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TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
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Press and Information

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11 November 2004

Judgments of the Court of Justice in Joined Cases C-183/02 P and C-187/02 P and Joined Cases C-186/02 P and C-188/02 P

Daewoo Electronics Manufacturing España SA (Demesa) v European Commission, and Territorio Histórico de Álava – Diputación Foral de Álava v European Commission and Ramondín SA and Ramondín Cápsulas SA v European Commission and Territorio Histórico de Álava – Diputación Foral de Álava v European Commission

THE APPEALS AGAINST THE DECISIONS OF THE COURT OF FIRST INSTANCE CONCERNING THE FISCAL AID GRANTED TO DEMESA AND RAMONDÍN ARE DISMISSED

The Court of Justice does not question the legal analysis made by the Court of First Instance

By two decisions of 1999¹, the European Commission found that certain advantages granted by the Diputación Foral de Álava to Daewoo Electronics Manufacturing España SA (Demesa) and to Ramondín SA and Ramondín Cápsulas SA constituted State aid incompatible with the common market. Those undertakings, the Diputación Foral de Álava and the Comunidad Autónoma del País Vasco brought actions before the Court of First Instance for annulment of those decisions.

On 6 March 2002, the Court of First Instance² held that the fiscal aid granted by the province of Álava to Demesa and Ramondín was incompatible with the Community provisions on State aid.

The Court of First Instance found, in that regard, that Demesa had been granted a tax credit of 45% and that Ramondín, a company specialising in the manufacture of sealing capsules, had,

¹ Commission Decision 1999/718/EC de la Commission of 24 February 1999 concerning State aid granted by Spain to Daewoo Electronics Manufacturing España SA (Demesa) (OJ 1999 L 292, p. 1) and Commission Decision 2000/795/EC of 22 December 1999 on State aid implemented by Spain for Ramondín SA and Ramondín Cápsulas SA (OJ 2000 L 318, p. 36).

² Judgments of the Court of First Instance of 6 March 2002 in Joined Cases T-127/99, T-129/99 and T-148/99 *Diputación Foral de Álava and Others v Commission* [2002] ECR II-1275) Joined Cases T-92/00 and T-103/00 *Diputación Foral de Álava and Others v Commission* [2002] ECR II-1385). See Press Release No 21/02.

on transferring its industrial plant from Logroño (La Rioja) to Laguardia (Basque Country), been granted a tax credit of 45%, while Ramondín Cápsulas had been granted a reduction in the basis for assessment to corporation tax applicable to newly-established undertakings.

Demesa, Ramondín, Ramondín Cápsulas and the Diputación Foral de Álava brought appeals before the Court of Justice against the decisions of the Court of First Instance.

The appellants initially raised various grounds of appeal challenging the categorisation of the fiscal measures in issue as State aid. In the course of the proceedings, they withdrew a number of those grounds of appeal, in order, as they stated, to allow the Court of First Instance to adjudicate at first instance on the relevant pleas in law in the proceedings pending before it. Accordingly, they maintained only certain grounds of appeal before the Court of Justice.

The principle of protection of legitimate expectations

Demesa refers to a Commission Decision³ of May 1993 concerning a system of fiscal aid for investment in the Basque Country, which, it alleges, categorised the tax credits in respect of investments made as aid incompatible with the common market as contrary to freedom of establishment. In Demesa's submission, the problem was resolved, since the provisions necessary to adapt the regional legislation to that decision had been adopted and the Commission had marked its approval of the solution adopted. For that reason, the Commission never initiated procedures in that connection and therefore led Demesa to entertain a legitimate expectation. In that context, Spain did not notify the application of the tax credit of 45% to the Commission; that was not approved by the Court of First Instance.

The Court of Justice recalls that where aid is implemented without first being notified to the Commission, it is illegal under Article 93(3) of the Treaty (now Article 88(3) EC) and the recipient of the aid cannot therefore have a legitimate expectation that it has been granted lawfully.

Next, the Court of Justice finds that the Commission, in its decision of 1993, considered that the system of tax aid for investment in the Basque Country was incompatible with the common market, in particular because that aid did not comply with the various aid arrangements.

Consequently, Demesa could not plead exceptional circumstances capable of having lawfully founded its confidence in the lawfulness of the aid.

The categorisation as State aid incompatible with the common market of the tax credit of 45% and the reduction in the basis for assessment to corporation tax applicable to newly-established undertakings.

The Territorio Histórico de Álava contends that since the measures in question predated the conclusions of the Ecofin Council meeting on 1 December 1997 concerning taxation policy and the Commission notice of 10 December 1998 on the application of the State aid rules to measures relating to direct business taxation, they escaped the application of the provisions on State aid, as they formed part of an industrial policy.

³ Commission Decision 93/337/EEC of 10 May 1993 concerning a scheme of tax concessions for investment in the Basque country (OJ 1993 L 134, p. 25).

As this is an argument put forward for the first time in the appeal, the Court of Justice declares it inadmissible. In the action before the Court of First Instance, the Territorio Histórico de Álava attempted to justify the measures in question, but did not claim that they were excluded from the outset from the provisions of the EC Treaty on State aid.

The misuse of power imputed to the Commission

Ramondín and the Territorio Histórico de Álava have disputed the Court of First Instance's assessment of the facts concerning the misuse of power allegedly committed by the Commission. The Court of Justice rejects that challenge as inadmissible, on the ground that, unless the clear sense of the evidence was distorted, which is not alleged in this case, it does not constitute a question of law which the Court has jurisdiction to review.

In those circumstances, the Court dismisses the appeals.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: French, English, Spanish

The full text of the judgment may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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