

Case T-145/98

ADT Projekt Gesellschaft der Arbeitsgemeinschaft Deutscher
Tierzüchter mbH

v

Commission of the European Communities

(TACIS programme — Invitation to tender — Irregularities in the tendering
procedure — Action for annulment — Action for damages — Admissibility)

Judgment of the Court of First Instance (Third Chamber), 24 February 2000 II- 391

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the proceedings — Summary of the pleas in law on which the application is based — Application seeking compensation for damage caused by a Community institution*
(EC Statute of the Court of Justice, Arts 19, first para., and 46, first para.; Rules of Procedure of the Court of First Instance, Art. 44(1)(c) and (d))

2. *Actions for annulment — Jurisdiction of the Community judicature — Claims seeking the issue of directions to an institution — Inadmissible*
(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC) and Art. 176 (now Art. 233 EC))
3. *Public procurement in the European Communities — Conclusion of a contract following an invitation to tender — Allegation of attempted bribery in the course of a tendering procedure — Evidential value — Conditions*
4. *Public procurement in the European Communities — Conclusion of a contract following an invitation to tender — Discretion of the institutions — Judicial review — Limits*
5. *Public procurement in the European Communities — Conclusion of a contract following an invitation to tender — Cancellation of an evaluation procedure*
6. *Acts of the institutions — General obligation to inform addressees of the remedies available and of the conditions under which they may be exercised — No such obligation*

1. In accordance with the first paragraph of Article 19 of the Statute of the Court of Justice, applicable to the procedure before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute, and Article 44(1)(c) and (d) of the Rules of Procedure of the Court of First Instance, an application must, in particular, state the subject-matter of the proceedings and contain the form of order sought and a summary of the pleas in law on which the application is based. Irrespective of any question of terminology, those particulars must be sufficiently clear and precise to enable the defendant to prepare his defence and to enable the Court to give judgment in the action without having to seek further information. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelli-

gibly in the text of the application itself.

The pleas in law on which the application is based, within the meaning of the Rules of Procedure, need not be set out in a particular way. The pleas may be expressed in terms of their substance rather than of their legal classification provided that the application sets them out with sufficient clarity.

In order to fulfil those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged by the applicant against the institution may be identified, the reasons for which the applicant considers there to be a causal

link between the conduct in question and the damage which he claims to have suffered and the nature and extent of that damage.

(see paras 65-67, 74)

4. The Commission has a broad discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender. Review by the Community judicature must be limited to checking that the rules governing the procedure and statement of reasons are complied with, the facts are correct and there is no manifest error of assessment or misuse of powers.

2. A claim in an action for annulment that the Commission should be ordered to adopt specific measures is inadmissible. The Court of First Instance may not, in the exercise of its jurisdiction, issue directions to the Community institutions or assume the role assigned to them, since the jurisdiction of the Community judicature is limited to reviewing the legality of the contested measure.

(see paras 83-84, 87)

As the contracting authority, the Commission is not bound by the evaluation committee's proposal. The fact that the Commission did not entrust the implementation of a project to an undertaking when the evaluation committee had taken view that it had put forward the best tender therefore does not in itself amount to a breach of procedure capable of resulting in the annulment of the disputed decision by the Commission to award the contract to another undertaking which participated in the tender.

(see paras 147, 152)

3. In order for an allegation of attempted bribery in the course of a tendering procedure for a contract to be regarded as proven, it must be founded on irrefutable evidence or, at the very least, on a body of objective, relevant and consistent evidence.

(see paras 121, 128)

5. Where the issue is one of restoring equal treatment and, thereby, equality of opportunity for all the tenderers, which the Commission is bound to ensure at each stage of a tendering procedure, the Commission has good grounds for cancelling an evaluation procedure and organising a fresh one,

open to the same tenderers as those who had competed in the first evaluation procedure.

It is true that Article 24 of the General Regulations for Tenders and the Award of Service Contracts financed from PHARE/TACIS Funds, upon which the Commission bases such a decision, mentions, expressly, only the Commission's power to decide to close or cancel the tender procedure, or where appropriate to recommence it on amended terms.

Nevertheless, it follows from the broad logic of that provision and from the principle of good administration that the Commission is, *a fortiori*, entitled, in the interests of the economy and effectiveness of the administrative procedure and those of the recipient of the project, to confine itself to cancelling only the disputed evaluation procedure and to organising a fresh one.

Besides, where an administrative procedure is flawed the Commission is not required, in the absence of an express provision to the contrary, to repeat the stages of the procedure which preceded the irregularity where they have not been affected by it.

(see paras 164-167)

6. In the absence of express provisions of Community law, the Community administration and judicature cannot be placed under a general obligation to inform individuals of the remedies available or of the conditions under which they may exercise them.

(see para. 210)