ORDER OF THE PRESIDENT OF THE FOURTH CHAMBER OF THE COURT OF FIRST INSTANCE

12 November 1997 *

In Case T-156/97,

Achim Berge, residing in Freiburg, Germany, represented by Till Müller-Heidelberg, Rechtsanwalt, Koblenz, with an address for service in Luxembourg at the Chambers of Charles Duro, 4 Boulevard Royal,

applicant,

v

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

defendant,

APPLICATION for annulment of the Commission's implied refusal to grant the applicant access to certain documents under Commission Decision 94/90/ECSC, EC, Euratom of 8 February 1994 on public access to Commission documents (OJ 1994 L 46, p. 58),

* Language of the case: German.

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

makes the following

Order

1 On 8 February 1994, the Commission adopted Decision 94/90/ECSC, EC, Euratom on public access to Commission documents (OJ 1994 L 46, p. 58).

2 Article 2 of that decision provides:

'...

1. All applications for access to documents shall be made in writing to the relevant Commission department at its headquarters, Commission Offices in the Member States or Commission Delegations in non-member countries.

2. The relevant Director-General or Head of Department, the Director designated for the purpose in the Secretariat-General or an official acting on their behalf shall inform the applicant in writing, within one month, whether the application is granted or whether he intends to refuse access. In the latter case the applicant shall also be notified that he has one month in which to apply to the Secretary-General of the Commission for review of the intention to refuse access, failing which he shall be deemed to have withdrawn his initial application.

...

4. Failure to reply to an application for access to a document within one month of application being made constitutes an intention to refuse access.

Failure to reply within one month of an application for review being made constitutes a refusal.

...'

3 The applicant is managing editor of a magazine entitled 'Forum Recht'. With a view to publishing an article in that magazine, he was carrying out research into genetically-modified foodstuffs.

4 By letter addressed on 19 December 1996 to the Commission Office in Germany, he requested access to a series of documents concerning, in particular, the authorization to distribute the genetically-modified maize produced by the Ciba-Geigy Corporation.

5 On 9 January 1997, the Commission Office informed him that his request had been forwarded to the appropriate department of the Commission in Brussels.

6 By letter of 7 February 1997, he lodged a confirmatory application with the Secretariat-General of the Commission, in accordance with Article 2(2) of Decision 94/90.

7 The Commission failed to reply to that application within the period of one month specified in Article 2(4) of that decision.

8 The applicant brought the present action by application lodged at the Registry of the Court of First Instance on 9 May 1997.

9 In its statement in defence of 7 July 1997, the Commission requested the Court to rule that there was no longer any need to adjudicate on the dispute because, on 26 May 1997, the Commission Office in Germany had communicated all the documents to the applicant, with the exception of those which had been made available to the Commission by third parties.

10 By letter of 17 July 1997, the applicant stated that he agreed with the Commission's request but nevertheless asked that the Commission be ordered to pay the costs.

11 The Court considers that letter to constitute a discontinuance of the proceedings for the purposes of Article 99 of the Rules of Procedure.

Costs

12 Under the first subparagraph of Article 87(5) of the Rules of Procedure, a party who discontinues or withdraws from proceedings is to be ordered to pay the costs if they have been applied for in the other party's pleadings. However, upon application by the party who discontinues or withdraws from pleadings, the costs are to be borne by the other party if this appears justified by the conduct of that party.

13 In the present case, the applicant has requested the Court to order the Commission to pay the costs. It is clear that the Commission did not reply to the applicant's confirmatory application of 7 February 1997 within the period of one month specified in Article 2(4) of Decision 94/90. That failure to reply thus constituted a refusal. The applicant brought his action on 9 May 1997. Less than three weeks after the action was brought, the Commission Office in Germany communicated to him all the documents except those which had been made available by third parties.

14 In those circumstances the Commission's conduct justifies its being ordered to bear all the costs.

On those grounds,

THE PRESIDENT OF THE FOURTH CHAMBER
OF THE COURT OF FIRST INSTANCE

hereby orders:

1. Case T-156/97 is removed from the register.

2. The Commission shall bear all the costs.

Luxembourg, 12 November 1997.

H. Jung — P. Lindh

Registrar — President