ORDER OF THE COURT (Seventh Chamber)

27 November 2007 *

In Case C-163/07 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 23 March 2007,

Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi,

Musa Akar,

established in Ankara (Turkey), represented by Ç. Şahin, Rechtsanwalt,

appellants,

the other party to the proceedings being:

Commission of the European Communities, represented by P. van Nuffel and F. Hoffmeister, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: German.

THE COURT (Seventh Chamber),

composed of U. Lõhmus, President of the Chamber, P. Lindh and A. Arabadjiev (Rapporteur), Judges,

Advocate General: M. Poiares Maduro,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By their appeal the companies Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar ask the Court to set aside the order of the Court of First Instance of the European Communities of 17 January 2007 in Case T-129/06 *Diy-Mar Insaat Sanayi ve Ticaret and Akar* v *Commission*, not published in ECR, ('the order under appeal') dismissing as inadmissible their action which sought, first, annulment of the decision of the Commission MK/KS/DELTUR/(2005)/SecE/D/1614 of 23 December 2005 relating to the award of public works contracts for the construction of educational facilities in the provinces of Siirt and Diyarbakir ('the contested decision'), and, secondly, suspension of the operation of the award procedure in question.

Background to the dispute

2 Following publication of a notice of the awarding of a public works contract relating to the construction of educational facilities in the Turkish provinces of Siirt and Diyarbakir (EuropeAid/12160l/C/W/TR), on 21 October 2005 the appellants lodged their application documents with the delegation of the Commission of the European Communities in Turkey.

3 On conclusion of the award procedure, by decision of 29 November 2005 the Commission awarded the contract to the undertaking ILCI Ins. San. Ve Tic, AS. By letter of 2 December 2005, the appellants requested that the Commission cancel that decision. The Commission rejected that request by the contested decision, which was contained in a letter of 23 December 2005 sent to the appellants by fax on the same day.

4 The decision included information on legal remedies and drew the appellants' attention to the right available to them under Article 230 EC to bring before the Community courts an action for annulment of the decision awarding the contract, within a period of two months from the date of the letter.

Procedure before the Court of First Instance and the order under appeal

5 Through two lawyers practising in Turkey, on 21 and 23 February 2006 the appellants lodged at the Registry of the Court of First Instance first a version in English and then a version in Turkish of an application for annulment of the contested decision ('the first application').

6 Following a letter dated 21 March 2006 from the Registry of the Court of First Instance which informed them that their action could not be dealt with because for the purposes of proceedings they had to be represented by a lawyer authorised to practise before a court of a Member State of the European Union or of another State which is a party to the Agreement on the European Economic Area ('the EEA Agreement'), on 6 April 2006 the appellants lodged, through Mr Ç. Şahin, a lawyer who is a member of the Düsseldorf bar (Germany), a translation in German of the English language version of the first application.

7 After the Registrar of the Court of First Instance informed Mr Şahin that he had omitted to sign the German language version of the application, he provided, on 26 April 2006, a new copy of that version which bore his signature. That is the date on which the action was registered under reference T-129/06.

8 On 16 August 2006, the Commission raised an objection of inadmissibility, on the basis of Article 114 of the Rules of Procedure of the Court of First Instance, on the ground that the action was out of time.

9 The appellants claimed that there were circumstances which were such that the irregularities attached to the lodging of their application were excusable.

10 By the order under appeal the Court of First Instance held, first, that the first application did not comply with an essential procedural condition which must be observed if an action is not to be inadmissible, namely the requirement to submit an application bearing the signature of a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement, and,

second, that such a breach of procedure could not be cured after expiry of the period prescribed for bringing the action. The Court of First Instance held that only the German language version of the application signed by Mr Şahin and lodged at the Registry on 26 April 2006 could be considered to be in proper form.

11 In that regard, the Court of First Instance ruled that the action, which had not been validly lodged until 26 April 2006, had to be declared out of time, given that the period prescribed for an action of annulment of the contested decision had expired on 6 March 2006.

12 In response to the appellants' argument that the fact that their action was lodged late, as a consequence of the failure by the Commission to inform them in the contested decision of the rules of representation before the Community courts, constituted an excusable error which precluded the application to them of the time-limits for bringing an action, the Court of First Instance stated that in relation to the time-limits for bringing an action the concept of excusable error had, in accordance with settled case-law, to be interpreted strictly. The Court stated that such an error can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned has been such as to give rise to a pardonable confusion in the mind of a party acting in good faith and exercising all the diligence required of a normally experienced trader.

13 In the light of the above, the Court of First Instance held, at paragraph 44 of the order under appeal, that it could not be concluded from the circumstances relied on by the appellants that there had been excusable error on their part.

14 Consequently the Court of First Instance dismissed the action as inadmissible on the ground that it was out of time and ordered the appellants to pay the costs.

The forms of order sought by the parties

15 The appellants claim that the Court should:

— set aside the contested order;

— annul the contested decision;

— alternatively, refer the case back to the Court of First Instance for a ruling on the substance, and

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss the appeal by declaring it to be unfounded, and

— order the appellants to pay the costs.

The appeal

17 Under Article 119 of the Rules of Procedure, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time, acting on a report from the Judge-Rapporteur and after hearing the Advocate General, by reasoned order, and without opening the oral procedure, dismiss the appeal.

18 In support of their appeal, the appellants rely on two grounds of appeal.

The first ground of appeal

Arguments of the parties

19 The appellants' criticism of the Court of First Instance is that it infringed Article 64 of the Rules of Procedure of the Court of First Instance and Article 24 of the Statute of the Court of Justice, which also applies to the Court of First Instance under the first paragraph of Article 53 of the Statute.

20 In essence, the appellants claim that those provisions place on the Community courts the obligation to establish the facts and to act on their own initiative and accordingly, in this case, the Court of First Instance was bound to take action when on 21 and 23 February 2006 it received the first application signed by a lawyer who was not authorised to represent them.

21 According to the appellants, the Court of First Instance was under an obligation, first, to draw their attention to this procedural error, relating to the capacity to represent a party, before expiry of the period prescribed for the lodging of the action, and, secondly, to clarify the facts with which the first application was concerned and to order the Commission to produce the relevant documents and records.

22 For its part, the Commission does not accept that the Court of First Instance was bound to inform the appellants, before expiry of the period laid down by Community law for the bringing of an action for annulment, that the first application signed by two Turkish lawyers did not comply with the formal requirements laid down in Articles 19 and 21 of the Statute of the Court of Justice and contends accordingly that the action had not properly been brought before the Court of First Instance.

23 In that regard, the Commission states that, while it is true that the Statute of the Court of Justice and the Rules of Procedure of the Court of First Instance permit non-compliance with certain procedural requirements of an application to be cured, by a procedure of rectification, it is no less true that, even in those cases, the consequence of failure to rectify within the period allowed by the Registrar, as is clear from Article 44(6) of those rules, is that the application is inadmissible.

24 It follows, according to the Commission, that an application such as that in this case, which is vitiated by non-compliance with a requirement in respect of which neither the Statute of the Court of Justice nor the Rules of Procedure of the Court of First Instance provide for any possibility of rectification, is on any view of the matter inadmissible. In the absence of any provision requiring the Court of First Instance to advise the signatories of documents who do not satisfy the requirements of Article 19 of the Statute of the Court of Justice that such a document is not properly before the Court, the Court of First Instance is also not bound to give such advice within a period which enables the applicant to lodge an application within the prescribed period.

Findings of the Court

25 Neither the provisions relied on by the appellants nor any other provision of the Rules of Procedure of the Court of First Instance and of the Statute of the Court of Justice place any obligation on the Court of First Instance to advise the party lodging an action that his application is inadmissible when it has not been signed by a lawyer authorised to appear before the Community courts.

26 While it is true that the Statute of the Court of Justice and the Rules of Procedure of the Court of First Instance provide for the possibility of rectifying an application which does not comply with certain procedural requirements, it is also true that, on any view of the matter, non-compliance with the mandatory condition of representation by a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement is not one of the requirements which can be rectified after expiry of the time-limit for bringing an action, in accordance with the second paragraph of Article 21 of the Statute of the Court of Justice and Article 44(6) of the Rules of Procedure of the Court of First Instance.

27 Having regard to the foregoing, the Court must hold that, by not inviting the appellants to rectify their application before expiry of the period for bringing the action at the time of receipt on 21 and 23 February 2006 of the first application signed by a lawyer who was not authorised to appear before the Community courts, the Court of First Instance did not commit any breach of procedure.

28 Accordingly, the first ground of appeal must be dismissed as clearly unfounded.

The second ground of appeal

Arguments of the parties

29 By their second ground of appeal, the appellants claim that the Court of First Instance infringed Community law inasmuch as it disregarded the fact that the contested decision gave information which was incomplete or incorrect on the rules relating to the pursuit of legal remedies. Since that decision did not state either how or by whom an action could be brought and restricted itself to informing those persons to whom it was addressed that there was a legal remedy and that there was a time-limit for pursuit of that remedy, the appellants were led to think that their application could be submitted in Turkish and by themselves. Where the information on the rules applicable to the pursuit of legal remedies is missing, incorrect or incomplete, the time-limit in respect of bringing an action for annulment is not two months, but a year.

30 In addition, the appellants claim that nationals of non-member States should receive information on legal remedies which is more comprehensive than that provided to citizens of the Union.

31 The response of the Commission is that under Community law there is neither a general obligation to inform the persons to whom measures are addressed of the legal remedies which are open to them nor an obligation to state the time-limits for availing themselves thereof.

32 While it is true that it cannot be denied that the Court of Justice and the Court of First Instance might, under Article 45 of the Statute of the Court of Justice, treat the provision by a Community institution of incorrect information on the rules for the

pursuit of legal remedies as equivalent to unforeseeable circumstances or force majeure with the consequence that no right of the parties concerned should be prejudiced by the expiry of a time-limit, that does not apply in these proceedings.

33 The contested decision, which restricted itself to providing the information that that there was a legal remedy, what time-limit applied to that remedy and which court had jurisdiction, and which was silent on all the procedural formalities relating to lodging an application, could not have engendered any confusion in the minds of the appellants.

34 Lastly, the Commission rejects the appellants' argument that nationals of non-member States should receive information on legal remedies which is more comprehensive than that given to citizens of the Union, since information deemed correct and sufficient for the latter must also be so when given to nationals of non-member States.

Findings of the Court

35 The Court of First Instance was fully entitled to rule that the fact that the contested decision did not state that legal proceedings could properly be brought only through a lawyer authorised to practise before a court of a Member State or of another State which is a party to the EEA Agreement did not lead the appellants to commit an excusable error the consequence of which was that the Community rules of public policy governing time-limits for bringing actions could be set aside for their benefit.

36 As was stated in paragraph 42 of the order under appeal, excusable error can concern only exceptional circumstances in which, in particular, the conduct of the institution concerned had been such as to give rise to a pardonable confusion in the

mind of a party concerned acting in good faith and exercising all the diligence required of a normally experienced trader (Case C-195/91 P *Bayer* v *Commission* [1994] ECR I-5619, paragraphs 26 to 28).

37 However, as was determined in paragraphs 43 and 44 of the order under appeal, since the condition that the application must be signed by a lawyer authorised to practise before a court of a Member State is an essential procedural condition laid down by the Statute of the Court of Justice and published, inter alia, in the Selected Instruments taken from the Treaties of the European Union and in the *Official Journal of the European Union*, the appellants were thus put in a position to be aware of the existence of that condition and cannot reasonably maintain that the conduct of the Commission caused a pardonable confusion in their minds as to the rules relating to their legal representation before the Community courts. In those circumstances, the appellants cannot be considered to have shown all the diligence required of a normally experienced trader.

38 That conclusion cannot be affected by the appellants' argument that the nationals of non-member States should receive information on legal remedies which is more comprehensive than that given to citizens of the Union.

39 It was the duty of the two lawyers who lodged the first application to read the relevant texts, in particular Article 19 of the Statute of the Court of Justice, and thereby make themselves aware of the rules relating to representation before the Community courts.

40 Consequently, it follows from that analysis that there is no merit in the appellants' claim that the Court of First Instance infringed Community law by declining to hold that their error was excusable.

41 Further, as the Commission correctly states, it is clear from the case-law of the Court that the Community institutions are not subject to any general obligation to inform the persons to whom their measures are addressed of the judicial remedies available or to any obligation to state the time-limits applicable to them (see, to that effect, the order in Case C-153/98 P *Guérin automobiles* v *Commission* [1999] ECR I-1441, paragraph 15).

42 It follows that the second ground of appeal must also be rejected as clearly unfounded.

43 Since both of the appellants' grounds of appeal have been unsuccessful, the appeal must be dismissed.

Costs

44 Under Article 69(2) of the Rules of Procedure, applicable in appeal proceedings by virtue of Article 118 thereof, 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 applied for costs and the appellants have been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Seventh Chamber) hereby:

1. **Dismisses the appeal.**

2. **Orders Diy-Mar Insaat Sanayi ve Ticaret Ltd Sirketi and Musa Akar to pay the costs.**

[Signatures]