

In Case 25/62

PLAUMANN & Co., Hamburg, represented by Harald Dirges, advocate of the Cologne Bar, with an address for service in Luxembourg at the offices of Mr Audry, Federation des Commerçants, 8 Avenue de l'Arsenal,

applicant,

v

COMMISSION OF THE EUROPEAN [UNION], represented by Hubert Ehring, Legal Adviser to the European Executives, acting as Agent, assisted by Ernst Steindorff, Professor of Law at the University of Tübingen, with an address for service in Luxembourg at the offices of Henri Manzanares, Secretary of the Legal Service of the European Executives, 2 Place de Metz,

defendant,

Application for:

- annulment of the Decision No SIII 03079 of the Commission of 22 May 1962, refusing to authorize the Federal Republic of Germany to suspend in part customs duties applicable to 'mandarins and clementines, fresh' imported from third countries;
- payment of 39 414.01 DM compensation;

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Lecourt (Presidents of Chambers), Ch. L. Hammes, R. Rossi (Rapporteur), A. Trabucchi and W. Strauß, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

Grounds of judgment

I - On the application for annulment

Admissibility

Under [the fourth paragraph of Article 263 TFEU] 'any natural or legal person may ... institute proceedings against a decision ... which, although in the form of ... a decision addressed to another person, is of direct and individual concern to the former'. The defendant contends that the words 'other person' in this paragraph do not refer to Member States in their capacity as sovereign authorities and that individuals may not therefore bring an action for annulment against the decisions of the Commission or of the Council addressed to Member States.

However [the fourth paragraph of Article 263 TFEU] does allow an individual to bring an action against decisions addressed to 'another person' which are of direct and individual concern to the former, but this Article neither defines nor limits the scope of these words. The words and the natural meaning of this provision justify the broadest interpretation. Moreover provisions of the Treaty regarding the right of interested parties to bring an action must not be interpreted restrictively. Therefore, the Treaty being silent on the point, a limitation in this respect may not be presumed.

It follows that the defendant's argument cannot be regarded as well founded.

The defendant further contends that the contested decision is by its very nature a regulation in the form of an individual decision and therefore action against it is no more available to individuals than in the case of legislative measures of general application.

It follows however from [Articles 288 and 297(1) and the second and third paragraphs of (2) TFEU] that decisions are characterized by the limited number of persons to whom they are addressed. In order to determine whether or not a measure constitutes a decision one must enquire whether that measure concerns specific persons. The contested Decision was addressed to the government of the Federal Republic of Germany and refuses to grant it authorization for the partial suspension of customs duties on certain products imported from third countries. Therefore the contested measure must be regarded as a decision referring to a particular person and binding that person alone.

Under [the fourth paragraph of Article 263 TFEU] private individuals may

institute proceedings for annulment against decisions which, although addressed to another person, are of direct and individual concern to them, but in the present case the defendant denies that the contested decision is of direct and individual concern to the applicant.

It is appropriate in the first place to examine whether the second requirement of admissibility is fulfilled because, if the applicant is not individually concerned by the decision, it becomes unnecessary to enquire whether he is directly concerned.

Persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed. In the present case the applicant is affected by the disputed Decision as an importer of clementines, that is to say, by reason of a commercial activity which may at any time be practised by any person and is not therefore such as to distinguish the applicant in relation to the contested Decision as in the case of the addressee.

For these reasons the present action for annulment must be declared inadmissible.

II -On the action for compensation

Admissibility

The defendant maintains that the conclusions in the present action, having been formulated for the first time in the reply, were submitted out of time and are not therefore admissible under Article 38(1)(d) of the Rules of Procedure.

The applicant has however included in the application a request for a declaration with regard to the damage which may result from the contested Decision. In the course of the written and oral procedures, the applicant specified the subject matter of this request and set a value on the amount of the damage. Therefore the conclusions of the action for compensation may be considered as a permissible amplification of those contained in the application. They are therefore admissible under the above-mentioned Article 38(1)(d).

Substance

The conclusions of the applicant ask for payment of compensation equivalent to the customs duties and turnover tax which the applicant had to pay in consequence of the Decision against which it has at the same time instituted proceedings for annulment. In these circumstances it must be declared that the damage allegedly suffered by the applicant issues from this Decision and that the action for compensation in fact seeks to set aside the legal effects on the applicant of the contested Decision.

In the present case the contested Decision has not been annulled. An administrative measure which has not been annulled cannot of itself constitute a wrongful act on the part of the administration inflicting damage upon those whom it affects. The latter cannot therefore claim damages by reason of that measure. The Court cannot by way of an action for compensation take steps which would nullify the legal effects of a decision which, as stated, has not been annulled.

The action brought by the applicant must therefore be dismissed as unfounded.

III -Costs

Under the terms of Article 69(2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

The applicant having failed in its action must be ordered to bear the costs.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to [the fourth paragraph of Article 263 TFEU], [Articles 266, 288, 297(1) and the second and third paragraphs of (2) and the second paragraph of Article 340 TFEU];

Having regard to the Protocol on the Statute of the Court of Justice annexed to the Treaty [on the Functioning of] the European [Union];

Having regard to the Rules of Procedure of the Court of Justice of the European [Union], especially Article 69(2);

THE COURT

hereby:

- 1. Dismisses the application for annulment as inadmissible;**
- 2. Dismisses the claim for compensation as unfounded;**
- 3. Orders the applicant to pay the costs.**

Donner

Delvaux

Lecourt

Hammes

Rossi
Strauß.

Trabucchi

Delivered in open court in Luxembourg on 15 July 1963.

A. Van Routte

A.M. Donner

Registrar

President