



C/2024/531

8.1.2024

**Appeal brought on 23 August 2023 by the Kingdom of Spain against the judgment of the General Court (Third Chamber) delivered on 14 June 2023 in Case T-376/21, Instituto Cervantes v Commission**

**(Case C-539/23 P)**

(C/2024/531)

*Language of the case: French*

**Parties**

*Appellant:* Kingdom of Spain (represented by: I. Herranz Elizalde, acting as Agent)

*Other parties to the proceedings:* Instituto Cervantes, European Commission

**Form of order sought**

The Kingdom of Spain claims that the Court should:

- set aside the judgment of 14 June 2023, *Instituto Cervantes v Commission* (T-376/21, EU:T:2023:331) and rule on the substance of the case by upholding the action for annulment brought against the contested decision;
- in the alternative, in the event that the Court, upholding the arguments relating to the unlawful refusal of the evidence provided, considers that it is necessary to admit that evidence in order to rule on the second ground of appeal, the Kingdom of Spain claims that, in accordance with Article 170 of the Rules of Procedure of the Court of Justice, following the setting aside of the judgment under appeal, the case should be referred back to the General Court for it to admit the evidence that was unduly refused and to rule on the substance of the case.

**Grounds of appeal and main arguments**

The Kingdom of Spain relies on four grounds of appeal.

The first ground of appeal alleges that the General Court made an error of assessment by failing to apply Article 41(2)(c) of the Charter of Fundamental Rights of the European Union correctly and by failing to find that the contested act failed to state reasons.

According to the Kingdom of Spain, the judgment under appeal wrongly rejected the plea alleging failure to state reasons for two reasons: (i) by failing to take account of the fact that the selection of the tender is based on the price/quality ratio and that, in the present case, it would have been necessary to provide a statement of reasons capable of justifying the fact that the tender submitted by the CLL-interlingua consortium ('CLL') is 1,49 points higher, which is impossible unless that reasoning includes the value attributed to the components evaluated in each sub-criterion; and (ii) by considering that a less detailed formulation of the award criteria may restrict the scope of the obligation to state reasons for Commission acts as required by the case-law of the General Court.

The second ground of appeal alleges that the General Court made an error of assessment by failing to find that the Commission had infringed the principles of legal certainty and legitimate expectations in that it did not afford the Instituto Cervantes the opportunity to prove that the documents accessible by the hypertext links had not been altered.

According to the Kingdom of Spain, the judgment under appeal is wrong to rule on the clarity of the applicable legal framework (the tender specifications approved by the Commission), without taking account of the previous and current conduct of the Commission in the application of the same clause, and without taking account of the same error committed by other tenderers.

The Kingdom of Spain also argues that the judgment under appeal is vitiated by an error in that the General Court did not take account of the fact that, in view of the lack of clarity of the applicable legal framework, caused by the Commission itself, the Commission could not merely penalise the error made by the Instituto Cervantes in excluding the documents submitted, but should have taken positive action to remedy the error which it had itself caused, for example, by allowing the Instituto Cervantes and the other tenderers concerned to correct the error made by proving that the documents accessible by the hypertext links had not been altered.

The third ground of appeal alleges that the General Court made an error of assessment in rejecting the plea alleging breach of the principle of equal treatment and the prohibition of arbitrariness in the assessment of tenders, and infringement of Article 145(c) of the Rules of Procedure of the General Court, resulting from the fact that a measure of inquiry was improperly rejected.

According to the Kingdom of Spain, the judgment under appeal is vitiated by an error in that the General Court merely assessed whether the comments were positive or negative and did not assess the cases relied on by the parties indicating that the Commission applied a different methodology in the evaluation of the tenders submitted by the Instituto Cervantes and CLL.

In addition, the judgment under appeal infringes Article 145(2)(c) of the Rules of Procedure of the General Court in so far as the latter refused the measure of inquiry proposed by the Kingdom of Spain.

The fourth ground of appeal alleges that the General Court made an error of assessment in rejecting the plea alleging infringement of the right to good administration resulting from the breach of the principles of objective impartiality and transparency.

According to the Kingdom of Spain, the judgment under appeal is vitiated by an error in that the General Court ruled out the possibility of there being a breach of the principle of objective impartiality in a tendering procedure, such as that at issue in the present case, in which there is no guarantee of an adequate separation between an evaluation based on value judgments and one based on mathematical formulae.

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