ORDER OF THE COURT
4 October 1999 *

In Case C-349/99 P,

Commission of the European Communities, represented by M.-J. Jonczy, Legal Adviser, B. Brandtner and M.L. Gussetti, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of that Service, Wagner Centre, Kirchberg,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Third Chamber) in Case T-145/98 *ADT Projekt* v *Commission* (not yet published in the ECR), seeking to have that order set aside,

* Language of the case: German.

the other party to the proceedings being:

ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher Tierzüchter mbH, a company incorporated under German law, established in Bonn, Germany,

defendant at first instance,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch and P. Jann (Presidents of Chambers), J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón, M. Wathelet (Rapporteur) and R. Schintgen, Judges,

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

after hearing the Opinion of the Advocate General,

makes the following

Order

1 On 11 September 1998 ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher Tierzüchter mbH brought an action against the Commission of the

European Communities before the Court of First Instance for annulment of the Commission's decision not to award the applicant the contract relating to Project FD RUS 9603 ('The Russian Federation: Adapting Russian Beef and Dairy Farming to Restructuring') and for compensation for the damage allegedly suffered by the applicant as a result of the Commission's conduct.

2 On 12 July 1999 the Court, by way of a measure of organisation of procedure, requested the Commission to produce the original evaluation records for the tendering procedure relating to Project FD RUS 9603 or a certified copy thereof, together with the minutes of the hearings organised in July 1997 and March 1998.

3 The Commission refused to produce to the Court an unexpurgated version of the documents requested on the ground that they contained certain information and appraisals which had to remain confidential. However, it expressed its willingness to lodge, at the Court's request, non-confidential versions of the documents.

4 By order of 14 September 1999 (hereinafter 'the contested order'), the Court, considering that it was necessary, for examination of the case, to obtain a complete version of the minutes of the evaluation procedures which had taken place on 9 and 10 July 1997 and on 4 and 5 March 1998, instructed the Commission to produce a certified copy thereof no later than midday on 22 September 1999 so that it could be placed in the file and brought to the applicant's attention.

5 By application lodged at the Registry of the Court of Justice on 22 September 1999, the Commission brought an appeal pursuant to Articles 49 and 51 of the EC Statute of the Court of Justice against the contested order.

Admissibility

6 While aware of the problems raised concerning the admissibility of the appeal in the light of the first paragraph of Article 49 of the EC Statute of the Court of Justice, the Commission maintains that, by the contested order, the Court of First Instance definitively disposed of a point of law, namely the question whether or not the documents requested are confidential, having regard in particular to Article 287 EC and, consequently, the question whether or not the applicant may have sight of them.

7 The Commission adds that if an appeal is brought against the final judgment of the Court of First Instance in Case T-145/98, this would have no practical effect with respect to the point of law concerning confidentiality, since once the documents have been placed in the case-file and made available to the other party, the secrecy lost cannot then be recovered and the breach of confidentiality is thus irreversible.

Findings of the Court

8 Under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order without opening the oral procedure.

9 Under the first paragraph of Article 49 of the EC Statute of the Court of Justice, appeals may be brought before that Court '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 a plea of lack of competence or inadmissibility'.

10 It must therefore be concluded that, contrary to the Commission's assertions, the contested order does not fall within one of the categories of measure against which an appeal may be brought pursuant to Article 49 of the EC Statute of the Court of Justice.

11 It follows that the appeal must be dismissed as clearly inadmissible.

Costs

12 Under Article 69(2) of the Rules of Procedure which, pursuant to Article 118 thereof, applies to the procedure on appeal, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has been unsuccessful in its pleadings, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders:

1. **The appeal is dismissed.**

2. The Commission of the European Communities shall bear the costs.

Luxembourg, 4 October 1999.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President