

Case T-13/96

TEAM Srl

v

Commission of the European Communities

(PHARE programme — Decision to annul an invitation to tender and issue a new invitation to tender — Action for damages — Admissibility — Damage resulting from the loss suffered by a tenderer, from its loss of profit and from the harm caused to its image)

Judgment of the Court of First Instance (Fourth Chamber),
29 October 1998 II - 4076

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Procedural requirements — Statement of the subject-matter of the proceedings — Summary of the pleas in law on which the application is based — Application for compensation for damage caused by a Community institution — Application not quantifying the damage but indicating the elements of which it is composed — Admissibility — Condition*

(EC Statute of the Court of Justice, Arts 19 and 46; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))

2. *Non-contractual liability — Conditions — Unlawfulness — Damage — Sufficiently direct causal link*
(EC Treaty, Art. 215, second para.)
3. *Budget of the European Communities — Financial regulation — Provisions applicable to external aid — Procedure for the award of public contracts financed under the PHARE/TACIS programmes — Annulment of a tendering procedure — Expenses incurred by a tenderer — Right to compensation — None — Exception — Infringement of Community law*
4. *European Community public procurement contracts — Award of a contract based on tenders — Discretion of the institutions*

1. According to Article 19 of the EC Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application originating proceedings must, *inter alia*, specify the subject-matter of the dispute and contain a brief statement of the grounds on which the application is based. 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 and the damage which he claims to have suffered and the nature and extent of that damage.

Although a claim for an unspecified form of damage is not sufficiently specific and must therefore be regarded as inadmissible, the position is different where the application, whilst not containing figures quantifying the damage allegedly suffered, nevertheless clearly indicates the

evidence on the basis of which its nature and extent can be assessed and the defendant institution is consequently able to prepare its defence. In those circumstances, the absence of figures in an application cannot affect the defendant's rights of defence, provided that the applicant produces those figures in its reply, thereby enabling the defendant to discuss them in its rejoinder and at the hearing.

2. In order for the Community to incur non-contractual liability within the meaning of the second paragraph of Article 215 of the Treaty, a number of conditions must be satisfied concerning the illegality of the conduct alleged against the Community institutions, the fact of the damage and the existence of a causal link between that conduct and the damage complained of. Moreover, the damage must be a sufficiently direct consequence of the conduct complained of.

3. It is apparent from the provisions of Article 23 of the General Regulations for Tenders and the Award of Service Contracts financed from PHARE/TACIS Funds that, in the event of closure or annulment of any tender procedure by the contracting authority, the charges and expenses incurred by a tenderer in connection with his participation in a tendering procedure cannot in principle constitute damage which is capable of being remedied by an award of damages. However, the provisions in question cannot, without potentially undermining the principles of legal certainty and of protection of legitimate expectations, apply in cases where an infringement of Community law in the conduct of the tendering procedure has affected a tenderer's chances of being awarded the contract.
4. In the context of the procedure for the award of public contracts by the Communities, and in particular the award of a contract based on tenders, the contracting authority is not bound by the evaluation committee's proposal but has a broad discretion in assessing the factors to be taken into account for the purpose of deciding to award a contract.