JUDGMENT OF THE COURT (Sixth Chamber)
29 April 2004 *

In Joined Cases C-199/01 P and C-200/01 P,

IPK-München GmbH, established in Munich (Germany), represented by H.-J. Prieß, Rechtsanwalt, with an address for service in Luxembourg,

and

Commission of the European Communaties, represented by J. Grunwald, acting as Agent, with an address for service in Luxembourg,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber) of 6 March 2001 in Case T-331/94 *IPK-München* v *Commission* [2001] ECR II-779, seeking the partial annulment of that judgment,

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 July 2003,

gives the following

Judgment

1 By two applications lodged at the Court Registry on 14 May 2001, IPK-München GmbH ('IPK') and the Commission of the European Communities each brought an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 6 March 2001 in Case T-331/94 *IPK-München* v *Commission* [2001] ECR II-779 ('the judgment under appeal'), by which it annulled the Commission's decision of 3 August 1994 refusing to pay IPK the balance of financial aid granted for a project on the creation of a database on ecological tourism in Europe ('the contested decision').

2 By order of the President of the Court of Justice of 15 October 2001, the two cases were joined for the purposes of the written and oral procedure and the judgment.

Facts

3 The facts, as they were found by the Court of First Instance in the judgment under appeal, are summarised as follows.

4 On 26 February 1992, the Commission published a call for proposals in the *Official Journal of the European Communities* with a view to supporting projects in the field of tourism and the environment (OJ 1992 C 51, p. 15).

5 On 22 April 1992 IPK, an undertaking active in the field of tourism, submitted a proposal to the Commission concerning the creation of a databank on ecological tourism in Europe ('the proposal'). That databank was to be called 'Ecodata' ('the project'). The proposal, which stated that there were seven stages in the project, specified that IPK was to be responsible for coordinating the project and that, in order to carry out the work, it would be assisted by three partners, the French undertaking Innovence, the Italian undertaking Tourconsult and the Greek undertaking 01-Pliroforiki.

6 By letter of 4 August 1992, the Commission informed IPK of its decision to grant financial aid for the project of ECU 530 000, which represented 53% of the

expenses envisaged for the project, and invited it to sign and return the declaration by the beneficiary of the aid ('the declaration'), which was annexed to that letter and contained the conditions for receipt of the aid.

7 The declaration stipulated that 60% of the aid would be paid when the Commission received the declaration, duly signed by IPK, and that the balance was to be paid when the Commission had received and accepted the reports on the performance of the project, namely an interim report to be submitted within three months of the project commencing and a final report, accompanied by accounts, to be submitted within three months of completion of the project and by 31 October 1993 at the latest.

8 The declaration was signed by IPK on 23 September 1992 and was received at the Directorate-General for enterprise policy, trade, tourism and social economics (DG XXIII) at the Commission on 29 September 1992.

9 By letter of 23 October 1992 the Commission informed IPK that it expected to receive the first report by 15 January 1993. In the same letter, the Commission also asked IPK to submit two additional interim reports by 15 April 1993 and 15 July 1993. Finally, it repeated that the final report was to be presented by 31 October 1993 at the latest. The Commission also suggested to IPK that a German undertaking, Studienkreis für Tourismus ('Studienkreis'), participate in the project.

10 On 24 November 1992, the Head of Division within DG XXIII invited IPK and 01-Pliroforiki to a meeting, which took place in the absence of Innovence and Tourconsult. He is alleged to have required during that meeting that the majority of the work and the funds be allocated to 01-Pliroforiki. IPK objected to that requirement.

11 The first instalment of the aid, namely ECU 318 000 (60% of the total subsidy of ECU 530 000), was paid in January 1993.

12 During a meeting which took place at the Commission on 19 February 1993, Studienkreis' participation in the project was discussed. Several days after that meeting, the project case was withdrawn from the Head of Division in DG XXIII. A disciplinary procedure was subsequently initiated against him, which resulted in his dismissal.

13 In the end, Studienkreis did not take part in the project. On 29 March 1993, IPK, Innovence, Tourconsult and 01-Pliroforiki entered into a formal agreement on the distribution of tasks and funds within the project. That distribution was explained in IPK's initial report which was submitted in April 1993.

14 IPK submitted a second report in July 1993 and a final report in October 1993. It also invited the Commission to a presentation of the work which had been completed, which took place on 15 November 1993.

15 By letter dated 30 November 1993 the Commission informed IPK that it considered that the work completed by 31 October 1993 did not satisfactorily correspond with what was envisaged in the proposal and that it should not pay the outstanding 40% of its proposed contribution of ECU 530 000 for the project. The Commission set out the reasons which had led it to adopt that decision in paragraphs 1 to 5 of that letter as follows:

'1. The project is nowhere near complete. Indeed the original proposal provided for a pilot phase as the fifth stage of the project. Stages six and seven

respectively were to be System Evaluation and System Expansion (to the 12 Member States) and it is clear from the timetable set out on page 17 of the proposal that these were to be completed as part of the project to be co-financed by the Commission.

2. The pilot questionnaire was manifestly over-detailed for the project in question having regard, in particular, to the resources available and the nature of the project. It should have been based on a more realistic appraisal of the principal information needed by those dealing with questions of tourism and the environment ... .

3. The linking together of a number of databases to establish a distributive database system has not been achieved at 31 October 1993.

4. The type and quality of data from the test regions is most disappointing, particularly as there were only 4 Member States with 3 regions in each. A great deal of such data as there is in the system is either of marginal interest or irrelevant for questions relating to the environmental aspects of tourism, particularly at the regional level.

5. These reasons, and others which are also apparent, sufficiently demonstrate that the project has been poorly managed and coordinated by IPK and has not been implemented in a manner which corresponds with its obligations.'

16 Furthermore, in that letter the Commission informed IPK that it had to be satisfied that the 60% of the aid already paid, ECU 318 000, had been used, in accordance with the declaration, only for realising the project and made, in paragraphs 6 to 12 of that letter, some observations on IPK's report relating to use of the funds.

17 IPK expressed its disagreement with the contents of the letter of 30 November 1993, in particular in a letter to the Commission dated 28 December 1993. On 29 April 1994 IPK met with representatives of the Commission in order to discuss their differences.

18 By the contested decision, the Director of DG XXIII informed IPK that there was nothing in its letter of 28 December 1993 which would lead the Commission to change its opinion. He confirmed that, for the reasons set out in the letter of 30 November 1993, the Commission would not make any further payment in respect of the project. Furthermore, it would continue to review with the other services whether or not it should ask for a refund by IPK of part of the 60% aid already paid.

Procedure

19 By application lodged at the Registry of the Court of First Instance on 13 October 1994, IPK brought an action seeking annulment of the contested decision.

20 By judgment of 15 October 1997 in Case T-331/94 *IPK* v *Commission* [1997] ECR II-1665, the Court of First Instance dismissed that application.

21 In paragraph 47 of that judgment, the Court of First Instance held:

> '... [IPK] cannot claim that the Commission caused the delay in the completion of the project. [IPK] waited until March 1993 before starting discussions with its partners concerning the distribution of tasks with a view to completing the project, even though it was responsible for coordination of the project. Thus, [IPK] allowed one-half of the time envisaged for completing the project to elapse before it was reasonably able to commence proper work. Even though [IPK] has provided some evidence that one or more officials of the Commission did interfere in the project between November 1992 and February 1993, it has not established at all that this interference prevented it from engaging in proper cooperation with its partners before March 1993.'

22 By application lodged at the Registry of the Court of Justice on 22 December 1997, IPK brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 15 October 1997 in *IPK* v *Commission*.

23 In its judgment of 5 October 1999 in Case C-433/97 P *IPK* v *Commission* [1999] ECR I-6795, the Court of Justice held:

> '15 ... it should be observed that, as appears from paragraph 47 of the judgment [of the Court of First Instance of 15 October 1997 in *IPK* v *Commission*], [IPK] did provide some evidence of the Commission officials' interference in the management of the project, particulars of which are given in paragraphs 9 and 10 of [the judgment of the Court of First Instance in *IPK* v *Commission*]. That interference was likely to have had an impact on the smooth running of the project.

16 In circumstances such as those, it was for the Commission to show that, notwithstanding the interference in question, [IPK] continued to be able to manage the project in a satisfactory manner.

17 It follows that the Court of First Instance erred in law by requiring [IPK] to furnish proof that the Commission officials' actions made it impossible for it to engage in proper cooperation with its partners in the project.'

24 Consequently, the Court of Justice set aside the judgment of the Court of First Instance of 15 October 1997 in *IPK* v *Commission* and, in accordance with the first paragraph of Article 54 of the EC Statute of the Court, it referred the case back to the Court of First Instance.

25 Following that referral, IPK raised two pleas for annulment before the Court of First Instance, alleging infringement of a number of general legal principles and of Article 190 of the EC Treaty (now Article 253 EC).

The judgment under appeal

26 As regards the subject-matter of the dispute, the Court of First Instance found, in paragraph 35 of the judgment under appeal, that the letter of 30 November 1993 was in two parts. The first part, namely points 1 to 5 of the letter, concerned the Commission's refusal to pay the second instalment of the aid and therefore contained the grounds on which the contested decision was based. The second part, points 6 to 12 of the letter, concerned the possible recovery of 60% of the aid that had already been paid.

27 The Court of First Instance held, in paragraph 36 of the judgment under appeal, that, as the Commission acknowledged at the hearing, points 6 to 12 of the letter of 30 November 1993 were not among the grounds on which the contested decision was based. Since those points were raised merely in the context of a possible future Commission decision requiring repayment of the instalment of the aid that had already been paid, the Court of First Instance held that the arguments advanced by IPK in its application relating to points 6 to 12 of the letter of 30 November 1993 had to be held to be inadmissible.

28 As regards the first plea raised by IPK, on the alleged infringement of several general legal principles, the Court of First Instance first summarised, in paragraphs 42 to 55 of the judgment under appeal, the parties' arguments on the time-limit provided for the completion of the project. It concluded that the decision to grant the aid of 4 August 1992 and the declaration attached to it required IPK to complete the project by 31 October 1993 at the latest and that on page 89 of its final report, IPK acknowledged that that was the date for completion of the project.

29 Second, in paragraphs 56 to 63 of the judgment under appeal, the Court of First Instance examined the parties' arguments on the state of the project on 31 October 1993, before concluding that it was not disputed that at that date the project did not fulfil the conditions of IPK's proposal, at least in so far as concerned the seventh stage.

30 Third, in paragraphs 64 to 75 of the judgment under appeal, the Court of First Instance considered the justifications put forward by IPK for exceeding the time-limit of 31 October 1993, namely the late payment of the first instalment of the financial aid, the meeting of 24 November 1992 and the Commission's attempts to involve Studienkreis in the implementation of the project. According to the

Court of First Instance, it is clear from the file that from the summer of 1992 until at least 15 March 1993, the Commission continued to exert pressure on IPK to involve Studienkreis in the project.

31 Fourth, in paragraphs 76 to 85 of the judgment under appeal, the Court of First Instance considered whether the Commission had produced evidence that, in spite of the interference designed to bring about Studienkreis's involvement in the project, IPK continued to be able to manage the project in a satisfactory manner (see the judgment of the Court of Justice of 5 October 1999 in *IPK* v *Commission*, paragraph 16). If account is taken of the fact that the Commission's interference delayed the project until March 1993, the Court of First Instance held, in paragraph 84 of the judgment under appeal, that it cannot be inferred that the fact that the project was only partially performed by 31 October 1993 is also attributable to IPK's alleged incompetence.

32 In the judgment under appeal, the Court of First Instance held, inter alia, the following:

'85 In those circumstances and since the Commission has failed to put forward any other arguments, it must be held that the Commission has not shown that, in spite of its interference, in particular that intended to involve Studienkreis in the ... project, "[IPK] continued to be able to manage the project in a satisfactory manner".

86 Therefore, given that, first, from the summer of 1992 until at least 15 March 1993 the Commission insisted that [IPK] involve Studienkreis in the ... project (even though [IPK's] proposal and the decision granting the aid did not provide for that undertaking's participation in the project), — something which necessarily delayed realisation of the project — and that, second, the Commission has not shown that, in spite of its interference, [IPK] continued to be able to manage the project in a satisfactory manner, it must be held that the Commission acted in breach of the principle of good faith by refusing to pay the second instalment of the aid on the ground that the project was not completed on 31 October 1993.'

33 The Court of First Instance therefore accepted that plea, without there being any need to examine the Commission's other actions.

34 In paragraphs 88 and 89 of the judgment under appeal, the Court of First Instance set out the Commission's argument alleging unlawful collusion between the Head of Division of DG XXIII, Mr Tzoanos, referred to in paragraph 10 of the present judgment, 01-Pliroforiki and IPK. It went on to dismiss that plea in the following terms:

'90 ... there is no mention in either the contested decision or the letter of 30 November 1993, to which the [contested] decision refers, of collusion between Mr Tzoanos, 01-Pliroforiki and [IPK], which prevented payment of the second instalment of the aid to IPK. The [contested] decision and the letter of 30 November 1993 do not, furthermore, give any indication that the Commission considered that the way in which the aid had been granted to IPK was irregular. In those circumstances, the Commission's explanation concerning the alleged existence of collusion between the parties concerned cannot be regarded as clarifying in the course of the proceedings the reasons stated in the contested decision (see, to that effect, Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22; Case T-16/91 RV *Rendo and Others* v *Commission* [1996] ECR II-1827, paragraph 45; and Case T-77/95 RV *Ufex and Others* v *Commission* [2000] ECR II-2167, paragraph 54).

91 If account is taken of the fact that, under Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Court of First Instance must confine itself to a review of the legality of the contested decision on the basis of the reasons set out in that measure, the Commission's argument concerning the principle *fraus omnia corrumpit* cannot be upheld.

92 It must be added that if the Commission, having adopted the contested decision, had taken the view that the evidence mentioned in paragraph 89 above was sufficient to conclude that there was collusion between Mr Tzoanos, 01-Pliroforiki and [IPK] which had vitiated the procedure by which aid was allocated to the ... project, rather than pleading in the present proceedings a ground which was not mentioned in the contested decision, it could have withdrawn that decision and adopted another decision not only refusing to pay the second instalment of the aid but also ordering repayment of the instalment that had already been paid.

93 Accordingly, the contested decision must be annulled without there being any need to consider the other plea advanced by [IPK].'

35 The Court of First Instance therefore annulled the contested decision and ordered the Commission to bear its own costs and to pay the costs incurred by IPK before the Court of First Instance and the Court of Justice.

The appeals

36 By its appeal, IPK claims that the Court should:

— set aside the judgment under appeal in so far as it starts from the premiss, in paragraphs 34 to 36, that points 6 to 12 of the reasons of the Commission's letter of 30 November 1993 do not form part of the grounds for the contested decision;

— dismiss the Commission's appeal as inadmissible, or alternatively as unfounded;

— order the Commission to pay the costs.

37 IPK relies on three grounds in support of its appeal, alleging, first, misappreciation of the subject-matter of the dispute, second, infringement of the obligation to state reasons, and third, infringement of the binding effect of the judgment of the Court of Justice of 5 October 1999 in *IPK* v *Commission*.

38 By its appeal the Commission claims that the Court should:

— set aside the judgment under appeal and dismiss the action brought by IPK against the contested decision;

— alternatively, set aside the judgment under appeal and refer the case back to the Court of First Instance;

— dismiss IPK's appeal as inadmissible, or alternatively as unfounded;

— order IPK to pay the costs.

39 In its appeal, the Commission puts forward five grounds of appeal alleging, first, incomplete examination of the statement of reasons of the contested decision and infringement of the prohibition of unjust enrichment; second, incorrect assessment of the alleged unlawful collusion between Mr Tzoanos, 01-Pliroforiki and IPK; third, incorrect assessment of the Commission's proposal to involve Studienkreis in the project; fourth, failure to examine the consequences of an infringement of the principle of good faith; and fifth, failure to consider the principle *dolo agit, qui petit, quodstatim redditurus est* and the principle *fraus omnia corrumpit*.

The admissibility of the appeals

IPK's appeal

40 Article 92(2) of the Rules of Procedure of the Court of Justice provides as follows:

'The Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case or declare, after hearing the parties, that the action has become devoid of purpose and that there is no need to adjudicate on it; it shall give its decision in accordance with Article 91(3) and (4) of these Rules.'

41 The first and second paragraphs of Article 49 of the EC Statute of the Court of Justice provide as follows:

'An appeal may be brought before the Court of Justice, within two months of the notification of the judgment under appeal, against final decisions of the Court of

First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning lack of competence or inadmissibility.

Such an appeal may be brought by any party which has been unsuccessful, in whole or in part, in its submissions. ...'

42 As is apparent from paragraph 28 of the judgment under appeal, IPK had asked the Court of First Instance to annul the contested decision. By holding, in the operative part of the judgment under appeal, that that decision must be annulled in its entirety, the Court of First Instance therefore granted in full the relief sought by IPK. It follows that, since IPK was neither partially nor wholly unsuccessful in its submissions before the Court of First Instance, it is not entitled to appeal against the judgment under appeal before the Court of Justice, within the meaning of the second paragraph of Article 49 of the EC Statute of the Court of Justice.

43 Therefore, it follows from all of the foregoing that, without it being necessary to examine the ground of inadmissibility raised by the Commission, IPK's appeal must be dismissed as inadmissible.

The Commission's appeal

44 IPK claims that the appeal brought by the Commission is clearly inadmissible. It argues that the Commission expressly raises only procedural errors. However,

those are not procedural errors that can be relied on in an appeal before the Court. They are only infringements of rules relating to court proceedings, which concern neither the content of the judgment nor errors in the application of the relevant law.

45 IPK also argues that an incomplete or incorrect legal assessment, wrongly relied on by the Commission in respect of its first, second and third procedural errors, does not constitute such a procedural error. That is clear from the fact that that incorrect or incomplete legal assessment affects the content of the judgment. Moreover, the absence of an examination of the legal consequences of an infringement of general legal principles constitutes an error of substance which vitiates the judgment, and not a procedural error.

46 Furthermore, the first, second, fourth and fifth grounds of appeal concern, first, the issue of IPK's unsatisfactory performance and, second, the issue of unlawful collusion, alleged apparently to be in bad faith, between the Head of Division in DG XXIII, 01-Pliroforiki and IPK. They are therefore only issues of fact, which cannot be the subject of a review by the Court of Justice, which in an appeal is limited to a review of the law. In reality the Commission's appeal seeks a fresh examination of arguments already put forward before the Court of First Instance, which is impossible, according to the case-law of the Court of Justice.

47 First of all, in that regard, since all the Commission's grounds of appeal seek to challenge the assessment by the Court of First Instance of questions of law and, therefore, a review both of the legal classification of the facts and the legal consequences drawn therefrom by the Court of First Instance, the objection of inadmissibility raised by IPK, who argues that those grounds of appeal only concern the assessment by the Court of First Instance of the facts, is unfounded. Furthermore, the incorrect classification by the Commission of those grounds of

appeal as alleged procedural defects has no effect on the question of their admissibility.

48 Second, it follows from Article 225 EC, the first paragraph of Article 58 of the Statute of the Court of Justice and Article 112(1)(1)(c) of the Rules of Procedure of the Court that an appeal must indicate precisely the contested elements of the judgment which the appellant seeks to have set aside and also the legal arguments specifically advanced in support of the appeal (see, in particular, Case C-352/98 P *Bergaderm and Goupil* v *Commission* [2000] ECR I-5291, paragraph 34; Case C-248/99 P *France* v *Monsanto and Commission* [2002] ECR I-1, paragraph 68; and Case C-41/00 P *Interporc* v *Commission* [2003] ECR I-2125, paragraph 15).

49 Thus, where an appeal merely repeats or reproduces verbatim the pleas in law and arguments previously submitted to the Court of First Instance, including those based on facts expressly rejected by that Court, it fails to satisfy the requirements regarding the statement of grounds under those provisions (see, in particular, the order in Case C-174/97 P *FFSA and Others* v *Commission* [1998] ECR I-1303, paragraph 24, and the judgment in *Interporc* v *Commission*, paragraph 16).

50 However, provided that the appellant challenges the interpretation or application of Community law by the Court of First Instance, the points of law examined at first instance may be discussed again in the course of an appeal (Case C-210/98 P *Salzgitter* v *Commission* [2000] ECR I-5843, paragraph 43). Indeed, if an appellant could not thus base his appeal on pleas in law and arguments already relied on before the Court of First Instance, an appeal would be deprived of part of its purpose (see, in particular, the judgment in *Interporc* v *Commission*, paragraph 17, and the order in Case C-488/01 P *Martinez* v *Parliament* [2003] ECR I-13355, paragraph 39).

51 In the present case, the appeal seeks specifically to contest the assessment by the Court of First Instance of several points of law which were referred to it at first instance. It contains specific indications as to the aspects of the judgment under appeal criticised and the pleas in law and arguments on which it is based.

52 Nevertheless, under Article 118 of the Rules of Procedure of the Court of Justice, Article 42(2) of those rules, which prohibits generally the introduction of new pleas in law in the course of the procedure, applies to the procedure before the Court of Justice on appeal from a decision of the Court of First Instance. In an appeal the Court's jurisdiction is thus confined to review of the assessment by the Court of First Instance of the pleas argued before it (see Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59; Case C-7/95 P *Deere* v *Commission* [1998] ECR I-3111, paragraph 62; and the order of 28 June 2001 in Case C-352/99 P *Eridania and Others* v *Council* [2001] ECR I-5037, paragraphs 52 and 53).

53 The Commission, by the first part of the first ground of appeal, first claims that the Court of First Instance made an incomplete assessment of the reasons for the contested decision by failing to take account of the fact that that decision is based on two wholly different reasons, namely, that the project was not completed by 31 October 1993, given that the sixth and seventh stages were missing (see paragraphs 1 and 3 of the letter of 30 November 1993) and also that the work already carried out by IPK in the first to fifth stages and for which it charged the full price, was useless (see paragraphs 2 and 4 of that letter).

54 The Commission argues that in spite of the fact that its arguments in paragraphs 2 and 4 of the letter of 30 November 1993 do not concern the sixth and seventh stages, but only the preliminary stages of the project during which IPK had carried out a substantial quantity of work, for which it had manifestly had sufficient time,

but which was useless, the judgment under appeal, by citing only paragraph 1 of that letter, refers exclusively to the failure to implement the sixth and seventh stages. In so far as the Court of First Instance did not examine the second reason for the refusal of payment relied on by the Commission in the contested decision, the reasons provided in the judgment under appeal are inadequate and it is vitiated by an error of law.

55 In the present case, it is clear, as the Advocate General pointed out in paragraph 45 of his Opinion, that the Commission did not argue before the Court of First Instance that the points set out in paragraphs 2 and 4 of the letter of 30 November 1993 were sufficient to justify the contested decision and avoid the annulment, which according to the Court of First Instance, must be the consequence of the infringement of the principle of good faith.

56 Therefore, since the first part of the first ground of appeal constitutes a new ground of appeal, it must be dismissed as inadmissible.

57 Second, by its fourth ground of appeal the Commission criticises the Court of First Instance for having concluded from the infringement of the principle of good faith that the entire decision was null and void. It argues that the Court of First Instance wrongly assumed that there was a link between the economic value of the sixth and seventh stages of the project which were not realised and the amount of the second instalment of the financial aid which was not paid, which means that it took the view that the value of the sixth and seventh stages of the project amounts to exactly 40% of the total costs of the project.

58 The Commission claims that the Court of First Instance should have annulled the contested decision solely to the extent that it refused to contribute to the costs that IPK had lawfully incurred for the sixth and seventh stages of the project which, subsequently, did not materialise due to lack of time. In so far as the Court of First Instance held, in paragraph 93 of the judgment under appeal, that the decision should be annulled in its entirety, the Commission argues that it therefore erred in law.

59 In that regard, it is sufficient to observe that before the Court of First Instance the Commission neither asked in the forms of order sought that any annulment of the contested decision should be partial nor relied on a plea to that effect.

60 It follows that in so far as the Commission raises a new ground of appeal before the Court of Justice, it cannot criticise the Court of First Instance for failing to partially annul the contested decision with respect to its refusal to pay financial aid for the sixth and seventh stages of the project; the fourth ground of appeal must therefore be dismissed as inadmissible.

61 It follows from all of the foregoing that with the exception of the first part of the first ground and the fourth ground of appeal, the Commission's appeal must be held to be admissible.

The substance of the Commission's appeal

The second and fifth grounds of appeal

62 By its second and fifth grounds of appeal, which it is appropriate to examine together and first of all, the Commission complains that the Court of First Instance, first, disregarded the findings set out in paragraphs 15 and 16 of the judgment of the Court of Justice of 5 October 1999 in *IPK* v *Commission*, in particular concerning the relevance of the alleged unlawful collusion between the Head of Division of DG XXIII, 01-Pliroforiki and IPK.

63 The Commission submits that that collusion delayed the implementation of the project at least until February 1993, in so far as the partners in the project could not agree on the award of the funds to the Greek partner demanded by the Head of Division of DG XXIII, which led to the suspension of the project and, second, that IPK expressly covered the actions of the Head of Division. In accordance with paragraphs 15 and 16 of the judgment of the Court of Justice of 5 October 1999 in *IPK* v *Commission*, the Court of First Instance should have checked whether the Commission had shown that, in spite of the actions in question, IPK remained in a position to manage the project in a satisfactory manner. Therefore, the Commission argues that by dismissing its argument relating to such collusion as irrelevant, the Court of First Instance committed an error of law.

64 The Commission claims that, by holding that it was not a criminal court and that it could not consider whether there had been such collusion, the Court of First Instance disregarded the principle *dolo agit, qui petit, quod statim redditurus est* and the principle *fraus omnia corrumpit.*

65 By contrast, IPK submits that there was no unlawful collusion between the Head of Division of DG XXIII, 01-Pliroforiki and itself. In any event, the lawfulness of the decision should be determined solely with regard to the reasons for which it was adopted and, as the Court of First Instance found, the contested decision does not contain any finding as to the so-called unlawful collusion of IPK with the Head of Division and 01-Pliroforiki.

66 According to settled case-law, the obligation to state reasons for a decision adversely affecting a person is intended to enable the Court to review the legality of the decision and to provide the person concerned with details sufficient to enable him to ascertain whether the decision is well founded or whether it is vitiated by an error which will allow its legality to be contested. It follows that the statement of reasons must in principle be notified to the person concerned at the same time as the decision adversely affecting him and that a failure to state the reasons cannot be remedied by the fact that the person concerned learns the reasons for the decision during the proceedings before the Court (*Michel* v *Parliament*, paragraph 22).

67 Furthermore, pursuant to Article 173 of the EC Treaty (now, after amendment, Article 230 EC), the Court of First Instance must confine itself to review of the legality of the contested decision on the basis of the reasons contained in that act.

68 In this case, the Commission, by the contested decision, refused to pay IPK, for the reasons contained in the letter of 30 November 1993, the outstanding 40% of the financial aid of ECU 530 000 that it had earmarked for the project. In that letter, the Commission informed IPK that, in its view, the work carried out until 31 October 1993 did not satisfactorily correspond to that envisaged in the proposal, and set out the grounds which led to the adoption of that decision in paragraphs 1 to 6 of that letter.

69 It is clear from paragraph 15 of the present judgment that neither in the letter of 30 November 1993 nor in the contested decision is there any mention of the existence of collusion between the Head of Division of DG XXIII, 01-Pliroforiki and IPK. Thus in paragraph 90 of the judgment under appeal, the Court of First Instance was right to hold that such collusion was not a ground for the contested decision.

70 Furthermore, in holding that the letter of 30 November 1993 and the contested decision did not contain any indication of the fact that the Commission considered that the financial aid had been improperly awarded to IPK, the Court of First Instance rightly held that the explanation put forward by the Commission concerning the alleged existence of unlawful collusion between the parties concerned could not be regarded as a clarification made in the course of the proceedings of the grounds put forward in the contested decision, and that the case-law set out in paragraph 66 of the present judgment applied in this case.

71 In those circumstances, the Court of First Instance was therefore able to conclude in paragraph 91 of the judgment under appeal without any error of law, from the grounds as a whole, that the Commission's arguments relating to the principle *fraus omnia corrumpit* could not be accepted. Furthermore, since the principle *dolo agit, qui petit, quod statim redditurus est* was not raised before the Court of First Instance, the Commission's argument that it disregarded that principle is inadmissible.

72 Therefore, the Commission's second and fifth grounds of appeal must be dismissed as being partly unfounded and partly inadmissible.

The third ground of appeal

73 The Commission's third ground of appeal, which it is appropriate to examine second, is based on an allegedly incorrect assessment and a contradictory analysis by the Court of First Instance, in paragraphs 64 to 86 of the judgment under appeal, of its proposal to involve Studienkreis in the project.

74 Although the Court of First Instance held that in this case the Commission had not made the grant of the financial aid dependent on the acceptance of Studienkreis' involvement in the project, it held that the Commission could have required such involvement by providing for a condition to that effect in its decision to grant the financial aid. The Commission, therefore, alleges that there is a contradiction in the reasoning of the Court of First Instance in so far as it held nevertheless that the Commission's existing proposal to involve Studienkreis constituted a violation of the principle of good faith.

75 That ground of appeal is founded on an incorrect reading of the judgment under appeal.

76 The Court of First Instance held, in paragraph 69 of the judgment under appeal, that if the Commission had taken the view that Studienkreis' involvement was essential or desirable for the proper implementation of the project, it could, in its decision to award the financial aid, have imposed a condition to that effect. The potential candidates would have known what to expect and could, accordingly, have made the necessary arrangements. However, it is clear from the file that in its decision to award the financial aid the Commission had accepted IPK's proposal without any condition as to the involvement of Studienkreis.

77 Moreover, as the Court of First Instance held in paragraphs 70 to 75 of the judgment under appeal, from the summer of 1992 until at least 15 March 1993 the Commission continued to exert pressure on IPK to involve Studienkreis in the project. The Court of First Instance was therefore right to hold that that continued pressure by the Commission on IPK constituted interference which hindered IPK's management of the project.

78 In paragraphs 76 to 85 of the judgment under appeal, the Court of First Instance also held that the Commission had failed to put forward any evidence that in spite of its interference, in particular that intended to involve Studienkreis in the project, IPK continued to be able to manage the project in a satisfactory manner. Consequently, the Court of First Instance rightly held, in paragraph 86 of that judgment, that the Commission was in breach of the principle of good faith when it refused to pay the second instalment of the aid on the ground that the project was not completed by 31 October 1993.

79 Therefore, contrary to the Commission's claims, the analysis of the Court of First Instance cannot be regarded as contradictory.

80 In those circumstances, the third ground of appeal must be dismissed as unfounded.

The second part of the first ground of appeal

81 By the second part of its first ground of appeal, which it is appropriate to examine last, the Commission complains that the Court of First Instance has caused IPK to

be unjustly enriched, in so far as it requires the Community to pay for useless work which does not conform to the project, without carrying out a proper legal examination.

82 In that regard, it must be observed that in its review of the legality of acts adopted by the Community institutions, according to the first paragraph of Article 231 EC, the Court is to declare the act concerned to be void if an action is well founded.

83 According to the first paragraph of Article 233 EC, the institution whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court of Justice. That article requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in the judgment annulling the original act (Case C-310/97 P *Commission* v *AssiDomän Kraft Products and Others* [1999] ECR I-5363, paragraph 56).

84 In this case, the Commission has misunderstood both the effect of the judgment under appeal, contrary to the first paragraph of Article 231 EC, since that judgment annulled the contested decision, and the measures that it is required to take in order to comply with that judgment, contrary to the first paragraph of Article 233 EC.

85 The Court of First Instance annulled the contested decision by which the Commission refused to pay IPK the 40% not yet paid of the financial aid of

ECU 530 000 that it had envisaged for the project. It held, in paragraph 94 of the judgment under appeal, that it was for the Commission to take the measures necessary to comply with that judgment. The Court of First Instance therefore required the Commission to ensure that any decision intended to replace the contested decision is not affected by the same irregularities as those identified in the judgment under appeal. Contrary to the Commission's claims, it did not require the Community to award the 40% of the financial aid not yet paid and therefore did not oblige it to pay for work which, it submits, is useless and does not conform to the project.

86 Therefore, the second part of the first ground of appeal must be dismissed as unfounded.

87 Since the pleas relied on by the Commission in support of its appeal are partly inadmissible and partly unfounded, it must be dismissed in its entirety.

Costs

88 Under Article 69(2) of the Rules of Procedure, which applies to appeals by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under the first subparagraph of Article 69(3), where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs. Since the two appellants have both been unsuccessful in their appeals, it is appropriate to order them to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby

1. **Dismisses the appeals;**

2. **Orders the parties to bear their own costs.**

Skouris Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President of the Sixth Chamber