

Case T-7/96

Francesco Perillo

v

Commission of the European Communities

(Lomé Convention — European Development Fund — Non-payment of
contract price — Commission's non-contractual liability)

Judgment of the Court of First Instance (First Chamber), 25 June 1997 II - 1063

Summary of the Judgment

- 1. International agreements — Fourth ACP-EEC Lomé Convention — Provisions concerning financial and technical cooperation — Award and implementation of public supply contracts — Action for compensation brought against the Commission — Jurisdiction of the Court of First Instance — Scope — Liability of the Community — Conditions*
(*EC Treaty, Arts 178 and 215, second para.; Fourth ACP-EEC Lomé Convention of 15 December 1989, Art. 317*)
- 2. Procedure — Costs — Costs unreasonably or vexatiously caused*
(*Rules of Procedure of the Court of First Instance, Article 87(3), second subpara.*)

1. When hearing an action for compensation brought against the Commission in connection with a supply contract financed by the European Development Fund, under the Fourth ACP-EEC Convention, the Court of First Instance has no jurisdiction to determine what rights may be available to the successful tenderer under the contract concerned with a view to securing its implementation. On the other hand, there is nothing to prevent the Court from examining the conduct of the Commission delegation in the ACP country concerned, in the light of its obligations under Article 317 of the Convention to facilitate and expedite preparation, appraisal and execution of projects and programmes in accordance with the requirements of sound administration. In that regard, even if the delegation did not fully observe those requirements, that fault does not in itself establish the Commission's liability such as to confer on the successful tenderer the right to compensation for the damage which he claims. For the Community to incur liability the applicant must prove not only the illegality of the conduct of which the institution concerned is accused and the fact of the damage but also the existence of a causal link between that conduct and the damage complained of and, moreover, the damage must be a sufficiently direct consequence of the conduct complained of.
2. Where the defendant institution's conduct has contributed to the emergence of the dispute, in that it failed to observe the requirements of sound administration, the applicant cannot be taken to task for instituting proceedings before the Court for review of that conduct and assessment of any resultant damage. In such circumstances, it is therefore appropriate to apply the second subparagraph of Article 87(3) of the Rules of Procedure under which the Court may order a party, even if successful, to pay the costs of proceedings which have been brought about by its own conduct.