ORDER OF THE COURT (Fourth Chamber)
11 July 1996 *

In Case C-325/94 P,

An Taisce — The National Trust for Ireland, established in Dublin, and

World Wide Fund for Nature UK (WWF), established in Surrey (United Kingdom),

represented by Georg Berrisch, Rechtsanwalt, Hamburg, with an address for service in Luxembourg at the Chambers of Turk and Prum, 13 B Avenue Guillaume,

appellants,

APPEAL against the judgment of the Court of First Instance of the European Communities (Second Chamber) of 23 September 1994 in Case T-461/93 between An Taisce and WWF UK and the Commission [1994] ECR II-733, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by Carmel O'Reilly and Marc van der Woude, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

* Language of the case: English.

THE COURT (Fourth Chamber),

composed of: C. N. Kakouris, President of the Chamber, P. J. G. Kapteyn and H. Ragnemalm (Rapporteur), Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Registry of the Court of Justice on 6 December 1994, The National Trust for Ireland (hereinafter 'An Taisce') and World Wide Fund for Nature (hereinafter 'WWF UK') appealed against the judgment of the Court of First Instance of the European Communities (Second Chamber) given on 23 September 1994 in Case T-461/93 *An Taisce and WWF UK* v *Commission* [1994] ECR II-733 (hereinafter 'the contested judgment'), in which the Court dismissed as inadmissible their application seeking, first, annulment of the decision of 7 October 1992 by which, according to the applicants, the Commission had decided not to suspend or withdraw the allocation of Community structural funds for financing the construction of a visitors' nature observation centre at Mullaghmore (hereinafter 'the Mullaghmore centre') and, second, damages for the harm which the applicants claimed that they had suffered and would suffer as a result of that decision.

2 Article 130a of the EC Treaty requires the Community to develop and pursue its actions leading to the strengthening of its economic and social cohesion. In particular, the Community must aim at reducing disparities between its various regions

and the backwardness of those which are least favoured, in order to promote its overall harmonious development. Under Article 130b of the Treaty, the Commission must also support the achievement of those objectives by the action which it takes through the Structural Funds, such as, in particular, the European Regional Development Fund.

3 According to Article 130c of the EC Treaty, the European Regional Development Fund is intended to redress the main regional imbalances through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions.

4 With a view to achieving those objectives and regulating the tasks of the Funds, the Council adopted Regulation (EEC) No 2052/88 of 24 June 1988 on the tasks of the Structural Funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 185, p. 9).

5 Article 7(1) of Regulation No 2052/88 requires measures financed by the Structural Funds or receiving assistance from the European Investment Bank or from another existing financial instrument to be in keeping with the provisions of the Treaties, with the instruments adopted pursuant thereto and with Community policies, including those concerning the rules on competition, the award of public contracts and environmental protection.

6 Under Article 24 of Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between

themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1), the Commission may, under certain conditions, suspend or reduce assistance in respect of the operation or measure concerned.

7 According to the contested judgment, An Taisce is a voluntary, non-profit-making company financed by private donations and membership subscriptions. It is concerned with protecting environmental quality in Ireland. An Taisce is entitled to receive copies of draft development plans and notice of decisions on all planning applications accompanied by environmental impact assessments. WWF UK is a non-governmental organization concerned with the conservation of nature and natural resources on an international scale.

8 With regard to the facts underlying the action brought before the Court of First Instance, that Court found that:

'1 In March and June 1989 the Irish Government submitted its regional development plans to the Commission pursuant to Article 8(4) of Council Regulation (EEC) No 2052/88 ... .

2 Those plans included a description of the main priorities for action and an indication of the uses to which assistance under the various Community funds would be put. On 31 October 1989 the Commission decided, in accordance with Article 8(5) of Regulation No 2052/88, to establish a Community support framework for Community structural operations in Ireland in pursuance

of Objective 1 for the period from 1989 to 1993. That decision envisaged Community assistance totalling ECU 3 672 million, to which were to be added ECU 2 454 million from Irish public funds and ECU 2 274 million from the private sector.

3 On 21 December 1989 the Commission approved the Operational Programme for Tourism submitted by Ireland (which did not address specific projects but merely analysed in general terms a number of sub-programmes on infrastructure, plant, training and marketing) and allocated to it for the period from 1 January 1989 to 31 January 1993 the sum of ECU 188.6 million, of which ECU 152 million came from the European Regional Development Fund and ECU 36.6 million from the European Social Fund. That sum covered the entire programme, with no specific amounts being allocated to individual projects.

4 On 22 April 1991 the Minister of State at the Irish Department of Finance announced a plan for the construction of an interpretative centre for visitors at Mullaghmore (Ireland). On 21 June 1991 the applicant WWF UK ... lodged a complaint against this project with the Commission and was subsequently joined in its complaint by the other applicant, An Taisce ... .

...

6 On 23 August 1991 an official of the Commission's Directorate-General for the Environment, Nuclear Safety and Civil Protection (DG XI) wrote to the applicants, informing them that no decision authorizing Community financing of the Mullaghmore centre would be taken until an environmental impact assessment had been carried out by the Irish authorities in accordance with Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) ("Directive 85/337").

7 At the Commission's request the Office of Public Works ("OPW") commissioned an environmental impact assessment. That assessment, published in February 1992, was criticized by environmental organizations and was the subject of a critical review by the Institute of Environmental Assessment carried out at the request of the applicant WWF UK. Subsequently, a further

report was produced at the request of OPW which introduced changes to the original plan, in particular the system of waste-water treatment. That report was also criticized by the applicant WWF UK. All the reports and criticisms were passed on to the Commission.

8 On 19 June 1992 the Director-General of DG XI wrote to the Irish Permanent Representative to state that he was recommending to the Commission that it should initiate the procedure provided for in Article 169 of the EEC Treaty with respect to the Mullaghmore centre.

9 On 7 October 1992 the Commission decided not to initiate a procedure, with respect to the Mullaghmore centre, against Ireland for failure to fulfil its obligations and issued a press release on the matter ...'

9 It was in those circumstances that the appellants, on 4 December 1992, brought an action before the Court of First Instance based on Articles 173, 178 and 215 of the EEC Treaty in which they sought annulment of a decision taken by the Commission on 7 October 1992 not to suspend or not to withdraw the allocation of structural funds for financing construction of the Mullaghmore centre and damages for the harm occasioned by the contested decision.

The contested judgment

10 On 23 September 1994, the Court of First Instance delivered a judgment dismissing that application as inadmissible.

11 In so far as the application was based on Article 173 of the Treaty, the Court of First Instance stated in particular that the procedure for the suspension or reduction of Community financial assistance for national operations was independent of the procedure for a declaration that the conduct of a Member State is in breach of Community law and for requiring that conduct to be brought to an end. The Court of First Instance referred in this connection to Article 23(2) and (3) of Regulation No 4253/88, according to which the Commission may carry out checks with regard to funded operations and is entitled, for a period of three years following the last payment in respect of any operation, to have access to all supporting documents regarding expenditure on the operation (paragraph 36).

12 From this the Court of First Instance concluded that the Commission had decided, on 7 October 1992, not to initiate Treaty-infringement proceedings against Ireland. However, nothing could justify the conclusion that it had also decided at that time not to make use of the possibility it had under Regulation No 4253/88 to suspend or reduce the use of Community funds for the construction of the Mullaghmore centre, a possibility which, according to the Court, was open to the Commission at all times (paragraph 38).

13 In those circumstances, and without determining whether individuals had *locus standi* to contest such a Commission decision, the Court of First Instance found that the Commission had not, on 7 October 1992, taken any decision not to suspend or not to reduce Community financing for the construction of the Mullaghmore centre and that consequently the application for annulment had to be dismissed as inadmissible (paragraph 39).

14 The application for damages based on Articles 178 and 215 of the Treaty was also declared inadmissible (paragraph 43). The Court of First Instance found that the applicants had failed to demonstrate the existence of a link between the contested measure and any damage which would allegedly be caused, on the one hand, to the environment of Mullaghmore and its neighbourhood and, on the other hand, to An Taisce as an owner of adjoining land. The Court of First Instance also pointed

out that the applicants had not quantified the alleged damage and had confined themselves to claiming that continuation of construction work on the Mullaghmore centre would give rise to serious and irreparable damage (paragraph 42).

The appeal

15 In their appeal, the appellants request the Court, first, to set aside the judgment of the Court of First Instance, second, to declare admissible the action for annulment of the Commission decision of 7 October 1992 not to suspend or not to withhold the use of Community structural funds for the construction of the Mullaghmore centre, third, to declare admissible the action for damages in respect of the harm occasioned by that decision, fourth, to refer the case back to the Court of First Instance as regards the decision on the substance of the appellants' application, and, finally, to reserve costs but in any event to order the Commission to bear the costs regarding the procedure on admissibility.

16 For its part, the Commission takes the view that this appeal is in part inadmissible and in any event unfounded.

17 Article 119 of the Rules of Procedure provides that, 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.

Annulment of the alleged Commission decision

18 The appellants put forward three pleas in law with regard to the part of the contested judgment concerning annulment of the alleged Commission decision not to suspend or not to withdraw the use of Community structural funds for the construction of the Mullaghmore centre.

The first and second pleas in law

19 In their first plea, the appellants submit that the Court of First Instance infringed Article 173 of the Treaty in finding that the Commission had not decided not to suspend or not to reduce funding for the construction of the Mullaghmore centre. In their view, the Court of First Instance thus misinterpreted Article 24 of Regulation No 4253/88 and the relationship between that provision and the Article 169 procedure and failed to characterize properly the Commission's press release and various events leading up to it. The decision by the Commission not to bring Article 169 proceedings necessarily entails the taking of a decision under Article 24 of Regulation No 4253/88, not only in view of the relationship between those two procedures but also in the light of the special circumstances of this case.

20 The appellants also submit that it is unimaginable that the Commission would decide at a later time to withdraw, suspend or reduce funds allocated to Ireland for the reasons which they had set out in their complaint and subsequent correspondence with the Commission. For that reason, the decision taken by the Commis-

sion on 7 October 1992 with regard to Treaty-infringement proceedings necessarily entailed a decision to terminate the procedure provided for by Article 24 of Regulation No 4253/88.

21 In their second plea in law, the appellants argue that the Court of First Instance failed to address certain pertinent evidence.

22 First, as regards the argument based on the relationship between the procedure provided for by Article 24 of Regulation No 4253/88 and that provided for by Article 169 of the Treaty, it must be pointed out that the purpose of the second of those procedures is to have the Court declare a Member State to be in breach of Community law and require its conduct to be brought to an end, whereas the first is intended to allow the Commission to suspend or reduce Community financial aid in the event of any irregularity on the part of the Member State concerned, in particular where, without seeking approval, the Member State makes a significant change to the nature of, or conditions for, implementation of the action or measure.

23 Consequently, as the Court of First Instance correctly points out at paragraph 35 of its judgment, neither commencement of Article 169 proceedings for failure to fulfil obligations nor even a declaration by the Court of Justice that there has been such a failure can automatically entail suspension or reduction of Community financial assistance. For that, it is necessary that the Commission should adopt a decision which, it is true, must take account of the proceedings commenced under Article 169 of the Treaty or of the declaring by the Court of Justice that there has been a failure to fulfil obligations.

24 Unlike the institution of proceedings under Article 169 of the Treaty, a decision suspending or reducing Community financing constitutes a measure adversely affecting the party to which it is addressed — in this case, the Irish Government — and may be the subject of an action before the Community courts.

25 A decision adopted under Article 24 of Regulation No 4253/88 is therefore distinct from institution of Article 169 proceedings or from a decision not to pursue such proceedings. Those two procedures are independent of each other, serve different aims and are subject to different rules (judgment in Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 26 et seq.).

26 Consequently, the Commission's decision not to institute proceedings under Article 169 of the Treaty cannot implicitly entail the taking of a separate decision based on Article 24 of Regulation No 4253/88.

27 Secondly, the special circumstances or evidence relied on by the appellants are directed at showing that the Commission did take a decision under Article 24 of Regulation No 4253/88.

28 It should be borne in mind in this regard that, under Article 168a of the EC Treaty, an appeal is confined to points of law and that this limitation is further embodied in the first paragraph of Article 51 of the EC Statute of the Court of Justice. Thus, the Court has itself held on several occasions that an appeal may rely only on grounds relating to infringement of rules of law, to the exclusion of any appraisal of facts, and is therefore admissible only in so far as the decision of the Court of First Instance is claimed to be incompatible with rules of law the observance of which it had to ensure (order of 11 January 1996 in Case C-89/95 P *D.* v *Commission* [1996] ECR I-53).

29 Consequently, the appellants' arguments concerning the assessment of the facts by the Court of First Instance are not admissible.

30 In so far as the Court of First Instance, in holding that the decision of 7 October 1992 was not a decision taken pursuant to Article 24 of Regulation No 4253/88, not only assessed the facts but also characterized them, the Court of Justice does have jurisdiction to examine this plea (see the judgment in Case C-39/93 P *SFEI and Others* v *Commission* [1994] ECR I-2681, paragraph 26).

31 However, there are no grounds for finding that the Court of First Instance wrongly characterized or failed to consider allegedly special facts or circumstances.

32 Consequently, the first and second pleas in law must be dismissed as clearly inadmissible or unfounded.

The third plea in law

33 The appellants submit that the contested judgment must be set aside on the ground that the Court of First Instance failed to address a number of their arguments and that its judgment is therefore insufficiently reasoned.

34 They argue, first, that the Court of First Instance failed to address their arguments concerning the relationship between Articles 173 and 175 of the Treaty. If a complaint is submitted to the Commission and it fails to adopt the measure requested, the complainant ought to be able either to request annulment of the Commission's refusal under Article 173 of the Treaty or to bring proceedings under Article 175 of the Treaty for failure to act if, in each of those cases, the other conditions laid down in the relevant provision are satisfied.

35 Suffice it to note in this regard that at no time did the appellants raise the issue of any failure by the Commission to act in response to their complaint. Since no such issue was ever raised against that institution, it cannot be objected that the Court of First Instance did not examine this part of the appellants' argument.

36 Secondly, the appellants claim that the Court of First Instance failed to address their argument that the procedure laid down in Article 24 of Regulation No 4253/88 involves several stages and that the decision to terminate that procedure, irrespective at which stage it is adopted, does not constitute merely a preparatory act but a final decision, challengeable under Article 173 of the Treaty.

37 As this Court has already found above, it is clear from the judgment of the Court of First Instance that on 7 October 1992 the Commission did not adopt any decision whatever — whether a preparatory act or a final decision — not to suspend or not to reduce Community financing for the construction of the Mullaghmore centre.

38 In those circumstances, the third plea in law must be dismissed as clearly unfounded.

The action for damages

39 As far as the claim for damages is concerned, the appellants have not established, either before this Court or before the Court of First Instance, that any decision had been adopted by the Commission on the basis of Article 24 of Regulation

No 4253/88. Consequently, the question whether such a decision occasioned harm need not be examined.

40 All of the pleas in law relating to the claim for damages must accordingly be dismissed.

41 In those circumstances, the appeal must be dismissed as clearly unfounded, pursuant to Article 119 of the Rules of Procedure.

Costs

42 Under Article 69(2) of the Rules of Procedure, 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 appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellants to pay the costs.

Luxembourg, 11 July 1996.

R. Grass

Registrar

C. N. Kakouris

President of the Fourth Chamber