Case T-431/93

Robert Wieschemann
v
Commission of the European Communities

(No need to give a decision)

Order of the Court of First Instance (Second Chamber), 29 October 1993 ..... II - 1199

Summary of the Order

Procedure — Action devoid of purpose — No need to give a decision

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
29 October 1993 *

In Case T-431/93,

Robert Wieschemann, as trustee in bankruptcy of Schiffswerft Germersheim GmbH, of Kaiserslautern (Federal Republic of Germany), represented by

* Language of the case: German.

Hermann Jacob, Rechtsanwalt of Kaiserslautern, with an address for service in Luxembourg at the Chambers of Marc Baden, 24 Rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by Thomas B. Cusack, Legal Adviser, assisted by Claus-Michael Happe, a national civil servant on secondment to the Commission, acting as Agents, with an address for service in Luxembourg at the office of Nicola Annechino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission decision C(90) 1937 final of 1 August 1990 concerning two aid projects of the German Government in favour of shipyards in financial difficulties,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: J. L. Cruz Vilaça, President, A. Kalogeropoulos, D. P. M. Barrington, A. Saggio and J. Biancarelli, Judges,

Registrar: H. Jung,

makes the following

Order

1 On 1 August 1990, by its decision C(90) 1937 final concerning two aid projects of the German Government in favour of shipyards in financial difficulties ('the decision of 1 August 1990'), the Commission declared that the aid given by the German Government to Schiffswerft Germersheim GmbH, in the form of a 90% guarantee on a DM 1.8 million loan which was to reinforce the working capital and a 95% guarantee on a loan of DM 20.7 million which was to serve the same purpose was incompatible with the common market, pursuant to Article 92(1) of the EEC Treaty, and ordered the German Government to abolish this aid by recovering the aid element contained in the public guarantees given and ordering the withdrawal of such of those guarantees as were still operational.

2 By an application lodged at the Registry of the Court of Justice on 3 January 1991 the applicant brought an action pursuant to the second paragraph of Article 173 of the EEC Treaty for the annulment of the aforementioned decision of 1 August 1990.

3 Following the discovery of a clerical error in the decision of 1 August 1990, the Commission, on 12 December 1990, adopted a new decision, whose statement of reasons and operative part were identical to those of the decision of 1 August 1990, correcting the said clerical error (decision C(91) 171 final, as rectified on 5 February 1991, 'the decision of 12 December 1990'). This new decision was sent to the applicant by a letter from the Commission of 25 February 1991.

4 By documents lodged at the Registry of the Court of Justice on 27 March and 13 June 1991, the Commission pointed out that since the decision of 1 August 1990 had been replaced in its entirety by the decision of 12 December 1990, the contested act no longer existed and consequently the action was clearly devoid of purpose.

5 By a letter from the Registry of the Court of Justice of 19 July 1993, the parties were invited to express their views on the possibility that the case need not proceed to judgment as well as on the resulting consequences, following the adoption by the Commission of the decision of 12 December 1990, replacing the contested decision of 1 August 1990.

6 By a letter lodged at the Registry of the Court of Justice on 29 July 1993, the Commission stated that it had no objection to the Court's intention to declare that there was no need to give a decision and that it did not object to bearing the costs, since the action was brought as a result of an error committed by the Commission.

7 By a letter lodged at the Registry of the Court of Justice on 26 August 1993, the applicant points out that since, as recognized by the Commission, the contested decision no longer has any legal effect, the aim of the action has been achieved and consequently there is no need to give a decision on its application. The applicant asks that the Commission be ordered to pay the costs, since the action originated from an error committed by the defendant.

8 By an order of 27 September 1993, the Court of Justice referred the case to the Court of First Instance, pursuant to Article 4 of the Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 amending Council Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities (OJ 1993 L 144, p. 21).

9 The Court of First Instance finds first that the decision of 12 December 1990 has replaced the decision of 1 August 1990. Secondly it finds that the parties agree that following replacement of the contested decision by the new decision of the Commission, the present dispute is devoid of purpose and also that the costs should be borne by the Commission.

10 In those circumstances, the Court of First Instance considers that there is no need to give a decision on the applicant's action for annulment.

Costs

11 Pursuant to Article 87(6) of the Rules of Procedure of the Court of First Instance, where a case does not proceed to judgment, the costs are in the discretion of the Court.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. There is no need to give a decision on the action for annulment in Case T-431/93.

2. The Commission shall bear all the costs.

Luxembourg, 29 October 1993.

H. Jung — Registrar

J. L. Cruz Vilaça — President