

SUMMARIES OF STATE AID JUDGMENTS AT NATIONAL LEVEL

JUDGMENTS SELECTED FROM THE 2009 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL

I- Information on the judgment

The Supreme Administrative Court ("Korkein hallinto-oikeus"), 27.9.2006, KHO 2006:68 (Dno. 3715/2/04), Ministry of Employment v. The State of Finland / City of Hämeenlinna

II- Brief description of the facts and legal issues

Parties:

The applicant: Ministry of Employment;
The defendant: City of Hämeenlinna / The State of Finland.

Factual background:

The City of Hämeenlinna applied for investment aid in order to establish a new leisure centre in cooperation with two limited liability companies. The aid was intended for a new real estate company, which was to be established for the purposes of a building project by the City of Hämeenlinna.

The amount of aid was EUR 3,300,000 for the period between 1 August 2003 and 30 June 2005. The Employment and Economic Development Centre for Häme decided to grant an initial EUR 2,000,000 for the project and undertook to grant additional support of EUR 1,300,000 at a later stage.

The Ministry of Employment then brought an action before the Supreme Administrative Court in 2003 claiming that, due to incorrect application of law, the decision to grant the aid should be revoked and the aid recipient should be ordered to reimburse the amount already received.

The Supreme Administrative Court annulled the Employment and Economic Development Centre for Häme's decision on the investment aid.

III- Summary of the Court's findings

The Supreme Administrative Court examined whether the municipal decision on granting the investment aid was based on an incorrect application of national law, in breach of Article 88(3) EC.

The Supreme Administrative Court dismissed the applicant's action to the extent that it concerned the demand for reimbursement of the amount of aid already disbursed. The Court judged that ordering reimbursement of aid which has already been granted goes beyond the Court's jurisdiction

at first instance, by virtue of the Act on the Supreme Administrative Court (Laki korkeimmasta hallinto-oikeudesta, statute number 1265/2006). However, the Court noted that a valid administrative action, such as the decision made by the municipal institution on the investment aid, may be revoked in accordance with the Administrative Judicial Procedure Act (Hallintolainkäyttölaki, statute number 586/1996) if the decision has evidently been based on an incorrect application of law which may have substantially affected the decision and which simultaneously infringes a private right or is required by reasons in the public interest. As such, since the Supreme Administrative Court revoked the Employment and Economic Development Centre's decision as a whole, the Centre has subsequently voluntarily made a decision on the recovery of the amount of aid already disbursed and the aid recipient has repaid the aid to the Centre.

The Court subsequently examined whether the national law had been applied erroneously, and thereby, also in breach of Article 88(3) EC, when deciding on the investment aid for the building of the leisure centre. The Court stated that the Employment and Economic Development Centre for Häme based its decision on the Act on the Public Employment Service (Laki julkisesta työvoimapaalvelusta, statute number 1295/2002) providing for public investments promoting employment and balanced development of regions. However, the Court found that the building of the leisure centre was substantially commercial by nature, thereby falling within the scope of industrial and commercial activity, and was not primarily launched as a project to improve employment. Therefore, the municipal institution should have applied the Aid to Business Act (formerly Laki yritystoiminnan tukemisesta, statute number 1068/2000, amended as Laki valtionavustuksesta yritystoiminnan tukemiseksi, statute number 1336/2006), instead of the Act on the Public Employment Service, as the investment aid benefited the companies operating in the construction project.

However, in order for a real estate company to be granted investment aid under the Aid to Business Act, the company must be established in a development area as defined by the Regional Development Act (Alueiden kehittämislaki, statute number 602/2002), which was not the case in respect of the City of Hämeenlinna. The Court noted that, even though the European Commission approved the notified aid schemes (Act on the Public Employment Service and the Aid to Business Act), the Commission's approval only concerned national measures complying with the conditions laid down in the national legislation.

The Court considered that, when taking into account the City's location outside a development area and the size of the undertakings benefiting from the investment aid, the aid had been granted to a project to which it could not have been granted at all. Since the investment aid at issue did not meet the requirements of either the Act on the Public Employment Service or the Aid to Business Act, the Court considered that it fell outside the scope of the aid schemes approved by the Commission and should, therefore, have been notified as a new aid measure falling within the scope of Article 87(1) EC.

The Court went to state that the prohibition to put aid measures into effect as laid down in Article 88(3) EC has direct effect (Case 6/64, *Flaminio Costa v E.N.E.L.*, [1964] ECR 1141, Case 120/73 *Gebrüder Lorenz GmbH v Federal Republic of Germany et Land de Rhénanie-Palatinat* [1973] ECR 1471) and that it is the national courts' duty to safeguard the rights of legal persons in the event that the national authorities do not comply with their duties laid down in Article 88(3) EC (Case C-354/90 *Fédération Nationale du Commerce Extérieur des Produits Alimentaires and Syndicat National des Négociants et Transformateurs de Saumon v French Republic* [1991] ECR I-5505; Case

C-17/91 *Georges Lornoy en Zonen NV and others v Belgian State* [1992] ECR I-6523; Case C-345/02, *Pearle BV and Others v Hoofdbedrijfschap Ambachten* [2004] ECR I-7139).

The Court further pointed out that in order to be able to determine whether an aid measure had been put into effect in breach of Article 88(3) EC, the national court may have to interpret the notion of aid referred to in Article 87(1) EC (Case 78-76, *Steinike & Weinlig v Federal Republic of Germany* [1977] ECR 595; Case C-345/02, *Pearle BV and Others v Hoofdbedrijfschap Ambachten* [2004] ECR I-7139). In this respect, the Court again referred to the European Court's case law and noted that for an aid measure to be qualified as State aid, all the criteria laid down in Article 87(1) EC must be fulfilled (Case C-345/02, *Pearle BV and Others v Hoofdbedrijfschap Ambachten* [2004] ECR I-7139, Case C-280/00, *Altmark Trans GmbH and Regierungspräsidium Magdeburg v Nahverkehrsgesellschaft Altmark GmbH* [2003] ECR I-7747).

Regarding those criteria, the Court held that by the contested decision, the Employment and Economic Development Centre for Häme had granted EUR 2,000,000 from State resources for an economic activity. In interpreting the European Court's case law, the Court considered that since the aid mitigates charges that a company would normally have borne under normal market conditions and reinforces the recipient undertakings' position compared to their competitors, the aid may affect trade between Member States and distort competition (Case C-372/97, *Italian Republic v Commission of the European Communities*, [2004] ECR I-3679; Case C-66/02 *Italian Republic v Commission of the European Communities*, [2005] ECR I-10901; Case C-148/04 *Unicredito Italiano SpA v Agenzia delle Entrate, Ufficio Genova 1*, [2005] ECR I-11137).

In this context, the Court also considered whether the beneficiaries could rely on legitimate expectations, but ruled that the aid recipient may only rely on legitimate expectations when the aid has been granted in accordance with Article 88(3) EC, since a diligent businessman is presumed to be able to verify whether the aid has been notified to the Commission. If an aid is granted in breach of Article 88(3) EC, the beneficiary cannot fairly presuppose that the aid is lawful (Joined cases C-183/02 P and C-187/02 P *Daewoo Electronics Manufacturing Espana SA (Demesa) and Territorio Histórico de Álava – Diputación Foral de Álava v Commission of the European Communities*, [2004] ECR I-10609). The Court therefore concluded that the principle of legitimate expectations cannot, in this instance, prevent an illegal decision from being revoked.

Following on from the above, the Court noted that the aid should have been notified to the Commission pursuant Article 88(3) EC. Therefore, the Court concluded that the decision, which also infringed the provisions of national law, had been adopted in breach of Article 88(3) EC. The incorrect application of relevant provisions of the EC Treaty resulted in aid being granted for an objective to which it could not have been granted, and therefore substantially affected the validity of the decision.

The Court ruled that the decision of the Employment and Economic Development Centre for Häme be revoked pursuant to Section 63 of the Administrative Juridical Procedure Act.

This summary has not been prepared by DG Competition or any other service of the Commission. The content of this judgment and this summary have not in any way been approved by the Commission and should not be relied upon as a statement of the Commission's or DG Competition's views.

I- Information on the judgment

The Supreme Administrative Court ("Korkein hallinto-oikeus"), 29.12.2006, Dno. 3170/2/06, Dalbo Affärsfastigheter Ab v. The State of Finland / The Province Government of Åland

II- Brief description of the facts and legal issues

Parties:

The applicant: Dalbo Affärsfastigheter Ab;

The defendant: The Province Government of Åland / The State of Finland.

Factual background:

The applicant was a company active in the construction, sale and letting of business premises in the province of Åland. It contested a decision of the Province Government of Åland, by which the Province Government granted a provincial guarantee of EUR 2,587,500 for the applicant's competitor Ålands Industrihus Ab, mainly owned by the Province Government of Åland and the City of Mariehamn, in order to support its construction project in the City of Mariehamn, the capital of the province. The applicant applied for an interim measure before the Supreme Administrative Court claiming that the decision involved State aid incompatible with the common market.

In addition, in two related (also pending) cases, the applicant applied for an interim measure regarding the Province Government of Åland's decision on converting the Province Government's receivable of EUR 1,379,998.95 from the same competitor into its share capital and the judgment of the Administrative Court of Åland allowing the decision of the City of Mariehamn to the subscribe the competitor's shares (cases 545/1/07, Dalbo Affärsfastigheter Ab v The Province Government of Åland / The State of Finland and 2206/1/07, Dalbo Affärsfastigheter Ab and Marcus Måtar v The Province Government of Åland / The State of Finland).

Since the European Commission initiated a formal investigation procedure pursuant Article 88(2) EC on the issues relating to the Province Government of Åland's subsidies to Ålands Industrihus Ab, the Supreme Administrative Court suspended the handling of the appeal until the European Commission takes its final decision.

III- Summary of the Court's findings

Legal issues:

The Supreme Administrative Court granted an interim measure to suspend the enforcement of the guarantee granted by the Province Government of Åland to the competitor of the applicant.

The Supreme Administrative Court noted that pursuant Article 88(3) EC, a national aid measure may not be put into force before it has been declared compatible with the common market. The Court did not make any further remarks in relation to the applicant's claim (described above), but has ordered the suspension of the granting of the provincial guarantee until the issue is finally resolved by the Supreme Administrative Court. In this respect, the Court referred to Section 32 of the

Administrative Judicial Procedure Act (Hallintolainkäyttölaki, statute number 586/1996) by virtue of which the appellate authority may suspend enforcement of a national authority's decision.

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JUDGMENTS SELECTED FROM THE 2006 STUDY ON THE ENFORCEMENT OF STATE AID LAW AT NATIONAL LEVEL - PART I**I- Information on the judgment**

KHO 2005:47 The Supreme Administrative Court, 1 July 2005/1657, Kokkolan Voima Oy v The State of Finland (DNo. 218/1/05)

II- Brief description of the facts and legal issues

A local energy company disputed the national allocation plan for emission trading, as regards emission allocation granted to the claimant, and demanded an adjustment thereof.

III- Summary of the Court's findings

The Supreme Administrative Court ruled that the allocation had been conducted in accordance with the existing EC and national legislation, including provisions on State aid, and dismissed the claim.

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I- Information on the judgment

KHO 2005:46 The Supreme Administrative Court, 1 July 2005/1656, Hyvinkään Lämpövoima Oy v The State of Finland (DNo. 207/1/05)

II- Brief description of the facts and legal issues

A local energy company disputed the national allocation plan for emission trading, as regards emission allocation granted to the claimant. The claimant argued that the allocation was not reasonable and, among other things, that the allocation de facto amounted to unlawful State aid to the claimant's competitor.

III- Summary of the Court's findings

Among other things, the Supreme Administrative Court found that the Commission had reviewed the emission allocation plan concerned in the light of Articles 87 and 88 EC and had submitted that a possible State aid would likely be compatible with the Common Market, if it were assessed pursuant to Article 88 (3) EC.

Consequently, the Supreme Administrative Court ruled that the allocation had been conducted in accordance with the existing EC and national legislation, dismissed the claim, and held that the claimant's request for preliminary ruling did not meet the criteria pursuant to Article 234 EC.

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I- Information on the judgment

DNo. S99/380 Helsinki Court of Appeal, 29 September 2000, Civil Engineer Reino Meriläinen, Merime-Kehitys Oy v The State of Finland / Ministry of Finance.

II- Brief description of the facts and legal issues

In this case, the Helsinki Court of Appeal upheld the earlier decision by the District Court of Helsinki that the alleged aid did not constitute State aid. According to the Helsinki Court of Appeal, it had not been shown by the appealing party that the aid, granted to a local golf club, would affect trade between Member States.

III- Summary of the Court's findings

Therefore, the Court of Appeal did not consider the case further, but ruled that the granted aid did not meet the criteria set forth for State aid pursuant to EC law.

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