 The applicant notes nevertheless that in view of its financial capacities it guarantees the implementation of the contested decision at all times.

30 The Commission states that the applicant does not claim to suffer irreparable material damage such that it cannot continue to function. According to the Commission, the economic dimension of the applicant is sufficient to guarantee the implementation of the contested decision.

31 As for the alleged stain on the applicant's reputation, the Commission states that the applicant makes no mention of any concrete elements showing that the damage complained of, which the applicant claims to have suffered as a result of the adoption of the contested decision, cannot be made good by the decision in the main proceedings. Since that non-material damage is linked to the contested decision, and, in particular, to its conclusion concerning the existence of irregularities, the Commission maintains that only the final judgment on the substance will be able to prevent that damage. It cannot be considered irreparable within the meaning of the case-law (order in *Hortiplant* v *Commission,* cited above, paragraphs 17 to 20).

Findings of the President

32 The urgent nature of an application for interim relief must be assessed in relation to the need for an interim decision in order to prevent serious and irreparable damage being caused to the party seeking the interim measure. The onus is on that party to prove that it cannot await the outcome of the main proceedings without suffering damage of that nature (order of the President of the Court of Justice in Case C-278/00 R *Greece* v *Commission* [2000] ECR I-8787, paragraph 14; orders of the President of the Court of First Instance in Case T-73/98 R *Prayon-Rupel* v *Commission* [1998] ECR II-2769, paragraph 36, and Case T-53/01 R *Poste Italiane* v *Commission* [2001] ECR II-1479, paragraph 110). To be able to determine whether the damage which the applicant fears is serious and

irreparable and therefore provides grounds for, exceptionally, the suspension of the operation of a decision, the judge hearing the application must have specific evidence allowing him to determine the precise consequences which the absence of the measures applied for would in all probability entail (order of the President of the Fourth Chamber of the Court of First Instance in Case T-86/96 R *Arbeitsgemeinschaft Deutscher Luftfahrt-Unternehmen and Hapag-Lloyd* v *Commission* [1998] ECR II-641, paragraph 64, and order in *Hortiplant* v *Commission*, cited above, paragraph 18).

33 However, it is not necessary that the imminence of the alleged damage be established with absolute certainty. It is sufficient, particularly where the occurrence of any damage depends on a number of factors, that it can be foreseen with a sufficient degree of probability [order of the President of the Court of Justice in Case C-149/95 P(R) *Commission* v *Atlantic Container Line* [1995] ECR I-2165, paragraph 38].

34 As a preliminary point, it should be observed that in its application for interim relief the applicant affirms that it is able to guarantee the implementation of the contested decision. In a letter from the rector presiding over the committee, cited by the applicant in the said application, the following elements are mentioned:

'The Aristotelian University of Thessaloniki is the largest Greek university, with 60 000 students, a permanent research staff of 2 000, 2 000 technicians, 9 schools and 43 departments; it ensures the implementation of 3 500 programmes, benefiting from external annual financing of some 16 billion Greek Drachmas (GRD) [EUR 46 955 245].'

35 It follows that the applicant would, at first sight, be in a position to implement the contested decision immediately.

36 As for the alleged non-material damage complained of by the applicant, even supposing that the implementation of the contested decision might have the harmful consequences which it fears, it must be observed that, in order to establish the existence of serious and irreparable damage, it cannot validly claim that only suspension of operation of the contested decision would make it possible to prevent its reputation from being adversely affected or prevent it from being deprived of the opportunity to manage projects receiving public financing in the future. An annulment in the main proceedings would enable such damage to be made good in an appropriate manner (see judgment of the Court of Justice in Joined Cases 59/80 and 129/80 *Turner* v *Commission* [1981] ECR 1883, paragraph 74; orders of the President of the Court of First Instance in Case T-82/95 R *Gómez de Enterría* v *Parliament* [1995] ECR-SC I-A-91 and II-297, paragraph 21, and in *Willeme* v *Commission*, cited above, and in Case T-138/01 R *F* v *Court of Auditors*, not published in the ECR, paragraph 49).

37 It follows that, in this case, as far as non-material damage is concerned, the condition of urgency is not met since the purpose of the proceedings for interim relief is not to ensure that damage be made good but to guarantee the full effectiveness of the judgment on the substance (order in *Willeme* v *Commission*, cited above, paragraph 62).

38 In any event, it seems likely that the adverse effect on the applicant's reputation, if it were established, would not result from implementation of the contested decision but from its actual adoption. Thus, even if the suspension sought by the applicant were to be ordered, it would not prevent the occurrence of the non-material damage that the applicant fears.

39 Since the existence of urgency has not been established, there is no need to examine the condition relating to a prima facie case.

40 The application for interim relief must therefore be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The application is dismissed.**

2. **The costs are reserved.**

Luxembourg, 18 October 2001.

H. Jung

Registrar

B. Vesterdorf

President