JUDGMENT OF THE COURT (Fourth Chamber)
5 March 1991 *

In Case C-330/88,

Alfredo Grifoni, the owner of the undertaking of that name, of Via G. Galilei, Ispra (Varese), Italy, represented and assisted by Michele Tamburini and Franco Colussi, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Mr Colussi, 36 Rue de Wiltz,

applicant,

v

European Atomic Energy Community (EAEC), represented by the Commission of the European Communities, defended by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION based on contractual liability for an order requiring the Commission to pay the applicant a sum of money for work that he allegedly carried out on behalf of the Joint Research Centre at Ispra in the performance of a contract,

THE COURT (Fourth Chamber),

composed of: M. Díez de Velasco, President of the Chamber, C. N. Kakouris and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Italian.

having regard to the Report for the Hearing,

after hearing the parties present their oral argument at the hearing on 28 June 1990,

after hearing the Opinion of the Advocate General at the sitting on 3 October 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 14 November 1988, Mr Alfredo Grifoni, the owner of an undertaking specializing in the supply of sheet-metal and iron work services, brought an action based on contractual liability under Article 153 and the first paragraph of Article 188 of the EAEC Treaty against the European Atomic Energy Community, represented by the Commission of the European Communities. Mr Grifoni asks the Court to order the Commission to pay him a sum of money by way of payment for the performance of work carried out on the basis of an outline agreement.

2 Mr Grifoni maintains that, having successfully bid for a contract for certain work in his specialist field, he concluded an outline agreement following an offer that he had made on 21 November 1979 and a subsequent offer on 10 March 1984, which was accepted by the Commission by registered letter of 21 May 1984. On the basis of that agreement and following orders placed by the Commission, Mr Grifoni carried out on a number of occasions between March 1980 and May 1987, when contractual relations between Mr Grifoni and the Commission ended, various work for the Joint Research Centre at Ispra.

3 Reference is made to the Report for the Hearing for a fuller account of the outline agreement, the facts of the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 Mr Grifoni maintains that, under the outline agreement, he ought to have been paid on a cost-reimbursement basis for the work that was ordered and that he carried out, and that the Commission, despite his repeated requests for payment, did not make full payment of the sums owing to him. That is why he seeks payment of a sum initially fixed at LIT 450 597 910 and subsequently increased in the reply to LIT 933 494 064, plus interest and monetary adjustment.

5 It should be pointed out that the action falls within the jurisdiction of the Court in accordance with Article 153 of the EAEC Treaty and a clause included in the outline agreement which confers on the Court exclusive jurisdiction to settle disputes concerning the implementation or interpretation of the agreement.

6 Mr Grifoni's claims, as set out in the reply and his statements during the hearing, are four in number. He claims to have carried out:

(a) services supplied on the basis of oral orders, which were partially regularized at a later date by written orders (he claims to have been paid only for the services covered by the written orders);

(b) services supplied entirely on the basis of oral orders;

(c) services supplied on the basis of written orders, which were then added to by oral orders (he claims to have been paid only for the services covered by the written orders);

(d) services supplied in accordance with written orders but incorrectly entered in the accounts.

7 It is necessary to examine first the cases under headings (a) and (b): Mr Grifoni claims that he is entitled to additional payments because, on the basis of the outline agreement, he carried out various tasks for which the Commission placed orders with him orally. Subsequently, a number of those oral orders were regu-

larized by written orders, only some of which cover in full what had been ordered orally. In a number of cases, the orders were only oral and were not subsequently regularized in writing.

8 In that regard, it must be pointed out, first, that under the first sentence of Article 50(1) of the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities (Official Journal L 356, p. 1), contracts for the purchase or hiring of goods, for the provision of services or for construction works must be in writing. Moreover, Clause 3(1) of the General Terms and Conditions, which, pursuant to Article 15 of the abovementioned outline agreement, forms an integral part of that agreement, also requires that contracts concluded between the Commission and third parties should be in writing.

9 It must be pointed out, secondly, that according to Clause 18 of those General Terms and Conditions, 'changes to the contract (including additions and deletions) shall be made by an additional act subject to the same conditions as the contract; oral agreements shall not be binding on the parties'.

10 It follows from the foregoing that the contractual relations between the parties must be conducted exclusively in writing, both as regards the conclusion of the contract and any amendment thereof. It also follows that the original orders and the subsequent changes made to them on the basis of the outline agreement must also be in writing. Consequently, the oral orders cannot constitute a valid legal basis for the payment of the work carried out.

11 Consequently, quite apart from the fact that the Commission denies that there were oral orders, Mr Grifoni's arguments in that regard have no foundation in law and must be rejected.

12 Mr Grifoni also claims that there are cases in which work that had been ordered in writing was supplemented or modified subsequently by oral orders; he claims to have been paid only for the work covered by the written orders.

13 Having regard to Article 50(1) of the Financial Regulation and the clauses cited above, written orders cannot validly be changed by oral orders. That interpretation also flows from Clause 6 of the outline agreement concluded between Mr Grifoni and the Commission, which contains a clause providing that 'if, while work is under way, it becomes necessary to have work carried out which is not included in the order, such work must first be authorized in writing by the Directorate of Works following submission by the undertaking of a detailed and definitive costing. Any work carried out otherwise shall be neither recognized nor paid for'. The documents before the Court show that that clause is repeated under point G in the written orders placed with Mr Grifoni by the Commission.

14 It follows that the applicant's arguments based on oral orders supplementing or modifying what was ordered in writing have no foundation in law.

15 Moreover, the documents before the Court show that the Commission indicated to Mr Grifoni, by registered letter of 4 May 1981, that Mr Grifoni was required to submit, in duplicate, a written detailed estimate for any change in or addition to the work agreed on the basis of existing contracts which could entail increased expenditure, and that such additional work was to be carried out only after he had received the copy of the detailed estimate approved by the competent official of the Infrastructure Division.

16 Finally, Mr Grifoni expressly claimed during the oral procedure that the Commission entered certain written orders incorrectly in the accounts and that it therefore did not pay him the full amount.

17 Mr Grifoni has not, either in the application or in the reply, specified his claims in detail by pointing out in the documents that he has produced the accounting errors he claims exist. Moreover, he has produced no evidence of specific errors and has not claimed that he expressed reservations on the documents that he signed each time he was paid. It was necessary for the applicant to specify his claims in detail since, as the Advocate General pointed out, the Commission produced in an annex

to its defence the documents evidencing, for each order, the 'final account of the work' carried out with the corresponding amounts specified by Mr Grifoni himself and containing the words: 'the work corresponds technically to what was ordered', and the signature both of Mr Grifoni and of the competent official of the Centre.

18 As the Court stated in its judgment in Joined Cases 19/60, 21/60, 2/61 and 3/61 (*Fives Lille Cail* v *High Authority* [1961] ECR 281, 295), a mere abstract statement of the grounds in the application does not alone satisfy the requirements of the Statute or the Rules of Procedure of the Court of Justice, and the application must specify the nature of the grounds on which the application is based. It follows that Mr Grifoni's claim in that regard is too general and imprecise to be appraised by the Court.

19 In addition to the pleas in law examined above, Mr Grifoni appears to claim in a general way that, apart from oral or written orders, he carried out work which was worth significantly more than the sums he received. Consequently, he asks the Court to have an inventory made of the work that he carried out and to estimate its overall value so that he may be awarded the outstanding balance.

20 As already stated, the contractual relations between the parties described above provide no basis for such a plea. Moreover, if it were possible to understand the plea as meaning that the Community was unduly enriched at Mr Grifoni's expense, it would constitute a new plea with, in any event, a non-contractual basis, so that it would fall outside the scope of the arbitration clause and the Court would not then be competent to consider it.

21 Having regard to all the foregoing considerations, the application must be dismissed as unfounded.

Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since Mr Grifoni has failed in his submissions, he must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Díez de Velasco Kakouris Kapteyn

Delivered in open court in Luxembourg on 5 March 1991.

J.-G. Giraud
Registrar

M. Díez de Velasco
President of the Fourth Chamber