

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

9 April 2003 *

In Case T-217/01,

Forum des migrants de l'Union européenne, having its registered office in Brussels (Belgium), represented initially by E. Degrez and subsequently by N. Crama, lawyers,

applicant,

v

Commission of the European Communities, represented by A.-M. Rouchaud-Joët and L. Parpala, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for annulment of the Commission's decision of 11 July 2001 to terminate the financial support granted to the applicant under Article A0-3040 of the Community budget,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: V. Tiili, President, P. Mengozzi and M. Vilaras, Judges,
Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2002,

gives the following

Judgment

Facts

- 1 The applicant is an international non-profit-making association promoting information and protection of the rights of migrants at the European institutions. It brings together several non-governmental organisations active in the sphere of asylum and immigration.

- 2 The main part of its budget is financed by the European Community. To that end, the applicant concluded a grant agreement with the Commission on 23 May 2000 for a maximum amount of EUR 800 000 ('the Grant Agreement'). Under Article 1 of the Grant Agreement the grant was to cover the applicant's operating costs for the year 2000. Under Article 3 the grant was calculated at EUR 800 000, equivalent to 86.65% of the total estimated costs eligible for Community financing. That sum was to be paid in three instalments.

- 3 The financial guarantee required for the payment of the first instalment of the grant was sent by the applicant to the Commission on 18 July 2000, and the first instalment of EUR 400 000 was paid by the Commission on 8 August 2000.

- 4 On 15 November 2000, the applicant sent the Commission the audit report which it had undertaken following notice by the Commission of its intention to carry out an audit.

- 5 By letter of 28 November 2000 the applicant requested payment of the second instalment of the grant, 25% of the total, and produced for that purpose the interim financial report for the first three quarters of the year 2000 ('the interim report'). Taking the view that the report was insufficient to justify the payment of the second instalment, the Commission sent a request for further information and documents to the applicant by letter of 5 December 2000. The applicant responded to that request by letter dated 11 December 2000.

- 6 Commission staff carried out an audit of the applicant's accounts on 11 and 12 December 2000.

- 7 Following that audit another request for further information was sent to the applicant on 18 December 2000.
- 8 The Commission informed the applicant of its decision to suspend payment of the grant for the year 2000 by letter of 19 January 2001. In that letter it also informed the applicant that its file would be sent to the European Anti-Fraud Office (OLAF).
- 9 By letters of 24 and 31 January 2001, the applicant complained that it had not received the audit report carried out by the Commission's staff. It also requested to be informed in writing of the Commission's complaints.
- 10 By letter of 5 February 2001, the Commission responded to the applicant, informing it that the OLAF investigation was actually under way and that it would be informed of the results of the investigation as soon as possible.
- 11 A visit to the applicant's premises was organised by the Commission on 1 March 2001, in the presence of OLAF, Commission staff and Mr Charchira, the applicant's president.
- 12 By letter of 30 April 2001, the applicant requested a meeting with the responsible Member of the Commission in order to discuss its position. On 18 May 2001, the responsible Member of the Commission informed the applicant that he had instructed his staff to carefully consider that letter.

- 13 On 3 May 2001, the competent staff of the Commission went to the applicant's head office in order to determine the eligibility of all the financial transactions in the financial year 2000. That examination was not possible because of the state of the applicant's accounts. The same day the Commission sent a letter to Mr Charchira, requesting him to produce a series of missing bank statements and to reorganise the accounting documents in chronological order of execution of the payments.
- 14 By letter of 22 May 2001 the Commission informed the applicant that the audit undertaken by its staff and OLAF was still under way.
- 15 By registered letter of 11 July 2001, the Commission informed the applicant of its decision to terminate financial support for the financial year 2000 ('the contested decision'). The audit report, on the basis of which the decision was taken, was attached to the decision.
- 16 The contested decision stated in particular:

'I refer to the various correspondence exchanged between you and Commissioner Antonio Vitorino and his staff at the Directorate-General of Justice and Home Affairs. I must inform you of the decision which has been taken in respect of the future financing of the Forum. The audits which have been undertaken by the Commission, whose conclusions have not been contradicted in any way by the investigation recently completed by the Anti-Fraud Office, have revealed not only important lacunae in terms of management but also serious irregularities. Consequently, I am obliged to put an end to the Commission's financial support under Article A0-3040 of the Community budget on the basis of Article 1 of the general conditions of the Grant Agreement for the financial year 2000. Please find attached the audit report by my staff on which this decision is based. The possible financial consequences will be notified to you shortly.'

- 17 The file of the OLAF investigation was sent to the Public Prosecutor in Brussels on 2 July 2001.

Procedure and forms of order sought

- 18 By application lodged at the Registry of the Court of First Instance on 11 September 2001 the applicant brought the present proceedings.
- 19 By a document lodged at the Registry of the Court of First Instance on 24 April 2002, KBC Bank SA requested permission to intervene in the present proceedings. That request was rejected as inadmissible by order of the President of the Fourth Chamber of the Court of First Instance on 28 June 2002.
- 20 Following the report of the Judge-Rapporteur the Court of First Instance (Fourth Chamber) decided to open the oral procedure.
- 21 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 12 December 2002.
- 22 The applicant submits that the Court of First Instance should:

— annul the contested decision;

— order the Commission to pay the costs.

23 The Commission contends that the Court of First Instance should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

Law

The first plea: infringement of Article 1(2) of the general conditions governing the Grant Agreement

Arguments of the parties

24 The applicant takes the view that the contested decision is unlawful, because it is not in accordance with Article 1(2) of the general conditions governing the Grant Agreement. By putting an end to that agreement on the ground that the investigations showed lacunae of management and serious irregularities, the Commission relied on a ground of termination which is not provided for in the

Grant Agreement. That agreement only provides for termination in two situations: the bankruptcy or liquidation of the beneficiary and the production of false or incomplete statements by the beneficiary in order to obtain the grant.

- 25 The applicant argues that its requests for payment of the final instalments of the grant are not based on false or incomplete statements. Moreover, it is neither in bankruptcy nor in liquidation nor in any similar situation. Furthermore, the contested decision does not show the existence of false statements intended to obtain the grant provided for in the Grant Agreement.
- 26 The contested decision, which terminates the financing for the year 2000 and which dates from 2001, has no purpose, given that all the expenditure, eligible or ineligible, has already been made for the year 2000. The premature termination of the Grant Agreement could only have been contemplated during the year 2000, the year covered by the agreement.
- 27 The applicant points out that neither the problems of internal organisation nor the questions of eligibility of expenditure can justify a decision to terminate the Grant Agreement.
- 28 By choosing to terminate the agreement voted by the European Parliament on behalf of the applicant, the Commission failed to comply with its duty to implement the budget under Article 272 EC et seq. The applicant takes the view that it is clear that 'cutting the subsidies' of an organisation which contributes to the public good does not satisfy the principle of good administration, and condemns that organisation to disappear, even though the Parliament and the Commission acknowledge its usefulness.

- 29 The Commission observes, first, that the Grant Agreement is not, strictly speaking, a contract but rather a unilateral decision by the Commission granting financial support to an organisation which pursues objectives of Community interest. That agreement sets out in Article 3 the general terms for the award of the grant and the expenditure eligible for Community financing.
- 30 The Commission takes the view that it was entitled to terminate the Grant Agreement without notice, in accordance with Article 1(2) of the general conditions, because the applicant made false or incomplete statements. The recommendations of Westen & Co., the company which carried out the audit at the applicant's request, clearly demonstrate the failings in the applicant's administration and their consequences for the content of the actions which it undertakes. Westen & Co. pointed out that the applicant had neither internal auditing, nor an approved bookkeeper, nor a cash-book. Doubts were also expressed with regard to the documents in support of cash expenditure.
- 31 According to the Commission, the interim financial report did not satisfy the requirements laid down by the Grant Agreement. It was a simple statement which did not correspond in any way to accounting practice. In particular, as was pointed out during the audit on 11 and 12 December 2000, the accounts produced included numerous items of expenditure not in fact incurred and which was therefore ineligible.
- 32 The cancellation of the grant must not be confused with its liquidation, that is to say the payment of the amounts provided for by the agreement for the period covered, on acceptance by the Commission of accounting documents proving the eligible expenditure. Thus by providing documentary evidence of eligible expenditure the applicant could have claimed payment of the sums stipulated by the Grant Agreement, to the full amount duly documented.

- 33 On the basis of the only supporting documents available the Commission has established the amount of the applicant's eligible expenditure. Setting off those sums against the amount of the first instalment paid in August 2000 left a balance of EUR 53 608.94 in favour of the Commission. It has issued a recovery order for that amount.
- 34 The Commission points out that the applicant does not even attempt to show that the documents provided in support of its claim for payment of the second instalment of the grant are in accordance with the requirements laid down by the Grant Agreement.
- 35 Under Article 2(2) of the Grant Agreement, the agreement only comes to an end at the date of payment of the final instalment. The Commission thus remains free to terminate the agreement under Article 1(2) of the general conditions governing the Grant Agreement until the date of the final payment.
- 36 The Commission refutes the assertion that the application of Article 1(2) of the general conditions governing the Grant Agreement requires an element of intent. According to the text, it is sufficient that the beneficiary makes a false or incomplete statement.
- 37 Finally, the Commission takes the view that the applicant has introduced a new plea in its reply which challenges the legality of the contested decision, alleging that the Commission has failed to fulfil its duty to implement the budget under Article 272 EC et seq. Consequently, the Commission takes the view that pursuant to Article 48(2) of the Rules of Procedure that plea should not be taken into account.

- 38 Alternatively, the Commission states that it has implemented the budget relating to the grant at issue in accordance with the Community financial rules in force. The fact that the budget heading at issue was entered by the Budgetary Authority does not give rise to an automatic obligation on the Commission to implement it.

Findings of the Court

- 39 As a preliminary point, it must be observed that notwithstanding a certain ambiguity in its wording the contested decision only concerns, as the Commission confirmed during the hearing in response to a question by the Court of First Instance, the grant for the year 2000.
- 40 It is clear from the Grant Agreement that Community financing for the applicant was subject to compliance by it with a certain number of conditions listed in the agreement and in the general conditions which are annexed to it.
- 41 Article 1(2) of the general conditions governing the Grant Agreement clearly states that the Commission may terminate the agreement and decide to withdraw the grant without notice or compensation if the beneficiary has made false or incomplete statements in order to obtain the grant stipulated by the agreement.
- 42 Furthermore, the terms used in the Grant Agreement and in the general conditions which are annexed to it clearly show that an interim report and a final report had to be lodged and accepted before the payment of the two final instalments of the grant.

- 43 In addition, Article 4 of the Grant Agreement provides that 25% of the total amount of the grant referred to in Article 3.1 is to be paid to the beneficiary within 60 days of the receipt and acceptance of an interim report and a claim for payment, and that the balance is to be paid within 60 days of receipt and approval of a definitive financial report and claim for final payment.
- 44 It is clear from those provisions that the Commission, before paying the balance of a grant awarded, was entitled to ensure that the conditions laid down by the Grant Agreement had been satisfied. It is also clear that the Commission could terminate the Grant Agreement if the beneficiary gave incomplete information on its operating costs in order to obtain payment of the grant.
- 45 In this case it is common ground that with the claim for payment of the second instalment of the grant, dated 28 November 2000, the applicant provided the Commission with a financial report which, far from being accepted by the Commission, gave rise to requests for further information in the light of both the fact that it was incomplete and the audits of the applicant's accounts.
- 46 It appears from the file that the audits of the applicant's accounts revealed serious irregularities whose existence is not contested by the applicant. Thus it appears from the audit report annexed to the contested decision that as regards the receipts all the documents available for the financial year 2000 showed a total amount of expenditure of BEF 197 811, of which BEF 142 555 has been estimated to be ineligible. Among those receipts there are, *inter alia*, supporting documents which are not in conformity with requirements (documents 1, 7, 8, 10, 12, 25, 26), reimbursement of expenses without any supporting documents (documents 2, 3, 4, 9) or reimbursement of unwarranted expenses (documents 17, 18, 20, 24) and receipts which were inadmissible as ineligible under the Grant Agreement (documents 5, 6, 11, 14, 15, 16, 21, 22). As regards the banking documents, all the available evidence for the first quarter of 2000 shows a total amount of expenditure of BEF 3 229 323, of which the sum of BEF 851 211.97

has been held to be ineligible. Among those pieces of evidence, some relate to reimbursement of mission expenses submitted on incomplete and unsigned forms or without supporting documents (documents 1, 2, 6, 10, 12, 16, 18), entertainment expenses which are either ineligible or unsubstantiated (documents 3, 4, 5, 13, 15), fees for non-defined services (document 7), payments of services without appropriate supporting documents (documents 8, 9, 11, 20, 21 to 25), and expenses paid in cash without explanation (document 17).

- 47 In those circumstances the Commission was entitled to terminate the financial support granted to the applicant for the year 2000, under Article 1(2) of the general conditions governing the Grant Agreement, in the light of the statements, which are at the very least incomplete, made by the applicant in order to obtain the grant at issue.
- 48 As to the applicant's argument alleging that the Commission could not adopt a decision in 2001 to cancel financial support granted for the year 2000, it must be observed that such a decision could only be made at the end of the financial year in question, and after completion of the formalities required by the verification of the eligibility of the applicant's expenses, and that within a reasonable time. By adopting the contested decision on 11 July 2001 the Commission has not committed any irregularity.
- 49 Finally, as regards the applicant's argument that the Commission was bound, in the course of its implementation of the Community budget, to pay the grant allocated to the applicant under the relevant budget heading, it must be pointed out that independently of the question whether that is a new plea, that argument is without any foundation, since the entry in the budget of an item of expenditure only requires payment of the amount provided for if the conditions for payment of that expenditure are fulfilled, which was not the case here.

- 50 In the light of the foregoing, the applicant's plea alleging that the contested decision was taken in breach of Article 1(2) of the general conditions governing the Grant Agreement must be dismissed.

The second plea: infringement of the right to a fair hearing

Arguments of the parties

- 51 The applicant takes the view that the contested decision is based on investigations which were undertaken without regard to the applicant's right to be heard. The audit report was only communicated to it in the annex to the contested decision. Moreover, that report was drafted in terms so vague that it was not possible for it to explain itself. No member of its staff was present during the investigation, in breach of the principle of the right to be heard.
- 52 Additionally, the Commission ordered several other audits (in December 2000, March 2001 and May 2001) of which neither the preliminary findings nor the results were communicated to it despite several requests by the president. The applicant states that it was not able sufficiently to safeguard its rights of defence.
- 53 The Commission takes the view that the second plea is based on the mistaken premiss that the auditors' report is the source of the contested decision. However, the 'suspension of the grant' is based on the applicant's failure to comply with the requirements stipulated by the Grant Agreement, that is, the obligation to provide accurate and complete information. Therefore the Commission had no obligation

to send the audit report to the applicant whereas the applicant, on the contrary, was obliged to provide supporting documents for the payment of the grant. However, those documents were not produced.

- 54 The Commission states that its staff regularly informed the applicant, orally or in writing, of the deficiencies and irregularities in the documents provided in support of the claim for payment of the second instalment of the grant. It makes reference, in particular, to the applicant's letter of 24 January 2001. As regards the investigation conducted by its staff on 11 and 12 December 2000, it states that Mr Charchira, the applicant's president, and Mr Van den Eede, the applicant's accountant, were present.
- 55 Furthermore, Mr Charchira was present both during the mission carried out by OLAF on 1 March 2001 and the visit of the Commission staff on 3 May 2001 which sought to determine the eligibility of the expenditure for the financial year 2000. Mr Charchira was also present at the meeting organised at his request on 20 July 2001, following the adoption of the contested decision.

Findings of the Court

- 56 According to settled case-law, observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the proceedings in question. That principle requires that the addressees of decisions which significantly affect their interests should be placed in a position in which they may effectively make known their views (Case C-32/95 P *Commission v Lisrestal and Others* [1996] ECR I-5373, paragraph 21).

- 57 In the present proceedings, it is common ground that the applicant only received the audit report when it was notified of the contested decision. Consequently, it is appropriate to consider whether, in those circumstances, the applicant was in a position to fully explain its view on the cancellation of the grant.
- 58 The first point to note in that regard is that according to settled case-law applicants for and beneficiaries of Community financial aid have an obligation to provide information and to act in good faith, and are thus required to satisfy themselves that they are submitting to the Commission reliable information (Case T-180/00 *Astipisca v Commission* [2002] ECR II-3985, paragraph 93). Accordingly, the applicant had a duty to provide supporting documents for the purpose of the payment of the grant. It is common ground that those documents were not provided.
- 59 The Commission asked the applicant for information on ineligible expenditure on several occasions. After having received the request for payment of the second instalment of the grant on 28 November 2000 the Commission sent several requests for further information and documents to the applicant, *inter alia* on 5 and 18 December 2000 and 3 May 2001. In addition, the Commission undertook several audits at the applicant's head office, in particular on 11 and 12 December 2000, 1 March 2001 and 3 May 2001. Its audits were always undertaken in the presence of one or more of the applicant's representatives, as the applicant confirmed at the hearing. On several occasions the Commission drew the applicant's attention to the fact that its accounts did not permit verification that the conditions for the payment of the outstanding amount of the grant had been satisfied. In particular, the Commission emphasised in its letter of 19 January 2001 that following the audit of December 2000 it was concerned as to the manner in which the grant was administered. By letter of 3 May 2001, the Commission informed the applicant that the verification of the eligibility of all the financial transactions made in the course of the financial year 2000 required 'the revision of the banking ledger (copies of missing bank statements) and re-filing of account documents in chronological order of the execution of the

relevant payments'. It added that during the audit of 3 May 2001 'it was observed that the banking ledger [was] incomplete (several statements were missing), and that the organisation of the account documents did not permit [the establishment] of a direct link (references and chronological order) with the bank statements relating to their payment'.

- 60 It is clear from the foregoing that the Commission offered the applicant on several occasions the chance to organise its accounts so as to include supporting documents for the payment of the balance of the grant. In addition, as it is clear from paragraph 46 above, all the banking and cash receipts available for the financial year 2000 were examined. On the basis of the available supporting documents the Commission established the amount of the applicant's eligible expenditure. Setting off those sums against the amount of the first instalment paid in August 2000 left a balance of EUR 53 608.94 in favour of the Commission. Nothing prevented the applicant from providing the appropriate supporting documents required under the Grant Agreement in order to receive the remainder of the grant or to contest the Commission's assessment of its accounts.
- 61 Therefore, in spite of the fact that the final auditors' report was only sent to the applicant when it was notified of the contested decision, the applicant had ample opportunity to present its observations on the factors taken into account by the Commission as the basis for the contested decision.
- 62 In addition, the Commission has clearly stated that the factors considered in the course of the various audits were likely to constitute irregularities for the purpose of Article 1(2) of the general conditions governing the Grant Agreement and might justify the cancellation of the financial aid at issue and the recovery of the sums already paid. It expressly mentioned the types of irregularities observed, that is, a lack of supporting evidence and the existence of ineligible expenditure.

- 63 It is clear from the foregoing that the applicant had the opportunity to make observations on all the irregularities complained of. In those circumstances, it must be held that the contested decision was taken in compliance with the principle of the right to be heard even if the audit report was only sent to the applicant when it was notified of the contested decision.
- 64 In addition, the applicant does not contest the existence of the facts referred to in the audit report. In those circumstances the applicant's complaint that the Commission infringed its right to be heard by failing to send it the audit report before the adoption of the contested decision is invalid. In so far as the applicant does not consider that the findings of the audit report were incorrect, it has no grounds for arguing that its right to be heard has been infringed.
- 65 It follows that the second plea must be dismissed.

The third plea: infringement of the duty to give reasons

Arguments of the parties

- 66 The applicant takes the view that the statement of reasons in the contested decision is inadequate as it does not clearly indicate the provision of the Grant Agreement on which it is based or the allegedly false statements which it made. It still does not know whether the contested decision terminates the Grant Agreement or whether that decision refuses to take account of certain expenditure considered not to be eligible. Consequently, it is unable to submit its views and to organise its defence.

- 67 The Commission considers that the statement of reasons in the contested decision is adequate because the applicant could not be unaware of which paragraph of Article 1 of the general conditions governing the Grant Agreement was referred to by the contested decision.

Findings of the Court

- 68 It is well established in case-law that, pursuant to Article 253 EC, the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their rights, and so as to enable the Community judicature to exercise its power of review. The extent of the obligation to state reasons depends on the nature of the measure at issue and the context in which it was adopted, as well as all of the legal rules applicable to the subject-matter in question (see Case C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, paragraphs 15 and 16; Case T-126/97 *Sonasa v Commission* [1999] ECR II-2793, paragraph 64).
- 69 In addition, according to settled case-law, when reference is made to a document annexed to a decision and therefore to its contents, the duty to give reasons for that decision may be satisfied by such a document (see, to that effect, Joined Cases T-551/93 and T-231/94 to T-234/94 *Industrias Pesqueras Campos and Others v Commission* [1996] ECR II-247, paragraphs 142 to 144).
- 70 In this case it is sufficient to observe that the contested decision makes express reference to Article 1 of the general conditions governing the Grant Agreement. In the light of the applicant's position and the content of the three paragraphs which make up that article the reference could only relate to the situation referred to in the second subparagraph of paragraph 2. Furthermore the audit report, which is annexed to the contested decision, clearly states the reasons which led the Commission to cancel the grant. In those circumstances it must be held that the

statement of reasons in the contested decision was sufficient to enable the applicant to defend its rights and for the Court of First Instance to exercise its power of review.

71 Accordingly, the third plea cannot be upheld.

The fourth plea: infringement of the principle of legitimate expectations

Arguments of the parties

72 The applicant alleges that the Grant Agreement created a debt towards it equivalent to 86.65% of its eligible expenditure. By waiting more than eight months after the submission of the interim report and more than seven months after the expiry of the period covered by the Grant Agreement, the Commission gave it justified hopes that the Grant Agreement would be honoured, given that the payment of the second instalment of the grant was supposed to take place within 60 days of the acceptance of the interim report.

73 Neither the letter of 19 January 2001 nor the various audits undertaken by the Commission was evidence sufficient to preclude the creation of legitimate expectations on the applicant's part.

74 The Commission argues that it did not provide the applicant with any precise, unconditional and consistent assurances such as to give rise to a legitimate expectation on its part.

- 75 The Commission adds that the applicant was aware of the procedure which led to the cancellation of the grant at issue.

Findings of the Court

- 76 The right to rely on the principle of protection of legitimate expectations extends to any economic operator to whom an institution has given justified hopes. However, it is settled law that the principle of protection of legitimate expectations may not be relied upon by an undertaking which has committed a manifest infringement of the rules in force (*Sonasa v Commission*, paragraphs 33 and 34).
- 77 According to the applicant, by waiting more than eight months after the lodging of the interim report and more than seven months after the expiry of the period covered by the Grant Agreement, the Commission gave the applicant justified hopes that the Grant Agreement would be honoured, given that the payment of the second instalment of the grant was supposed to take place within 60 days of acceptance of the interim report.
- 78 In that regard it must be observed, first of all, that that statement has no factual basis. The award of the grant was subject to production of supporting financial statements in accordance with Article 3 of the Grant Agreement. That provision made payment of the grant conditional upon acceptance by the Commission of the financial report. In this case, the Commission informed the applicant by letter of 19 January 2001, that is, within 60 days of the sending of the interim report on 28 November 2000, that payment of the grant had been suspended. Furthermore,

as the file shows, the Commission had already informed the applicant in December 2000 that it should provide further information in support of its claim for payment of the second instalment of the grant.

79 Next, it must be recalled that, as was held during consideration of the first plea, the applicant has not fulfilled the obligation incumbent on it under the Grant Agreement to provide documents capable of justifying payment of the Community grant at issue.

80 In those circumstance it cannot claim that the Commission gave it justified hopes as to payment of that grant.

81 In the light of the foregoing the fourth plea and therefore the present application must be dismissed.

Costs

82 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the defendant has applied for costs, the applicant must be ordered to pay the costs of the defendant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application;**
2. **Orders the applicant to pay its own costs and those of the defendant.**

Tiili

Mengozi

Vilaras

Delivered in open court in Luxembourg on 9 April 2003.

H. Jung

Registrar

V. Tiili

President