JUDGMENT OF THE COURT
19 September 1985 *

In Joined Cases 194 to 206/83

Asteris AE, a limited liability company incorporated under Greek law, whose registered office is in Athens (Case 194/83),

Strymon Ellas — Adelfoi Bitzidi AE, a limited liability company incorporated under Greek law, whose registered office is in Serres (Case 195/83),

Adelfoi Chatziathanassiadi AVE, a limited liability company incorporated under Greek law, whose registered office is in Serres (Case 196/83),

Amvrosia — Konservopiia Veroias AEVE, a limited liability company incorporated under Greek law, whose registered office is in Veria (Case 197/83),

Elliniki Viomichania Eidon Diatrofis AE, a limited liability company incorporated under Greek law, whose registered office is in Larissa (Case 198/83),

Eteria Emporiou & Antiprossopeion Eisagogiki-Exagogiki Darva EPE, a limited liability company incorporated under Greek law, whose registered office is in Egio (Case 199/83),

Sevath AVE Syneteristiki Eteria Viomichanikis Anaptixeos Thrakis, a limited liability company incorporated under Greek law, whose registered office is in Xanthi (Case 200/83),

Anonymos Viomichaniki Eteria Konservon D. Nomikos, a limited liability company incorporated under Greek law, whose registered office is in Athens (Case 201/83),

Intra Anonymos Viomichaniki & Emporiki Eteria, a limited liability company incorporated under Greek law, whose registered office is in Athens (Case 202/83),

Viomichania Trofimon AE, a limited liability company incorporated under Greek law, whose registered office is in Kalamata (Case 203/83),

Adelfoi Kanakari AVE & Exagogiki Eteria Georgikon Proionton, a limited liability company incorporated under Greek law, whose registered office is in Athens (Case 204/83),

* Language of the Case: Greek.

Syneteristika Ergostasia Konservopoiias Voriou Ellados AE — Sekove AE, a limited liability company incorporated under Greek law, whose registered office is in Thessaloniki (Case 205/83), and

Omospondia Georgikon Sineterismon Thessalonikis, a cooperative society constituted under Greek law, whose registered office is in Thessaloniki (Case 206/83),

represented by Ioannis E. Stamoulis, Christos D. Arvanitis and Nikolaos I. Tsiokas, of the Athens Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicants,

v

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Bernhard Jansen, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann and R. Joliet, Judges,

Advocate General: Sir Gordon Slynn
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 27 February 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By applications lodged at the Court Registry on 14 September 1983, Asteris AE, a company having its registered office in Athens, and 12 other companies constituted under Greek law, all of which are producers of tomato concentrates, brought actions under Article 178 and the second paragraph of Article 215 of the EEC Treaty seeking compensation for the damage which they claim to have incurred as the result of the erroneous fixing of the amount of Community aid available for tomato concentrates during the marketing years 1981/82 and 1982/83.

Background and purpose of the applications

2 In order to establish the legal background to the dispute, reference should be made to Council Regulation No 516/77 of 14 March 1977 (Official Journal, L 73, p. 1), which consolidated in a single text all the provisions dealing with the common organization of the market in products processed from fruit and vegetables. Under Article 20 of that regulation the task of organizing the market is entrusted to the Commission, which makes rules in accordance with what is called the 'Management Committee procedure'. In Regulation No 1152/78 of 30 May 1978 (Official Journal, L 144, p. 1), the Council supplemented the scheme by inserting into Regulation No 516/77 a series of new articles numbered 3a to 3c, which set up a system of production aid for certain products, including tomato concentrates and peaches in syrup. According to the preamble to Regulation No 1152/78, the purpose of the system is '[to make] Community products . . . more competitive by adopting the necessary measures to enable them to be sold at prices which compete with those charged by the major non-member producing countries'.

3 Under the terms of Article 3a the system of aid is based on contracts binding on producers and processors. For deliveries made pursuant to those contracts a 'minimum price' is to be fixed which processors must pay to producers. That minimum price was calculated on the basis of the average of the prices paid by processors for raw material during the marketing year preceding the introduction

of the new system; the minimum price was updated each marketing year to take account of changes in both prices for raw material and production costs.

4 Article 3b provides that the amount of the aid is to be fixed in such a way as to make up the difference between the prices of Community products and those of products from non-member countries, the prices for Community products being established by reference to the minimum price fixed according to the criteria laid down in Article 3a and to the 'processing costs' ascertained without regard to those undertakings having the highest costs.

5 Under Article 3c detailed rules for the application of Articles 3a and 3b are to be adopted in accordance with the procedure laid down in Article 20, that is to say, by the Commission acting in accordance with the Management Committee procedure. The fixing of the minimum price and the level of aid follows the same pattern.

6 It was on the basis of Article 3c of Regulation No 516/77 that the Commission fixed the level of aid for successive marketing years. In the case of tomato concentrates, the aid is fixed in respect of a product having a standard degree of concentration and a dry-extract content of 28% to 30%, and presented in standard packaging of a given weight, which varies from one marketing year to the next. In Regulation No 1610/78 of 10 July 1978 (Official Journal, 1978, L 188, p. 19) the Commission fixed 'coefficients' designed to take account both of the varying degrees of concentration and of the growing impact exerted on the price by packaging which was smaller than the standard presentation prescribed by the Regulation fixing the amount of the aid. It should be pointed out that those coefficients apply to the level of the aid fixed for the standard product, not to the various factors taken into consideration in determining the amount of such aid.

7 That was the state of the Community legislation when the Greek Act of Accession (Official Journal 1979, L 291, p. 17) came into effect. Articles 58 and 59 of the Act of Accession lay down a system whereby Greek agricultural prices are gradually adjusted to the price levels obtained under the various schemes for the common organization of the market. As a preliminary, Article 58 (2) guarantees to Greek producers market prices equivalent to those obtained under the previous national

system. Article 59 (2) deals with products processed from tomatoes or peaches covered by Regulation No 516/77, by providing for adjustment in seven phases, the details of which are laid down in the rest of the article.

8 Article 103 of the Act of Accession sets out the arrangements for extending the system of aid provided for by Regulation No 516/77 to Greece. Article 103 (1) provides that the minimum price referred to in Article 3a of Regulation No 516/77 is to be established on the basis of prices paid to producers in Greece previously under the national system for the product which is to be processed, recorded over a representative period which is to be determined. That period was fixed by Council Regulation No 41/81 of 1 January 1981 (Official Journal 1981, L 3, p. 12).

9 Under Article 103 (3) the amount of Community aid granted in Greece is to be fixed in such a fashion as to compensate for the difference between, on the one hand, the prices of products from non-member countries, determined in accordance with Article 3a of Regulation No 516/77, and, on the other, the prices of Greek products established by reference to the minimum price, ascertained in the manner set out above, and to the processing costs 'obtaining in Greece'.

10 In pursuance of all those provisions the Commission adopted Regulation No 1963/81 of 10 July 1981 (Official Journal 1981, L 192, p. 16) establishing production aid which for the first time distinguishes between the Member States other than Greece, and Greece itself. At the same time, in Regulation No 1962/81 of 10 July 1981 (Official Journal 1981, L 192, p. 13), the Commission fixed coefficients designed to take account of the variable costs due to the packaging of the products. Regulation No 1962/81 is based on the same principles as the original Regulation, No 1610/78.

11 Production aid was fixed for the 1982/83 marketing year in accordance with those principles by Commission Regulation No 1585/82 of 12 June 1982; at the same time, the coefficients were incorporated into Commission Regulation No 1602/82 of 22 June 1982 (Official Journal 1982, L 179, p. 16).

12 The applicants seek compensation for the damage which they claim to have incurred on account of the inadequacy of the production aid fixed for tomato concentrates during the marketing years 1981/82 and 1982/83. The claims are based on reasoning which differs in some respects according to which marketing year is concerned.

13 As far as the 1981/82 marketing year is concerned, the applicants explain that the documents of the Management Committee, when examined and compared with the provisions adopted in Commission Regulation No 1963/81, disclose that the Commission, without any justification whatever, reduced the figures originally submitted to the Management Committee by 6.41 ECU.

14 They further maintain that the coefficients fixed for the purpose of establishing the aid payable for tomato concentrates presented in packaging smaller than the standard packaging envisaged by Regulation No 1962/81 had placed them at a disadvantage, on the ground that a single coefficient covering the various weight categories was applied to aid which was lower for Greek producers than for producers from other Member States. That difference in treatment is, they claim, incompatible with the prohibition of discrimination contained in the second paragraph of Article 40 (3) of the EEC Treaty and Article 103 (3) of the Act of Accession because it fails to take account of the actual packaging costs in Greece.

15 With regard to the 1982/83 marketing year, the applicants do not dispute the fixing of the aid as such but only the distortion which resulted in their case from the application of the coefficients laid down in Regulation No 1602/82, which relates to the marketing year in question.

16 As far as the reduction of the aid for the 1981/82 marketing year is concerned, the Commission admits that it was because the Council had appealed for greater economy in the administration of the Community's financial resources that it had applied a flat-rate reduction of 6.41 ECU to the aid granted both to Greek producers and to producers in other Member States. The Commission argues that there is no provision requiring it to fix annually the amount of the aid for tomato concentrates at the exact level indicated by the information laid before the Management Committee; in any event, the Commission enjoys a discretion in the matter, which it exercises in the light of the Community's general economic policy, and, in particular, its agricultural policy.

17 It should be pointed out with reference to this issue that the applicants, when contesting the legality of a Commission Regulation, are not entitled to rely on any

discrepancy between the provisions adopted and the preliminary documents indicating the proposals which were referred to the Management Committee. The information contained in preliminary documents may not be elevated to the status of a rule of law on the basis of which criticism may be directed at the decision which was ultimately adopted by the Commission in consultation with the Management Committee. No regard may therefore be had to the conclusions which the applicants have drawn, as a means of quantifying the damage suffered by them, from a comparison of the proposals originally put to the Management Committee with regard to the minimum price for the raw material and the processing costs.

8 When questioned about the scope of their actions the applicants expressly conceded, in fact, that they did not contest the figures taken into account in determining the aid, that their applications were confined to challenging the erroneous fixing of the coefficients which made it possible to deduce from the aid fixed by reference to the standard packaging envisaged by the Commission Regulations the amount of aid granted for tomato concentrates presented in smaller packaging.

Substantive issues

9 In its judgment of today's date in Case 192/83, *Hellenic Republic* v *Commission*, the Court has already had occasion to consider the complaints about the fixing of coefficients for the 1983/84 marketing year under Commission Regulation No 1615/83 of 15 June 1983 (Official Journal 1983, L 159, p. 48). As may be seen from the grounds of the judgment, those coefficients merely reinstate the coefficients obtaining in previous marketing years, which the applicants contested. Since on this point the applicants endorsed the arguments of the Government of the Hellenic Republic, it is sufficient to refer to that judgment, in which the method of fixing the coefficients was held to be unlawful inasmuch as it led to inadequate compensation for Greek producers for the extra processing costs entailed by the use of packaging which differed from the standard packaging envisaged by the Commission Regulation fixing different levels of aid for Greece and for the other Member States. That finding must be extended, for identical reasons, to Commission Regulations Nos 1962/81 and 1602/82 fixing coefficients for the 1981/82 and 1982/83 marketing years respectively.

20 The next question is whether the fact that the coefficients challenged by the applicants were fixed unlawfully is sufficient to found liability on the part of the Community.

21 The applicants allege that the Community is liable for the consequences of legislative measures adopted by the Commission. However, the Court has established that liability on the part of the Community for the consequences of legislative measures can arise only in exceptional circumstances (see in particular the judgments of 2 December 1971, Case 5/71, *Zuckerfabrik Schöppenstedt*, [1971] ECR 975, and 25 May 1978, Joined Cases 83 and 94/76 and 40/77, *Bayerische HNL*, [1978] ECR 1209).

22 It should be recalled that, according to those judgments, the Community does not incur liability unless a sufficiently serious breach of a superior rule of law for the protection of the individual has occurred. In its judgment of 25 May 1978 the Court emphasized that the finding that a legislative measure is void — as here — is insufficient in itself to give rise to liability, and that individuals may be required to accept within reasonable limits certain harmful effects on their economic interests as a result of a legislative measure, even if it has been declared void. According to the same judgment, there can be no question of indemnification unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers.

23 In that connection it should be borne in mind that, in its judgment of today's date in Case 192/83 between the Hellenic Republic and the Commission, the Court held that the fixing of the contested coefficients was due to a technical error which, although leading in objective terms to unfair treatment for Greek producers, cannot be regarded as constituting a serious breach of a superior rule of law or as manifest and grave disregard by the Commission of the limits on its powers. In particular, it should be pointed out that the rule in Article 103 (3) of the Act of Accession is not called in question by the method applied by the Commission in fixing the coefficients, as may be seen from the grounds of the judgment in Case 192/83.

24 The foregoing considerations make it clear that the applicants' position is not such that the Community may be considered liable, in view of the criteria to which the second paragraph of Article 215 of the EEC Treaty refers. Consequently, their applications must be dismissed.

Costs

25 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to bear the costs. However, under the first paragraph of Article 69 (3) the Court may order the parties to bear their own costs in exceptional circumstances.

26 It may be seen from the foregoing that the applicants had reasonable grounds for contesting the amount of the aid granted to them, even though it cannot *ipso facto* be concluded that the Community has incurred liability. It therefore seems equitable to order the parties to bear their own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the applications;

(2) Orders the parties to bear their own costs.

Mackenzie Stuart Bosco Due Kakouris

Pescatore Koopmans Everling Bahlmann Joliet

Delivered in open court in Luxembourg on 19 September 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President