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JUDGMENT OF THE COURT (Grand Chamber)

23 October 2007 (\*)

(Action for annulment – Commission decision approving a project relating to border security in the Philippines – Decision adopted on the basis of Regulation (EEC) No 443/92 – Commission’s implementing powers – Limits)

In Case C-403/05,

ACTION for annulment under Article 230 EC, brought on 16 November 2005,

**European Parliament**, represented initially by R. Passos, E. Waldherr and K. Lindahl, and subsequently by R. Passos, E. Waldherr and G. Mazzini, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Commission of the European Communities**, represented by C. Tufvesson and A. Bordes, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by:

**Kingdom of Spain**, represented by J.M. Rodríguez Cárcamo, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and A. Tizzano, Presidents of Chambers, R. Schintgen (Rapporteur), J.N. Cunha Rodrigues, R. Silva de Lapuerta, J.-C. Bonichot, T. von Danwitz, A. Arabadjiev and C. Toader, Judges,

Advocate General: J. Kokott,

Registrar: M.-A. Gaudissart, Head of Unit,

having regard to the written procedure and further to the hearing on 20 March 2007,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2007,

gives the following

**Judgment**

- 1 By its application, the European Parliament seeks annulment of the decision of the Commission of the European Communities approving a project relating to the security of the borders of the Republic of the Philippines to be financed by budget line 19 10 02 in the general budget of the European Communities (Philippines Border Management Project, No ASIA/2004/016-924) (not published in the *Official Journal of the European Union*, 'the contested decision'), adopted in implementation of Council Regulation (EEC) No 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (OJ 1992 L 52, p. 1), as amended by Council Regulation (EC) No 807/2003 of 14 April 2003 adapting to Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in Council instruments adopted in accordance with the consultation procedure (unanimity) (OJ 2003 L 122, p. 36; 'Regulation No 443/92'), to the extent that the Commission exceeded the implementing powers conferred upon it by that regulation.
- 2 The contested decision is the outcome of a financing proposal submitted by the Commission to a meeting held on 17 and 18 November 2004 of the regulatory committee provided for by Regulation No 443/92. Since, at that meeting, some Member States had expressed reservations as to the legal basis chosen, the proposal was made subject to the written procedure, which was concluded on 7 December 2004 with a favourable opinion given by that committee by qualified majority.
- 3 The contested decision was adopted on 21 December 2004.

### **Legal context**

#### *Regulation No 443/92*

- 4 Article 1 of Regulation No 443/92 provides:  

'The Community shall continue and broaden Community cooperation with the Asian and Latin American developing countries, hereinafter referred to as 'the ALA developing countries', which are not signatories to the Lomé Convention and do not benefit from the Community's cooperation policy with Mediterranean third countries. This cooperation, which shall be in addition to assistance from the Member States, shall involve financial and technical development assistance and economic cooperation. In this connection, the Community shall attach the utmost importance to the promotion of human rights, support for the process of democratisation, good governance, environmental protection, trade liberalisation and strengthening the cultural dimension, by means of an increasing dialogue on political, economic and social issues conducted in the mutual interest.'
- 5 Under the first paragraph of Article 2 of Regulation No 443/92, '[t]he aim of Community development and cooperation policies shall be human development.'
- 6 Article 4 of Regulation No 443/92 provides:  

'Financial and technical assistance shall be targeted primarily on the poorest sections of the population and the poorest countries in the two regions, through the implementation of programmes and projects in whatever sectors Community aid is likely to play an important role. In particular, measures shall be implemented in areas where domestic, economic and human resources are difficult to mobilise, but which are of strategic importance either for the development of the countries concerned or for the international community as a whole.'

7 Article 5 of Regulation No 443/92 states:

'Financial and technical assistance shall give priority to developing the rural sector and improving the level of food security. ...

Protection of the environment and natural resources, and sustainable development, shall be long-term priorities. ...

...

Special attention must be given to measures to combat drugs. Community cooperation with the ALA developing countries to promote the fight against drugs shall be stepped up on the basis of a dialogue within the more general context of the economic development of the producer countries and their cooperation with the European Community. This cooperation shall cover measures involving both humanitarian and development aid.

The human dimension of development shall be present in all areas of action, given the objective of this form of cooperation.

The cultural dimension of development must remain a constant objective in all activities and programmes with which the Community is associated.

Aid should accordingly be allocated, inter alia, to specific projects for the spread of democracy, good governance and human rights.

Furthermore, care should be taken to ensure not only that the changes brought in by the projects and programmes do not have any detrimental effects on the position and role of women, but that, on the contrary, specific measures, or even projects, are adopted in order to increase their active participation, on an equal footing, in the productive process and its results, and in social activities and decision-making.

Special attention shall also be given to child protection.

Ethnic minorities warrant special attention through measures designed to improve their living conditions while respecting their cultural identity.

Special attention shall be given to demographic questions, in particular those relating to population growth.

Community aid for development projects and programmes must take account of macro-economic and sectoral problems and favour operations which have an effect on the structural make-up of the economy, on the development of sectoral policies and on the development of institutions. ...

Support for the national institutions of the developing countries, so as to strengthen their capacity to manage development policies and projects, represents an area of action likely to assume a strategic role in the development process. Maintaining a suitable dialogue between the developing countries and the Community is an important element in this context.

...'

8 Article 6 of Regulation No 443/92 is in the following terms:

'Financial and technical assistance shall be extended to the relatively more advanced ALA developing countries, in particular in the following specific fields and cases:

- the spread of democracy and human rights,

- prevention of natural disasters and reconstruction in their wake,
- the fight against drugs,
- the environment and natural resources,
- strengthening institutions, especially public authorities,
- pilot schemes to help particularly under privileged strata of the population especially in large conurbations,
- regional cooperation and integration, with special attention being paid to regional cooperation and integration schemes allowing partnerships to be formed between poor and relatively advanced countries.'

9 Article 7 of Regulation No 443/92 provides:

'Economic cooperation, devised to serve the mutual interests of the Community and its partner countries, shall contribute to the development of the ALA developing countries by helping them build up their institutional capacity so as to create an environment more favourable to investment and development and make the most of the prospects opened up by the growth of international trade, including the European single market, and by enhancing the role of businessmen, technology and know-how from all the Member States, particularly in the private sector and in small and medium-sized undertakings.

Economic cooperation shall be aimed in particular at establishing a climate of confidence by supporting countries which pursue macro-economic and structural policies that are open to trade and investment and conducive to technology transfer, in particular by protecting intellectual property rights.'

10 Under Article 8 of Regulation No 443/92, economic cooperation is to include the following three sectors:

1. Improvement of scientific and technological potential and of the economic, social and cultural environment in general by means of training schemes and the transfer of know-how. ...
2. Improvement of the institutional structure, which must go hand in hand with a closer dialogue with partners, in order to make the economic, legislative, administrative and social climate more conducive to development;
3. Support for undertakings, for example by means of trade promotion, training and technical assistance schemes, by establishing contacts between undertakings and by schemes to facilitate cooperation between them.

...'

11 Article 15 of Regulation No 443/92 is in the following terms:

1. The Commission shall administer the financial and technical assistance and the economic cooperation.
2. The Commission shall be assisted by a committee.
3. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at one month.

...'

*The contested decision*

- 12 The contested decision, in English, contains two articles.
- 13 Article 1(1) approves the Philippines Border Management Project ('the project'), as set out in the annex to the decision ('the descriptive annex'). In Article 1(2), the Community's maximum contribution is set at EUR 4 900 000, to be financed from budget line 19 10 02 of the Community's general budget for 2004.
- 14 Article 2 of the contested decision deals with implementing arrangements and the scheduling of payments.
- 15 Under point 3.2 of the descriptive annex, entitled 'Expected results and main activities', the project is intended to assist the Philippines authorities to achieve the following results:
  - '1. Promotion of best international border management standards through review/validation of ongoing national policies and practices.
  2. Intelligence information is efficiently shared among agencies involved in BM [border management] through a linked and secured IT system ... (analysing and processing the information).
  3. Circulation of false identity documents is prevented through increased capacity to detect false documents and public awareness on the importance of holding correct identity documents.
  4. Capacity of Border Management senior and technical staff is increased through appropriate training activities (gender and culturally-sensitive).'
- 16 Referring to the General Affairs Council's conclusions of 22 July 2002, Recital 1 of the contested decision emphasises the European Union's role in assisting third countries in implementing their obligations under United Nations Security Council Resolution 1373 (2001) of 28 September 2001 ('Resolution 1373').
- 17 Recital 2 of the contested decision mentions the Philippines Country Strategy Paper for the period 2002-2006 and a revised National Indicative Programme for the period 2002-2004 for that State, which gives priority to actions aimed at combating terrorism. It states that the Commission aims to focus its support in the field of counter-terrorism on border management, in particular immigration, and the fight against the financing of terrorism.
- 18 According to Recital 3 of the contested decision, 'the overall objective of the proposed project is to assist in the implementation of the UNSCR 1373 (2001) in the fight against terrorism and international crime'.
- 19 In the terms of Recital 4 of the contested decision, '[t]he purpose of the project is to contribute to the efforts of the Government of the Republic of the Philippines to enhance border security and management in the Philippines in accordance with international norms and protocols'.

### **Forms of order sought by the parties**

- 20 The Parliament claims that the Court should:
- annul the contested decision;
  - order the Commission to pay the costs.
- 21 The Commission contends that the Court should:
- dismiss the action as inadmissible or, in any event, as unfounded;
  - make an appropriate order as to costs.
- 22 By order of the President of the Court of 28 March 2006, the Kingdom of Spain was granted leave to intervene in the present case in support of the form of order sought by the Commission.

### **The admissibility of the action**

#### *Arguments of the parties*

- 23 The Commission submits that the Parliament's action was brought after the expiry of the prescribed time-limit. It contends that the Parliament in fact became aware of the contested decision before the official communication dated 9 September 2005, since it had been notified of that decision informally by letter sent on 12 May 2005 by the delegation in Manila to the secretariat of the Parliament's Committee on Development, as well as through an exchange of letters dated 19 July 2005 between members of the two institutions' legal services.
- 24 The Parliament replies that the time-limit for bringing the action for annulment of the contested decision, which was not published and not addressed to it, started to run only from the day when it had full knowledge of it, that is to say from when it officially received the letter containing a copy of that decision, that is 9 September 2005. The Parliament submits that the earlier letters were not sufficiently precise to enable it to acquire knowledge of the precise content and reasons for the contested decision and an exchange of informal letters between colleagues of the two institutions cannot be valid notification of the contested decision.
- 25 The Kingdom of Spain makes no submissions on the action's admissibility.

#### *Findings of the Court*

- 26 Under the fifth paragraph of Article 230 EC, the proceedings provided for in that article are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be.
- 27 Under Article 254(3) EC, directives and decisions other than those which, by virtue of Article 254(1) and (2), are to be published in the *Official Journal of the European Union*, are to be notified to those to whom they are addressed and are to take effect upon such notification.

- 28 It is common ground that the contested decision was neither published in the Official Journal nor notified to the Parliament as an addressee, with the result that the time-limit of two months could start to run with regard to that institution only on the day that the contested decision came to its full knowledge.
- 29 It is necessary therefore to determine on what date the Parliament acquired precise knowledge of the content of the contested decision and of the reasons on which it was based.
- 30 First of all, it should be noted that it is clear from the contents of the file that the Commission forwarded to the Parliament, on 14 December 2004, the brief minutes of the meeting of 17 and 18 November 2004 of the regulatory committee provided for by Regulation No 443/92, from which it is clear that the committee's opinion on the Commission's Proposal concerning the project was deferred.
- 31 By written questions of 8 and 10 February 2005, two members of the Parliament sought more information about the outcome of that proposal.
- 32 In its letters in reply of 14 March and 22 April 2005, the Commission confined itself to rehearsing the procedure by which that proposal had been adopted, stating that Regulation No 443/92 was the legal basis of the contested decision and reproducing Recitals 3 and 4 of the decision. In its letter of 22 April 2005, the Commission also referred to the Country Strategy Paper for the Philippines for the period 2002-2006. Neither of its replies contained, however, a copy of the contested decision or descriptive annex.
- 33 On 22 May 2005, the Parliament, having still not gained precise knowledge of the content of, or reasons for, the contested decision, requested, through its Committee on Development, a copy of that decision from the Commission.
- 34 It was only following a reminder of 26 August 2005 that the Parliament finally received, on 9 September 2005, a copy of the contested decision, undated and unsigned, and of the descriptive annex.
- 35 It should be added that while the Commission asserts that it replied to the Parliament's request by letter of 22 June 2005, it has, however, adduced no evidence that the Parliament actually received a copy of the contested decision on that date. The letters and informal exchanges between institutions to which the Commission refers cannot be regarded as decisive in that context. In addition, the Commission has been unable to refute the Parliament's assertion that the information derived from those informal contacts was not sufficiently precise to enable it to acquire full knowledge of the content of, and reasons for, the contested decision.
- 36 In view of all the foregoing, the Court finds that the Parliament acquired precise knowledge of the content of the contested decision and of the reasons on which it was based only when the Commission sent the full text of that decision on 9 September 2005.
- 37 Consequently, the time-limit for the Parliament to bring its action started to run on 10 September 2005 and expired on 20 November 2005, including the extension on account of distance.
- 38 Since the application in this case was lodged on 16 November 2005, the action was brought within the prescribed time-limit.

## **The action**

### *Arguments of the parties*

- 39 In support of its action, the Parliament raises a single plea in law alleging that the Commission had no power to adopt the contested decision. Since the reasons for that decision are clearly based on considerations connected with the fight against terrorism and international crime, it goes beyond the framework set out by Regulation No 443/92 which serves as its basis and, more particularly, Articles 7 and 8 of that regulation relating to economic cooperation.
- 40 The scope of Regulation No 443/92 cannot be extended by broad interpretation, since including the fight against terrorism and international crime in the scope of that regulation presupposes an amendment to its wording. The Parliament contends, in that regard, that the Commission had submitted a proposal to include in that regulation, among other things, the fight against terrorism, but that the attempt had failed.
- 41 Even though the Parliament accepts that strengthening institutional capacity is part of development cooperation, it submits that international security and the fight against terrorism cannot be an integral part of strengthening institutions under Regulation No 443/92. Support for institutions does not constitute, in itself, an objective, but at the most a tool for reducing poverty and thus attaining the objectives of the policy on development cooperation. In any event, the fight against terrorism does not come within the Community's general powers.
- 42 In the alternative, the Parliament submits, in its capacity as budgetary authority, that the contested decision must be annulled because the Commission had no power to commit the expenditure necessary to fund the project in question. First, the budget was committed without a basic instrument authorising that expenditure. Second, it is an improper use of credits in respect of development cooperation in breach of the principle of budgetary specification.
- 43 The Commission contends, on the other hand, that the absence of express reference to the fight against terrorism and international crime in Regulation No 443/92 cannot taint the contested decision with illegality such as that alleged by the Parliament. The possible inadequacy of the statement of reasons for that decision does not affect its validity. The Commission submits that a distinction is to be drawn between the objective stated by the contested decision, which is to assist in the implementation of Resolution 1373, and its specific purpose, which is to promote, by assisting in border management, the strengthening of institutions, which is expressly provided for in Articles 5 and 6 of Regulation No 443/92.
- 44 The objective pursued by the project implemented by the contested decision is not confined to the fight against terrorism alone, but is intended also to combat the trafficking in drugs and human beings. Therefore, the project has a positive impact in the field of internal security, particularly in the tourism sector. The Commission adds that the project helps to create conditions more conducive to economic development and investment and that it therefore also comes within the framework of Articles 7 and 8 of Regulation No 443/92.
- 45 Relying on the general framework and evolution of development policy over recent years the Commission then explains that the strengthening of institutions, which is one of the horizontal aspects essential to sustainable development, henceforth forms an integral part of Community cooperation policies. That follows also from a reading of Articles 177 EC and 181a EC, in which the terms employed show that assistance may be given in fields not expressly referred to, such as, in particular, mine-clearance or the decommissioning of light weapons.

- 46 Whilst recognising that it has no independent powers in respect of anti-terrorism, the Commission points out that Regulation No 443/92 is a financial instrument at the service of a global policy, so that, in determining its scope, it is appropriate to show a certain flexibility and to take account, in particular, of the general policy framework.
- 47 In the alternative, the Commission submits that, having regard to the legal basis of Regulation No 443/92, namely Article 235 of the EC Treaty (now Article 308 EC), that regulation must be broadly construed.
- 48 The Kingdom of Spain submits that the Commission's implementing powers are to be determined taking into account the broad discretion conferred on the Community institutions by the Court's case-law in fields necessitating complex economic analyses. It submits, more specifically, that the contested decision comes within the scope of Regulation No 443/92 since, first, it forms part of the system for strengthening the institutions of the recipient State, a sector expressly mentioned in Article 8 of that regulation, and, second, it contributes, by creating a certain degree of internal security, to the economic and social development of that State. That conclusion is supported by the fact that Regulation No 443/92 sets out among its objectives actions connected with improving security, such as the fight against drugs. By setting out the objectives pursued in a non-exhaustive manner, that regulation can, by means of a flexible interpretation, be adapted to the developments in international society, by including in its objectives the fight against terrorism and compliance with the obligations resulting from Resolution 1373, objectives which, in addition, are not incompatible with actions under the Community policy of development and economic cooperation.

*Findings of the Court*

- 49 It should borne in mind, at the outset, that, in accordance with the second subparagraph of Article 7(1) EC, the Community institutions may act only within the limits of the powers conferred upon them by the Treaty (see, to that effect, Case C-93/00 *Parliament v Council* [2001] ECR I-10119, paragraph 39, and Case C-110/03 *Belgium v Commission* [2005] ECR I-2801, paragraph 57).
- 50 Under the third indent of Article 202 EC, in order to ensure that the objectives set out in the Treaty are attained in accordance with its provisions, the Council of the European Union is to confer on the Commission, in the acts which the Council adopts, powers for the implementation of the rules which it lays down. The Council may impose certain requirements in respect of the exercise of those powers and may also reserve the right, in specific cases, to exercise directly implementing powers itself.
- 51 Within the framework of those powers, the limits of which must be determined by reference amongst other things to the essential general aims of the legislation in question, the Commission is authorised to adopt all the measures which are necessary or appropriate for the implementation of the basic legislation, provided that they are not contrary to it (see, to that effect, Case C-478/93 *Netherlands v Commission* [1995] ECR I-3081, paragraphs 30 and 31, and Case C-159/96 *Portugal v Commission* [1998] ECR I-7379, paragraphs 40 and 41).
- 52 In the present case, the Council conferred on the Commission, in the very terms of Article 15 of Regulation No 443/92, the power to administer the financial and technical assistance as well as the economic cooperation with the ALA developing countries. It is under that implementing power that the Commission adopted the contested decision.
- 53 As is clear from the recitals of the contested decision, and likewise from the descriptive annex, the project must contribute to the efforts of the Republic of the

Philippines efforts to enhance the security and management of its borders in accordance with Resolution 1373, which seeks to combat terrorism and international crime.

- 54 To that end, the project is designed to implement concrete measures in four fields concerned with border management, namely optimising management methods, creating a system of information technology, checking identity papers and training the staff concerned.
- 55 In order to rule upon the Parliament's action, it is appropriate, therefore, to determine whether an objective such as that pursued by the contested decision, relating to the fight against terrorism and international crime, comes within the scope of Regulation No 443/92.
- 56 Admittedly, Articles 177 EC to 181 EC, inserted by the EU Treaty and dealing with cooperation with developing countries, refer not only to the sustainable economic and social development of those countries, their smooth and gradual integration into the world economy and the campaign against poverty, but also to the development and consolidation of democracy and the rule of law, as well as to respect for human rights and fundamental freedoms, whilst complying fully with their commitments in the context of the United Nations and other international organisations.
- 57 In addition, it follows from the Joint statement of the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy entitled 'The European Consensus' (OJ 2006, C 46, p. 1) that there can be no sustainable development and eradication of poverty without peace and security and that the pursuit of the objectives of the Community's new development policy necessarily proceed via the promotion of democracy and respect for human rights.
- 58 The Community legislature thus decided, in repealing Regulation No 443/92 by Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation (OJ 2006 L 378, p. 41), to strengthen the development policy framework in order to improve its effectiveness. In that respect, Regulation (EC) No 1717/2006 of the European Parliament and of the Council of 15 November 2006 establishing an Instrument for Stability (OJ 2006 L 327, p. 1) establishes Community assistance, complementary to that provided for under external assistance, by contributing, among other things, to preventing the fragility of the States concerned. Under the sixth recital in the preamble to that regulation, account must be taken of the European Council Declaration on Combating Terrorism of 25 March 2004, in which it called for counter-terrorist objectives to be integrated into external assistance programmes. Under Article 4(1)(a) of that regulation the Commission was thenceforth empowered to administer technical and financial assistance in the field of strengthening the capacity of authorities involved in the fight against terrorism and organised crime, by giving priority, inter alia, to supporting measures concerning the development and strengthening of counter-terrorism legislation, of customs law and of immigration law.
- 59 The fact remains that it is common ground that Regulation No 443/92 contains no express reference to the fight against terrorism and international crime. In that same respect, it must be pointed out that the proposal for amendment of Regulation No 443/92, presented by the Commission in 2002 (COM 2002/0340 final of 2 July 2002) and intended to insert in the scope of that regulation, among other things, the fight against terrorism, failed.
- 60 The Commission submits, none the less, that the contested decision could validly be adopted on the basis of Regulation No 443/92 since the project contributes directly

to strengthening the capacity of the institutions of the country concerned and that that area of action is expressly mentioned both in Articles 5 and 6 of that regulation, relating to financial and technical assistance, and in Articles 7 and 8 of the same regulation, relating to economic cooperation.

- 61 In that regard, so far as concerns financial and technical assistance, it follows from Article 5 of Regulation No 443/92 that support for the national institutions of developing countries does not constitute an end in itself, but an instrument for strengthening their capacity to administer development policies and projects in the fields on which that regulation confers particular importance, namely, among others, the rural sector, food security, environmental protection, the fight against drugs, the cultural dimension of development, the protection of children and demographic questions. The strengthening of the administrative capacities of the authorities responsible for border management in order to fight against terrorism and international crime cannot be regarded as coming within one of the areas of action referred to in that regulation.
- 62 As regards Article 6 of Regulation No 443/92, inasmuch as it is intended to extend to the relatively more advanced developing countries the financial and technical assistance referred to in Article 5 in specific fields and cases, in particular the institutional strengthening of the public authorities, it follows from the third sentence of Article 1 of that regulation that such assistance must contribute to supporting the objectives set out in that provision. Consequently, for the financial and technical assistance thereby provided for, the strengthening of institutions referred to in Article 6 of Regulation No 443/92 also does not constitute an end in itself.
- 63 Nor can the Commission found an argument on the fact that the project is designed to increase the internal stability and security of the Republic of the Philippines.
- 64 It is true that border management is, as a rule, likely to increase the internal stability and security of the country concerned by leading to an improvement in the controls so far as concerns, in particular, the trafficking in arms, drugs and human beings, activities which undeniably constitute serious obstacles to economic and social development. The fact remains, however, that not only does Regulation No 443/92 make no reference to internal stability and security, but also that there is no reason to conclude that those objectives are impliedly covered by that regulation, which, in the seventh recital in its preamble, sets out, among the new priorities, the environment, the human dimension of development and economic cooperation in a spirit of mutual interest.
- 65 Contrary to the Commission's assertions, it matters little that decisions analogous to the contested decision were adopted on the basis of Regulation No 443/92, or that the regulation includes matters, such as the fight against drugs, the impact of which on the internal stability and security of the country concerned is comparable to that of the fight against terrorism and international crime. First, the Commission's implementing powers must be evaluated by considering each decision's characteristics, which, in this case, cannot justify the adoption of the contested decision on the basis of Articles 5 and 6 of Regulation No 443/92 and, second, unlike the fight against terrorism and international crime, the fight against drugs is expressly referred to in Articles 5 and 6 of that regulation.
- 66 So far as concerns the institutional strengthening in respect of economic cooperation relied upon by the Commission, it follows from Articles 7 and 8 of Regulation No 443/92 that the economic cooperation must contribute to making the economic, legislative, administrative and social environment more conducive to investment and development. Since all cooperation, by the very fact of the funding to be applied, is, as a rule, likely to have an impact on the economic situation of the country concerned, a project of institutional strengthening must, to be eligible as economic cooperation, be conspicuous for the existence of a direct connection with its aim of strengthening investment and development.

- 67 However, in this case, as the Advocate General pointed out in points 101 and 102 of her Opinion, there is nothing in the contested decision to indicate how the objective pursued by the project could contribute effectively to making the environment more conducive to investment and economic development.
- 68 It follows from all the foregoing that the contested decision pursues an objective concerning the fight against terrorism and international crime which falls outside the framework of the development cooperation policy pursued by Regulation No 443/92, so that the Commission exceeded the implementing powers conferred by the Council in Article 15 of that regulation.
- 69 The contested decision must, therefore, be annulled on that ground.
- 70 In those circumstances, there is no need to examine the Parliament's alternative argument, advanced in its reply, concerning the Commission's lack of power to commit the expenditure necessary to fund the project.

### **Costs**

- 71 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has applied for costs against the Commission which has been unsuccessful, the latter must be ordered to pay the costs. In accordance with Article 69(4) of those Rules, the Kingdom of Spain must bear its own costs.

On those grounds, the Court (Grand Chamber) hereby:

- 1. Annuls the decision of the Commission of the European Communities approving a project relating to border security in the Republic of the Philippines to be financed by budget line 19 10 02 in the general budget of the European Communities (Philippines Border Management Project, No ASIA/2004/016-924);**
- 2. Orders the Commission of the European Communities to pay the costs;**
- 3. Orders the Kingdom of Spain to bear its own costs.**

[Signatures]