

Appeal brought on 29 April 2013 by Bonvecchiati Srl against the order of the General Court (Fourth Chamber) of 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 *Albergo Quattro Fontane and Others v Commission*

(Case C-239/13 P)

(2013/C 207/37)

Language of the case: Italian

Parties

Appellant: Bonvecchiati Srl (represented by: A. Bianchini and F. Busetto, avvocati)

Other parties to the proceedings: Comitato 'Venezia vuole vivere', European Commission

Form of order sought

- Set aside the order of the General Court under appeal
- Uphold the forms of order sought at first instance and, accordingly,
 - annul, in so far as is reasonable and in so far as it concerns the appellant, European Commission Decision No 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995;
 - in the alternative, annul that decision in so far as it imposes an obligation to recover the relief granted and in so far as it requires interest to be added to the amount of relief to be recovered for the periods taken into consideration in the judgment;
- order the Commission to pay the costs incurred both at first instance and on appeal.

Grounds of appeal and main arguments

In support of the appeal, the appellant raises nine grounds of appeal:

First ground: the General Court erred in not taking into consideration the fact that the measures in question did not confer any advantage upon their beneficiaries given their compensatory nature.

Second ground: the Court erred in not excluding, or at least assessing, the likelihood that the measures in question would affect competition and intra-Community trade.

Third ground: the Court erred in holding that the derogations in Article 87(2)(b) EC (now Article 107(2)(b) TFEU) and Article 87(3)(b) EC (now Article 107(3)(b) TFEU) were inapplicable.

Fourth ground: the Court erred in holding that the derogation in Article 87(3)(c) EC (now Article 107(3)(c) TFEU) was inapplicable.

Fifth ground: the Court erred in holding that the derogations in Article 87(3)(d) and (e) EC (now Article 107(3)(d) and (e) TFEU) were inapplicable.

Sixth ground: the Court erred in holding that the derogation in Article 86(2) EC (now Article 106(2) TFEU) was inapplicable.

Seventh ground: the Court erred in not recognising the existence of the aid, thus infringing Article 88(3) EC (now Article 108(3) TFEU) and Article 15 of Regulation No 659/1999.⁽¹⁾

Eighth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the recovery order.

Ninth ground: the Court erred in finding that Article 14(1) of Regulation No 659/1999 did not apply to the addition of interest.

⁽¹⁾ Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Request for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 29 April 2013 — *Commerz Nederland NV*; other party: *Havenbedrijf Rotterdam NV*

(Case C-242/13)

(2013/C 207/38)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Commerz Nederland NV

Other party: Havenbedrijf Rotterdam NV

Questions referred

1. Is the imputability — required for purposes of classification as State aid within the meaning of Articles 107 TFEU and 108 TFEU — to the public authorities of a guarantee provided by a public undertaking necessarily precluded by the fact that that guarantee, as in the present case, was provided by the (sole) director of the public undertaking who, while he had the power to do so under civil law, acted on his own authority, deliberately kept the provision of the guarantee secret and ignored the requirements under the articles of association of the public undertaking by failing to seek the approval of the Raad van Commissarissen (Council of Commissioners), and where, furthermore, it must be assumed that the public body concerned (in this case, the Gemeente (Municipality)) did not want the guarantee to be provided?
2. If the circumstances described do not necessarily preclude imputability to the public authorities, are those circumstances then irrelevant for the purpose of answering the question as to whether the provision of the guarantee may be imputed to the public authorities, or should the court consider the matter in the light of the other indicators which argue for or against imputability to the public authorities?

Appeal brought on 2 May 2013 by Manutencoop Soc. coop., formerly Manutencoop Soc. coop. arl and Astrocoop Universale Pulizie, Manuntenzioni e Trasporti Soc. coop. rl against the order of the General Court (Fourth Chamber) delivered on 20 February 2013 in Joined Cases T-278/00 to T-280/00, T-282/00 to T-286/00 and T-288/00 to T-295/00 *Albergo Quattro Fontane and Others v Commission*

(Case C-246/13 P)

(2013/C 207/39)

Language of the case: Italian

Parties

Appellants: Manutencoop Soc. coop., formerly Manutencoop Soc. coop. r.l. and Astrocoop Universale Pulizie, Manuntenzioni e Trasporti Soc. coop. r.l. (represented by: A. Vianello, A. Bortoluzzi and A. Veronese, avvocati)

Other parties to the proceedings: European Commission, Comitato 'Venezia vuole vivere'

Form of order sought

- Set aside and/or vary the order of the General Court (Fourth Chamber) delivered on 20 February 2013 and notified on 25 February 2013 in Case T-280/00 and Case T-285/00;
- Order the Commission to pay the costs.

Pleas in law and main arguments

In support of their appeal, the appellants put forward two pleas in law.

First, the order of the General Court is vitiated by an error of law in the application of the principles outlined by the Court of Justice in its judgment in *Comitato 'Venezia vuole vivere' and Others v Commission* regarding the duty to state the reasons for decisions of the Commission relating to State aid. In particular, the General Court did not comply with that judgment in so far as it states that a decision of the Commission 'must contain in itself all the matters essential for its implementation by the national authorities'. However, even though the decision at issue in the present case lacked the matters essential for its implementation by the national authorities, the General Court failed to find any deficiency in the method used by the Commission in the contested decision, and consequently erred in law.

Second, the order is vitiated by an error of law in the application of the principles outlined by the Court of Justice in *Comitato 'Venezia vuole vivere'* regarding the allocation of the burden of proof concerning the conditions laid down in Article 107(1) TFEU. On the basis of the principles outlined by the Court in that judgment, when aid is being recovered, it is the Member State — and not, therefore, the individual beneficiary — which is required to show, in each individual case, that the conditions laid down in Article 107(1) TFEU are met. In the present case, however, in the contested decision the Commission failed to clarify the 'modalities' of any such verification. Consequently, since it did not have available to it, at the time when the aid was to be recovered, the information necessary to show that the advantages granted constituted, in the hands of the beneficiaries, State aid, the Italian Republic reversed the burden of proof, requiring the individual beneficiaries of aid granted in the form of relief to prove that the advantages in question do not distort competition or affect trade between Member States. In the absence of any such proof, there is a presumption that the advantage granted was likely to distort trade and affect trade between Member States.

Action brought on 7 May 2013 — European Commission v Kingdom of the Netherlands

(Case C-252/13)

(2013/C 207/40)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: D. Martin and M. van Beek, Agents)

Defendant: Kingdom of the Netherlands