JUDGMENT OF THE COURT (Second Chamber)
11 October 1990 *

In Case C-200/89,

Funoc, whose registered office is at Charleroi (Belgium), assisted by G. Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 62 avenue Guillaume,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser, H. Lima, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission's decision of 21 April 1989 requesting the applicant to reimburse BFR 6 579 334 and refusing to pay the balance (BFR 6 600 000) of the financial assistance awarded in respect of project No 84 3246 B5 of the European Social Fund is void, and for damages,

THE COURT (Second Chamber),

composed of: T. F. O'Higgins, President of Chamber, G. F. Mancini and F. A. Schockweiler, Judges,

Advocate General: G. Tesauro
Registrar: J. A. Pompe, Assistant Registrar,

* Language of the case: French.

having regard to the Report for the Hearing,

after hearing the oral arguments of the parties at the hearing on 5 June 1990, at which the Commission was represented by H. Lima and D. Gouloussis, acting as Agents,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 July 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 June 1989, Funoc — Association pour le développement à Charleroi d'actions collectives de formation pour l'université ouverte (Association for the development in Charleroi of collective training projects for the open university) — brought an action under the second paragraph of Article 173 of the EEC Treaty for a declaration that the decision of the Commission, notified to the applicant by letter of 21 April 1989, concerning the participation of the European Social Fund in the funding of projects submitted by the Kingdom of Belgium is void in so far as it requests the reimbursement of BFR 6 579 334 and refuses to pay the balance of the financial assistance awarded by the Fund in respect of project No 84 3246 B5. In the same application, Funoc also brought an action for damages under Article 178 of the EEC Treaty, seeking compensation for the damage it has suffered as a result of that decision.

2 Article 1(2)(a) of Council Decision 83/516/EEC of 17 October 1983 on the tasks of the European Social Fund (Official Journal 1983 L 289, p. 38) provides that the Fund is to participate in the financing of operations concerning vocational training and guidance. Article 3(2) of that decision provides that Fund assistance may be granted for encouraging the implementation of innovatory projects.

3 Article 6(1) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of the abovementioned decision (Official Journal 1983 L 289,

p. 1) provides that when Fund assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may suspend, reduce or withdraw the aid after having given the relevant Member State an opportunity to comment.

4 In September 1983, in the name of the Kingdom of Belgium and on behalf of Funoc, the Belgian Ministry of Labour and Employment submitted an application to the Fund for 1984, 1985 and 1986, for assistance for an innovatory project within the meaning of Article 3(2) of Decision 83/516, the aim of which was to provide training in new information technology for young people with limited qualifications in the Charleroi area.

5 The application stated that the aim of the proposed training programme was to set up a scientific production cooperative to carry out research and survey work of general interest. It specified that, for that purpose, 90 young people with limited qualifications would be given appropriate training in research methods and techniques, with intensive use of data processing (1 000 hours per trainee). On 15 June 1984, Funoc provided the Commission with further information supplementing its original application, specifying that the project would comprise three separate phases — basic training, specific training and practical application — spread over three years (1984, 1985 and 1986).

6 The project was approved for the amount applied for — BFR 16 500 000 — by Commission Decision C(84) 1076 of 23 July 1984.

7 In accordance with Article 5(2) of Regulation No 2950/83, an initial advance of BFR 4 950 000 was paid in December 1984, and a second advance of BFR 4 950 000 in May 1987.

8 In May 1987, a request for payment of the balance of BFR 6 600 000 was submitted by the Ministry of Labour and Employment, together with all the supporting documents and the completion report. On 6 June 1988, Funoc received a registered letter from the Ministry of Labour and Employment forwarding a note

from the Commission together with an explanatory letter. The Commission requested the reimbursement of the BFR 9 900 000 advanced on the ground that, according to the completion report, the organizer had decided as early as January 1984 to modify the project without informing the Fund, by setting up three one-year training programmes each comprising 30 trainees, the first of which had started in March 1984, and the other two in 1985 and 1986. In the Commission's view, that change of plan was in conflict with the original structure of the project.

9 Following contacts between the Belgian authorities and the Commission, the Commission sent a letter on 21 April 1989, forwarded to the applicant on 2 May 1989, reducing its claim for reimbursement of the sums advanced to Funoc to BFR 6 579 334 by taking the first year (1984) into consideration on the ground that it was the only part of the operation which met the criterion of non-repetitivity.

10 In support of its application for a declaration that the contested decision is void, the applicant argues that the official who took the contested decision did not have the power to do so, and alleges infringement of the rules governing the management of the Fund, manifest error of appraisal and error of law and, in the alternative, breach of the principle of proportionality.

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

The action for annulment

The first submission

12 In the applicant's submission, the decision is vitiated by the fact that it was not taken by the competent body, namely the Commission itself, but by the Head of Division of Directorate-General V, who was not empowered to do so.

13 It must first be pointed out that under the applicable provisions Directorate-General V is responsible for managing the expenditure of the Fund, in cooperation with the Financial Controller. It is clear from the Rules of Procedure of the Commission that officials may be empowered to take, in the name of the Commission and subject to its control, clearly defined measures of management or administration.

14 In this submission, the applicant is disregarding the fact that, as the Court recognized in Case 48/69 *ICI* v *Commission* [1972] ECR 619, paragraphs 10 to 14 and in Case 8/72 *Cementhandelaren* v *Commission* [1972] ECR 977, paragraphs 10 to 14, delegation of signature is the normal means whereby the Commission exercises its powers. The applicant has not provided any evidence to show that the Community administration failed to comply with the relevant rules in this case.

15 The first submission must therefore be dismissed.

The second submission

16 In the applicant's submission, the contested decision infringes the rules governing the Fund. It claims that the Commission merely presented the Belgian employment authorities with a claim for BFR 9 900 000 without first seeking, in accordance with Article 6(1) of Regulation No 2950/83, their comments in that regard.

17 That argument cannot be accepted. It is clear from the documents before the Court that the decision at issue in this case, namely the decision of 21 April 1989, was taken following an exchange of letters between the Commission and the Belgian authorities, which submitted their comments in accordance with Article 6(1) of Regulation No 2950/83, that is to say before the final decision was adopted.

18 The second submission must therefore be rejected.

The third submission

19 The applicant also claims that the Commission committed a manifest error of appraisal and applied the provisions governing the Fund incorrectly. It denies that it made any change to its original project. That project was adhered to although, in order to ensure successful completion, it proved necessary to modify certain details of its implementation. The operation carried out retained the characteristics of a single innovatory programme aimed at testing a new work theory.

20 It appears from the description of the training programme contained in the application for Fund assistance submitted by the applicant, together with the supplementary information given to the Commission, that the original project, aimed at 90 young people with limited qualifications, provided for 1 000 hours of training spread over three years, in three separate phases.

21 However, according to the final report, drawn up by the applicant itself and communicated to the Commission in June 1987, the operation which was carried out comprised three similar training courses each lasting 1 000 hours over one year, involving three different groups of 30 young trainees.

22 It must be acknowledged that the fact of concentrating into one year a 1 000-hour course which had been planned to take place over a three-year period meant that the programme was carried out in circumstances different from those originally announced. Furthermore, the fact that the same course was repeated over the last two years removed the innovatory nature of the operation. In those circumstances the Commission was entitled, under Article 6(1) of Regulation No 2950/83, to suspend, reduce or withdraw the aid provided by the Fund.

23 It therefore follows that the third submission must be dismissed.

The fourth submission

24 Lastly, the applicant maintains that the contested decision infringes the principle of proportionality inasmuch as the recovery of the greater part of the sums advanced and the non-payment of the remainder are disproportionate in view of the formal nature of the irregularity in question, namely a failure to give notice of the changes made. That infringement is all the more serious in that the penalty adopted jeopardizes the very survival of Funoc.

25 It must be pointed out that Article 6(1) of Regulation No 2950/83 made it necessary to withdraw the decision of approval, which was rendered unlawful by a substantive modification of the original project and not by a mere formal irregularity. Moreover, the Commission, as it stressed itself, took the applicant's private interests into account inasmuch as it finally decided, exceptionally and for reasons of fairness, to replace the decision of approval which had become illegal by another decision of partial approval for the first training course.

26 It has therefore not been established that, by cancelling the funding for the training programmes carried out in 1985 and 1986, the Commission went beyond what was necessary in order to ensure that the sums paid out by the Fund were properly used.

27 This submission, too, must therefore be dismissed.

28 It follows from all the foregoing that the application for a declaration that the decision is void must be dismissed in its entirety.

The claim for damages

29 The applicant claims that, by adopting the contested decision, the Commission caused it damage which the Commission must make good in accordance with the second paragraph of Article 215 of the EEC Treaty.

30 It must be borne in mind that the Court has consistently held that a series of conditions regarding the illegality of the alleged conduct of the institutions, the reality of the damage and the existence of a causal link between the conduct of the institution and the alleged damage must be met for the Community to incur liability within the meaning of the second paragraph of Article 215.

31 In the present case, it is clear from the foregoing that the conduct of the Commission which is alleged to have caused the damage suffered by Funoc was in no way illegal.

32 The claim for damages must therefore be dismissed, without any inquiry into whether the remaining conditions set out in the Court's case-law are met.

33 It follows from the foregoing considerations that the action brought by Funoc must be dismissed in its entirety.

Costs

34 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs incurred by the Commission.

On those grounds,

THE COURT (Second Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

O'Higgins Mancini Schockweiler

Delivered in open court in Luxembourg on 11 October 1990.

J.-G. Giraud
Registrar

T. F. O'Higgins
President of the Second Chamber