ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
29 November 1993 *

In Case T-56/92,

Casper Koelman, resident in Monaco (Principality of Monaco), represented by Michel Molitor, of the Luxembourg Bar, with an address for service at his Chambers, 14A Rue des Bains,

applicant,

v

Commission of the European Communities, represented by Berend Jan Drijber, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for declarations of principle and a declaration of annulment, for an award of damages and for a declaration that the Commission has failed to act,

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: R. Schintgen, President, H. Kirschner, B. Vesterdorf, K. Lenaerts and C. W. Bellamy, Judges,

Registrar: H. Jung,

makes the following

* Language of the case: Dutch.

Order

Facts and procedure

1 On 6 August 1992, the applicant in person lodged an application at the Court Registry which did not include the name of a lawyer and which he had signed himself. The Registrar refused to register the application on the ground that it had not been signed by a lawyer, contrary to the second paragraph of Article 17, of the Protocol on the Statute (EEC) of the Court of Justice (hereafter 'the Statute of the Court') and Article 43(1) of the Rules of Procedure of the Court of First Instance (hereafter 'the Rules of Procedure').

2 On 7 August 1992 the applicant submitted an application mentioning his lawyer's name and bearing his signature. It was then registered under number T-56/92.

3 The applicant states that his action is brought against the Commission of the European Communities pursuant to Article 175 or, alternatively, Article 173 of the EEC Treaty. He explains that he lodged a complaint with the Commission on 26 October 1990 against Buma, an association whose registered office is in Amstelveen (Netherlands), the Netherlands State and all other natural or legal persons 'shown on examination to have acted or to be still acting in concert with Buma, or in a similar way to Buma, in relation to the standard agreements of 29 May 1985 on radio and television cable broadcasting, and the resulting or subordinate agreements, which stipulate that Buma should adopt a proactive policy, intervene and exercise certain rights on behalf of persons other than composers of musical works and/or third parties, such as broadcasting bodies etc.' The applicant states that 'overall he seeks declaratory judgments, a declaration of annulment and an award of damages'.

4 The applicant further states that he is putting in evidence his complaint of 26 October 1990 in its entirety (pages 1 to 20 and 86 documents) and the Court is asked to consider the statements contained therein (including those in the reports) as part of his application. He is also putting in evidence all the documents from the proceedings which he has initiated in the Netherlands (volumes A, B, C, D) which the

Court is asked to consider as part of the application, in so far as they are relevant to the case. He is also submitting his response dated 6 March 1992, produced at the Commission's request, to the replies of Buma, NOS and VECAI which the Commission received in 1991, thereby expanding the scope of his claim. Those voluminous documents are annexed to the application.

5 The application includes no details about the contents of the documents annexed, nor about the purpose or contents of the agreements mentioned, nor about the purpose or nature of the proceedings brought in the Netherlands, nor, finally, about the status of the third parties, which are referred only to by abbreviations.

6 There follows one and a half pages of explanation entitled 'Brief summary of Koelman's contentions', from which it can be inferred that the case is concerned with the question of who should receive royalties when radio and television signals are transmitted by cable. The applicant alleges breach of Articles 7, 85 and 86 of the EEC Treaty, of the Auteurswet (Law on Copyright), of the Berne Convention, of accepted morality in relation to copyright and of good faith.

7 That summary is followed by two further pages of explanation entitled 'The applicant's interest', from which it can be deduced that the applicant is concerned, first, 'as a composer of musical works and affiliate of Buma', which, allegedly, uses its monopoly and its dominant position to include in its accounts sums to which it has no right, and replaces the composer's right to give his agreement to the publication of his works by 'guarantee systems' and, secondly, as an entrepreneur acting as an intermediary for copyright in photographic works. The applicant adds that several hundred million in royalties been claimed improperly over the years from consumers 'by the relentless intervention of public utilities, reflected in increases in gas, water or electricity bills,' in breach of Article 90 of the EEC Treaty. He also asserts that the Commission, in spite of being aware of those problems, is trying to shrug off the questions he has raised. No other details are given about the applicant's activities, about his relationship with the BUMA, about the activities and practices of the latter, about why these activities and practices might be seen as breaches of Community law, about the connection which may exist between the

problems of copyrights in musical or photographic works and increases in gas, water or electricity bills, nor about the applicant's approaches to the Commission and its reactions and replies.

8 That explanation concludes with the statement that the applicant wrote to both Sir Leon Brittan and M. N. Menges on 8 April 1992, requesting the Commission, pursuant to Article 175 of the Treaty to 'adopt a real position'. He added that he had not received a reasonable reply or had only received a reply which could be described as inadequate given the Commission's responsibility for the application of Community law.

9 By document received at the Court Registry on 5 January 1993, the Commission raised an objection of inadmissibility, in which it maintained that the Court of First Instance did not have jurisdiction to entertain the claims formulated in subparagraphs (a) to (k) of the form of claim and that, furthermore, the application did not meet the minimum criteria set down in Article 44 of the Rules of Procedure. It added that the action, in so far as it sought a declaration of failure to act, was inadmissible, because the applicant was not the subject of the measure which it had been invited to take. In so far as it could be interpreted as a request for a letter under Article 6 of Regulation No 99/63/EEC of the Commission of 25 July 1963, relating to the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963, 127, p. 47, hereafter 'Regulation No 99/63'), the action ceased to have any purpose after the Commission sent such a letter on 8 October 1992.

10 By document received at the Court Registry on 22 February 1993, the applicant submitted his observations on the objection of inadmissibility, maintaining that the application was admissible.

11 By letter dated 6 April 1993, the Commission provided the Court with a copy of the letter which it had sent to the applicant on 8 October 1992, pursuant to Article 6 of Regulation No 99/63.

12 By Registry letter dated 25 May 1993, the Court asked both parties if a final decision had been taken by the Commission following the letter of 8 October 1992, and it also asked the Commission whether, if the reply was negative, it intended to do so.

13 By letter lodged at the Court Registry on 27 June 1993, the applicant informed the Court that he had not been informed of any decision. By letter lodged at the Court Registry the following day, the Commission informed the Court that no decision had been taken, but that it was probable that a decision would be taken before the end of July.

14 By letter lodged at the Court Registry on 19 October 1993, the Commission informed the Court of its decision rejecting the applicant's complaint, dated 14 October 1993.

15 By Registry letter, the Court requested the applicant to submit, before 3 November 1993, his comments on the Commission's letter of 14 October 1993. The applicant has not done so.

Forms of order sought by the parties

16 The applicant asks the Court, pursuant to Article 175 or, alternatively, Article 173 of the Treaty, to declare that the Commission failed to act and/or annul the Commission's 'decision' or its 'lack of a decision', its 'lack of position' or its 'inadequate position', in any event, its 'reaction' and/or its 'failure to react', whatever the status of that 'action' or 'inaction' and/or declare that the foregoing were contrary to the Commission's obligations regarding the application of Community law, and therefore to order the Commission to do the following things:

(a) annul the two agreements dated 29 May 1985 relating to radio and television broadcasting by cable and all the agreements derived therefrom;

(b) forbid the musical copyright societies occupying a dominant position from participating in agreements or in undertakings, whether in the form of associations or undertakings, if that participation is not necessary for achieving the organisation's aim, or if that aim may be achieved without the participation in question;

(c) guarantee composers free choice of whichever organization is best suited to their requirements and not to authorize, on any terms, musical copyright societies and/or other legal persons of which they form a part or which they control — that power deriving from their dominant position — to exercise rights which have not been transferred to them by the composer under a specific contract;

(d) guarantee undertakings which mediate rights, like that of Mr Koelman, fair access to the market, to protect them against abuses of dominant position and to take all measures and decisions to guarantee in the future the development of a free market in the mediation of copyrights and similar rights, which will require a decision ordering the annulment, in each Member State, of the legal or other provisions by which monopolies over musical copyright are granted to individual organizations;

(e) declare unlawful the role played by the Dutch State in the breaches of Community law described;

(f) annul all acts of the Council and the Commission which, in view of the doubtful balance of the inquiry procedures applied — breach of the principle of legitimate expectation — manifestly lack legitimacy (92/C 128/05 e. a.);

(g) declare that Articles 2, 3, 5, 6, 8 and 9 of Buma operating contracts dated 23 December 1986 are incompatible with Community law;

(i) declare that the de facto monopolies and the de facto division of the markets between the copyright organizations in the Member States are unlawful;

(j) impose (or have imposed) fines commensurate with the nature and the gravity of the infringements;

(k) order the Commission, the Buma and the Dutch State, jointly and severally and/or on a basis to be determined by the Court, to pay compensation for all damage, including loss of business, which remains to be determined, and Mr Koelman's costs,

or itself rule to the same effect.

The Commission contends that the Court should:

— dismiss both the principal application under Article 175 and the alternative application under Article 173 as inadmissible;

— order the applicant to pay the costs of the action.

Admissibility

17 The Court must rule on the pleas of inadmissibility, as provided for in Article 114 (3) and (4), of the Rules of Procedure. In the present case, it considers that, since examination of the case documents provides sufficient information, there is no need to open the oral procedure.

18 The Court finds, first, that the claims set out in (a) to (e) and (g) to (k), of the application, except for the latter in so far as the responsibility of the Commission, is concerned, manifestly fall outside the jurisdiction of the Community judicature and must, therefore, be declared inadmissible. The latter has no power either to issue directions to Community institutions, to Member States or to natural or legal persons, or to find unlawful, on whatever ground, the actions of Member States or of natural or legal persons on the initiative of natural or legal persons, or to annul agreements concluded by the latter.

19 Secondly, the Court observes that, as regards claim (f), by which the applicant seeks annulment of 'all acts of the Council and the Commission ... which manifestly lack

legitimacy', the applicant gives no indication of which acts he seeks to have annulled. In consequence, that claim is not sufficiently precise to be admissible.

20 Thirdly, the Community judicature does have the power to order the Commission to pay compensation for damage which it has caused to natural or legal persons, as sought by the applicant in claim (k).

21 In this respect, the Court recalls that under Article 19 of the Statute of the Court of Justice and under Article 44(1)(c) of the Rules of Procedure, all applications must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court to give a ruling, if appropriate, without other information in support. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible, the essential facts and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible. If specific points in the text of the application can be supported and completed by references to specific passages in the documents attached, a general reference to other documents cannot compensate for the lack of essential information in the application itself, even if those documents are attached to the application (see the judgments of the Court of Justice in Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28, and in Case C-52/90 *Commission* v *Denmark* [1992] ECR I-2187, paragraph 17, and the order of the Court of First Instance in Case T-35/89 TO II *Buggenhout* v *Albani* [1992], not published in the ECR, paragraphs 16 and 17).

22 In the present case, it is not possible to clearly identify from the application either the fault imputed to the Commission or the damage suffered by the applicant, which the Court is to order the Commission to make good.

23 It should be added that the applicant and his lawyer must set out the factual and legal grounds on which the action is based and that it is not for the Court to do their work by trying to locate and identify in the numerous annexes to which the application makes general reference the information which may support the claims for compensation formulated in the application.

24 It follows that, as regards claim (k), the application does not satisfy the minimum requirements laid down by Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure with which an application must comply if it is to be admissible.

The other issues

25 Finally, the Court observes that the introduction to the claim in which the applicant asks the Court 'under Article 175 or, in the alternative, under Article 173 of the EEC Treaty, to find that the Commission has failed to act and/or to annul and/or to declare as contrary to the Commission's obligations regarding the application of Community law, its "decision" or its "lack of a decision", its "lack of position" or its "inadequate position", or its "reaction" and/or its "failure to react", whatever the status of that "action" or "inaction"' in combination with point 14 of 'Koelman's contentions', according to which 'the applicant wrote to both Sir Leon Brittan and M. N. Menges on 8 April 1992, requesting the Commission, pursuant to Article 175 of the EEC Treaty, to "adopt a real position," adding that he had not received a reasonable reply or had only received a reply which he described as inadequate given the Commission's responsibility to apply Community law' may be interpreted as a claim for a declaration of the Commission's failure to act.

26 The Court notes, in this respect, that after the action was brought, the Commission sent the applicant, on 8 October 1992, a communication pursuant to Article 6 of Regulation No 99/63, stating, first, that it did not intend to act on his complaint and, secondly, inviting the applicant to submit his observations on the matter, which the applicant did by letter dated 9 November 1992. Subsequently, on 14 October 1993, the Commission notified the applicant of a decision definitively rejecting his complaint.

27 It is therefore established that the Commission not only satisfied the procedural requirements incumbent upon it under Article 6 of Regulation No 99/63 but that it also adopted a definitive decision rejecting the complaint submitted to it by the applicant, thus enabling him to protect his legitimate interests (judgment of the Court of Justice in Case 26/76 *Metro* v *Commission* [1977] ECR 1875, paragraph 13), even though the decision of 14 October 1993 was taken after a considerable delay.

28 It follows that in such a case, in accordance with the case law of the Court of First Instance, the application has become devoid of purpose, at least and in any event, following the decision of 14 October 1993, and there is, therefore, no longer any need to give a ruling on it (Case T-28/90 *Asia Motor France* v *Commission* [1992] ECR II-2285, paragraphs 35 to 38).

Costs

29 Under Article 87(2) of the Rules of Procedure, the costs are to be borne by the unsuccessful party if they have been applied for in the successful party's pleadings. Under Article 87(6), where a case does not proceed to judgment, the costs are at the discretion of the Court.

30 In this case, the Court finds first of all that the (a) to (k) of the application must be dismissed as inadmissible and that the applicant has therefore failed to that extent. Secondly, since the claims set out in the application may be interpreted as seeking a declaration of the Commission's failure to act, the Court finds that the case should not proceed to judgment.

31 Given that the applicant had to wait until the 8 October 1992 for the Commission to respond to his initial letter of 8 April 1992, although it had been informed of the substance of his complaint on 26 October 1990, and that it was only after the applicant commenced this action on 7 August 1992 that the Commission notified him, firstly on 8 October 1992, of its provisional position with respect to his complaint, pursuant to Article 6 of Regulation No 99/63, and, secondly, on 14 October 1993, of its decision definitively rejecting his complaint, the Court considers that the Commission is partly responsible for these proceedings having been brought.

32 It follows that each party is to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber),

hereby:

1. **Dismisses claims (a) to (k) as inadmissible;**

2. **Declares that there is no need to give a decision on the remainder of the application based on Article 175 of the Treaty;**

3. **Orders each party to bear its own costs.**

Luxembourg, 29 November 1993.

H. Jung

Registrar

R. Schintgen

President