

Case T-333/03

Masdar (UK) Ltd

v

Commission of the European Communities

(Non-contractual liability of the Community — TACIS programme — Sub-contracted services — Refusal to make payment — Unjust enrichment — *Negotiorum gestio* — Recovery of sum not due — Legitimate expectations — Duty of diligence)

Judgment of the Court of First Instance (Fifth Chamber), 16 November 2006 II - 4380

Summary of the Judgment

1. *Non-contractual liability — Conditions — No unlawful conduct on the part of the Community institutions — Application for recovery of sum not due based on unjust enrichment or negotiorum gestio*
(Art. 288, second para., EC)
2. *Community law — Principles — Protection of legitimate expectations*

3. *Non-contractual liability — Conditions — Sufficiently serious breach of Community law (Art. 288, second para., EC)*

1. The second paragraph of Article 288 EC on the obligation of the Community to make good any damage caused by its institutions does not restrict the rules governing the non-contractual liability of the Community solely to unlawful conduct on the part of those institutions. Thus, where an act or conduct of an institution of the Community, although lawful, causes unusual and special damage, the Community is required to make reparation.

and the applicant, any enrichment of the Commission or impoverishment of the applicant, as it arose from the contractual framework in place, cannot be described as being without cause. Similar reasoning may also be used to rule out the application of the principles of the *negotiorum gestio* civil action which, according to the general principles common to the laws of the Member States, lends itself only very exceptionally as a means to establish liability on the part of the public authorities.

However, according to the general principles common to the laws of the Member States, which are the basis of the Community's obligation to make reparation, actions for recovery of undue payment based on unjust enrichment or *negotiorum gestio* cannot succeed where the justification for the advantage gained by the enriched party or the principal derives from a contract or legal obligation. Further, in accordance with those same principles, it is generally possible to plead such actions only in the alternative, that is to say where the injured party has no other action available to obtain what it is owed.

(see paras 93, 97, 99, 100)

Thus, where there is a contractual relationship between the Commission

2. The right to rely on the principle of the protection of legitimate expectations, which is one of the fundamental principles of the Community, extends to any individual who is in a situation in which it is clear that the Community administration has, by giving him precise assurances, led him to entertain justified expectations. Irrespective of the manner in which it was communicated, precise, unconditional and consistent informa-

tion coming from authorised and reliable sources amount to such assurances. The Community may thus incur liability for infringement of that principle. Nevertheless economic operators must bear the economic risks inherent in their operations having regard to the circumstances specific to each case.

between that conduct and the damage pleaded. In order to satisfy the condition relating to the unlawfulness of the alleged conduct of the institution, case-law requires that there must be established a sufficiently serious breach of a rule of law intended to confer rights on individuals.

Such is the case, for example, with an operator whose expectations cited relate to the payment by the Commission for services provided under contract to a third party and who does not succeed in proving that the Commission gave him precise assurances undertaking to pay for those services so as to give rise to justified expectations on the part of that operator.

(see paras 119, 120)

3. In order for the Community to incur non-contractual liability under the second paragraph of Article 288 EC for the unlawful conduct of its institutions a number of conditions must be satisfied: the conduct of the institutions must be unlawful, actual damage must have been suffered and there must be a causal link

Where the conduct of the Commission complained of is failure to exercise reasonable care to ensure that, when suspending payments for services provided by the applicant under contracts concluded with that institution, the Commission did not cause harm to third parties and, if necessary, to indemnify those third parties for the damage thereby suffered, a very vague reference in the claim for damages to the general principles of non-contractual liability for fault under civil law systems and the principle of tortious liability for negligence under Anglo-Saxon systems does not show that the Commission is under such an obligation to have regard to the interests of third parties or, therefore, that there has been a sufficiently serious breach of a rule of law.

(see paras 59, 61, 140, 141)