



Private Enforcement of State Aid Law from a National Law Perspective

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Overview

I) INTRODUCTION

- In principle national procedural rules apply to such proceedings. However, based on general principles of Community Law, the application of national law in these circumstances is subject to two essential conditions
- a) national procedural rules applying to claims under article 88(3) EC may not be less favorable than those governing claims under domestic law (prc of equivalence)
- b) national rules may not render excessively difficult or practically impossible the exercise of the rights conferred by Community law. (prc of effectiveness).
- ECJ has held that national courts could go even further: ECJ case C-119/05 Lucchini: It is the first time where the ECJ, required the national court to set aside the principle of res judicata

II. JUDICIAL PROTECTION AGAINST ILLEGAL AID- THE OBSTACLES

- No uniform procedure at Member State level
- Denmark has specific national laws that create a right for private parties to challenge the grant of State aid as a matter of competition law before the national authorities.
- In Spain, there is a procedure under the Spanish competition Act which enables the Tribunal for the Defense of Competition, of its own initiative or upon request of the Minister of Finance, to issue advisory reports addressed to the Government in connection with particular aids or aid schemes.

II. JUDICIAL PROTECTION AGAINST ILLEGAL AID- THE OBSTACLES

- **Locus Standi**

e.x. In a judgment of 13 July 1999, the Court of Appeal of Cagliari, in Italy stated that a claimant does not have standing in national proceedings concerning the implementation of a negative Commission decision if the decision is not directly addressed to it. The Court of First Instance of Genoa, in Italy appears to have come out the opposite way on the same question when deciding an action for unfair competition brought by the competitor of a cargo ferry service that had received State aid in 1993.

II. JUDICIAL PROTECTION AGAINST ILLEGAL AID- THE OBSTACLES

- **Lack of clarity of the legal basis**

For e.x. In cases concerning damages actions against member States or beneficiaries

In one 2004 French case (France, Fontanille), an administrative court awarded monetary damages to a beneficiary who had relied on the lawfulness of the aid granted to it. The case illustrates the main obstacle to damages brought by private parties based on a violation of EC State aid law: the lack of a clear legal basis under domestic law

II. JUDICIAL PROTECTION AGAINST ILLEGAL AID- THE OBSTACLES

- Unfair competition law as a legal basis
For e.x. in cases concerning actions by competitor
against aid beneficiary**

The Austrian Supreme Court of 2002 and 2004, suggest that unfair competition law may be a legal basis, although in these specific cases the State aid issue was not dealt with specifically.

The Higher regional Court of Munich, in a judgment of 15th May 2003, refused to apply unfair competition law in a case involving a claim by an operator of a crematorium who provided its services in competition with the City of Munich which also operated a crematorium.

II. JUDICIAL PROTECTION AGAINST ILLEGAL AID- THE OBSTACLES

- ❑ Nullity of transaction as a risk leading to private litigation

Two decisions of 2003 and 2004 by the Highest German court in civil law matters (Bundesgerichtshof”) have taken the position that the transaction involving the aid is null and void.

III. THE SITUATION IN GREECE

- Speaking of Greek State Aid Law, we remark the absence of any specific legislation defining the notion of state aid and regulating the conditions and procedures for granting and controlling state aid

III. THE SITUATION IN GREECE

A) The role of Greek Courts in sanctioning illegal state aid

1) The notification obligation is safeguarded in terms of judicial protection, by establishing the tort liability of Public Administration according to Article 105 of the Introductory Law to the Greek Civil Code.

e.x. An action for damage has already been brought before the Administrative Court of First Instance of Athens against the National Drug Organisation and the Greek State for the infringement of articles 87 and 88 EC (Decision 5110/1994 Administrative Court of First Instance of Athens)

2) Another way of safeguarding the notification obligation, in terms of judicial protection may be offered to the competitor of the recipient of a non notified aid by provisions or articles 914 and 904 of the Greek Civil Code.

III. THE SITUATION IN GREECE.

B) Inspiring and problematic cases dealt with by Greek Courts

- a) the Hellenic Conseil d'Etat rejected the claim on the grounds that the provisions of article 87 EC do not have direct effect, (Decisions 1093/1987, and 3910/1988 but also 220/2002 of the Hellenic Conseil d'Etat). # qualification of state aid, the Supreme Court (Areios Pagos), decisions 194/2008 and 20/2006.
- b) Interim measures: no interim measures have so far been ordered by the Greek Courts to safeguard third parties interests. Nevertheless, there is the decision 89/2002 of the Suspensions Committee of the Hellenic Conseil d'Etat

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- c) enforcement of negative Commission decision, (decisions 1957/1999, 1916/2002, 1917/2002, 1918/2002 and 1335/2002, of the Hellenic Conseil d'Etat and decision 2156/2007 of the Administrative Court of Appeal of Athens)
- d) action for damages against the State, because an illegal state aid was granted to a competitor of a company, (the Hellenic Conseil d'Etat, decision 115/2004)

CONCLUSION

- Clarify where possible in recovery decision: body that must seek reimbursement, quantify exact amount, precisely identify the beneficiary
- Force MS to inform the Commission within certain period about method, timing of most effective recovery procedure
- Prevent NC from staying proceedings pending appeal before ECJ
- Assign Commission with an amicus curiae role in Procedural Regulation in all cases?