ORDER OF THE COURT (Sixth Chamber)
28 March 2003 *

In Case C-75/02 P,

Territorio Histórico de Álava — Diputación Foral de Álava,

Territorio Histórico de Bizkaia — Diputación Foral de Bizkaia,

Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa y Juntas Generales de Gipuzkoa

and

Comunidad Autónoma del País Vasco — Gobierno Vasco,

represented by R. Falcón y Tella, abogado,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 11 January 2002 in Case T-77/01 *Diputación Floral de Álava and Others* v *Commission* [2002] ECR II-81, by which the Court held inadmissible the action for annulment brought by

* Language of the case: Spanish.

the appellants against Commission Decision 2001/168/ECSC of 31 October 2000 on Spain's corporation tax laws (OJ 2001 L 60, p. 57), seeking to have that order set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by G. Rozet and J.L. Buendía Sierra, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, C. Gulmann, F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 6 March 2002, the Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Bizkaia — Diputación Foral de Bizkaia, the Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa y Juntas Generales de Gipuzkoa and the Comunidad Autónoma del País Vasco — Gobierno Vasco brought an appeal pursuant to Article 49 of the ECSC Statute of the Court of Justice and Article 49 of the EC Statute of the Court of Justice seeking to have set aside the order of the Court of First Instance of 11 January 2002 in Case T-77/01 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II-81 ('the order under appeal'), by which the Court of First Instance dismissed as inadmissible their action for annulment of Commission Decision 2001/168/ECSC of 31 October 2000 on Spain's corporation tax laws (OJ 2001 L 60, p. 57; 'the contested decision').

Relevant provisions

2 The fourth paragraph of Article 230 EC provides:

'Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.'

3 The first and second paragraphs of Article 33 CS provide:

'The Court of Justice shall have jurisdiction in actions brought by a Member State or by the Council to have decisions or recommendations of the Commission declared void on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The Court of Justice may not, however, examine the evaluation of the situation, resulting from economic facts or circumstances, in the light of which the Commission took its decisions or made its recommendations, save where the Commission is alleged to have misused its powers or to have manifestly failed to observe the provisions of this Treaty or any rule of law relating to its application.

Undertakings or associations referred to in Article 48 may, under the same conditions, institute proceedings against decisions or recommendations concerning them which are individual in character or against general decisions or recommendations which they consider to involve a misuse of powers affecting them.'

Facts

4 The historic territories of Álava, Bizkaia and Gipuzkoa, which have independent taxation powers, included in their own tax legislation systems the tax credit for export activities contained in Article 34 of Law No 43/1995 of 27 December 1995 on corporation tax (BOE No 310 of 28 December 1995). In the historic territory of Álava it is Article 43 of Norma Foral (Provincial Act) No 24/1996 of

5 July 1996 (*Boletín Oficial del Territorio Histórico de Álava* No 90 of 9 August 1996), in the historic territory of Bizkaia, Article 43 of Norma Foral No 3/1996 of 26 June 1996 (*Boletín Oficial de Bizkaia* No 135 of 11 July 1996), and in the historic territory of Gipuzkoa, Article 43 of Norma Foral No 7/1996 of 4 July 1996 (*Boletín Oficial de Gipuzkoa* No 138 of 17 July 1996).

5 By letter of 7 August 1997, the Commission, considering that those credits favoured local steel companies, informed the Spanish Government that it had decided to initiate proceedings under Article 6(5) of Commission Decision No 2496/96/ECSC of 18 December 1996 establishing Community rules for State aid to the steel industry (OJ 1996 L 338, p. 42).

6 On 31 October 2000, the Commission adopted the contested decision, the operative part of which reads as follows:

'*Article 1*

Any aid granted by Spain under:

(a) Article 34 of Act 43/1995 of 27 December 1995 on corporation tax;

(b) Article 43 of Provincial Act 3/1996 of 26 June 1996 on corporation tax adopted by the [Diputación Foral de Bizkaia];

(c) Article 43 of Provincial Act 7/1996 of 4 July 1996 on corporation tax adopted by the [Diputación Foral de Gipuzkoa] or

(d) Article 43 of Provincial Act 24/1996 of 5 July 1996 on corporation tax adopted by the [Diputación Foral de Álava],

to ECSC steel undertakings established in Spain is incompatible with the common market in coal and steel.

Article 2

Spain shall forthwith take appropriate measures to ensure that ECSC steel undertakings established in Spain do not receive the aid referred to in Article 1.

...'

7 By application lodged at the Registry of the Court of First Instance on 30 March 2001, the appellants brought an action for the annulment of the contested decision.

8 By a separate document, lodged at the Registry of the Court of First Instance on 2 July 2001, the Commission raised an objection of inadmissibility against that action under Article 114(1) of the Rules of Procedure of the Court of First Instance on the ground that the appellants, which are intra-State authorities, did not have the standing to bring proceedings before the Community judicature for annulment of the contested decision.

9 At the same time, by application lodged at the Registry of the Court of Justice on 29 December 2000 under number C-501/00, the Kingdom of Spain brought an action before the Court of Justice for the annulment of the contested decision. In that case, the President of the Court of Justice, by order of 13 June 2001, gave the appellants in the present case leave to intervene in the proceedings in support of the form of order sought by the Kingdom of Spain.

The order under appeal

10 By the order under appeal, the Court of First Instance granted the form of order sought by the Commission. It dismissed as inadmissible the action brought before it and ordered the appellants to pay the costs of the proceedings.

11 The Court of First Instance made the preliminary point, in paragraph 21 of the order under appeal, that the admissibility of the action, which sought the annulment of a decision based on the ECSC Treaty, could be assessed only in the light of its provisions.

12 It held, in paragraph 22 of the order under appeal, that the question whether the fiscal measures in issue fell within the scope of the ECSC Treaty, even though they applied indiscriminately to steel and non-steel undertakings, or whether the Commission had misused its powers by adopting the contested decision, was a matter relating to the substance of the case and did not justify the admissibility of an action for the annulment of a decision adopted on the basis of the ECSC Treaty being governed by the provisions of Article 230 EC.

13 The Court of First Instance pointed out, first, in paragraphs 23 to 27 of the order under appeal, that the admissibility of an action for annulment brought against a decision based on the ECSC Treaty is governed by Article 33 CS, the first paragraph of which empowers only the Council and the Member States, not intra-State authorities, to lodge an application before the Community judicature. The Court of First Instance noted that the Court of Justice applies that rule strictly (orders in Case C-95/97 *Région wallonne* v *Commission* [1997] ECR I-1787, paragraph 6, and Case C-180/97 *Regione Toscana* v *Commission* [1997] ECR I-5245, paragraph 6).

14 Similarly, in paragraphs 28 to 31 of the order under appeal, the Court of First Instance pointed out that the second paragraph of Article 33 CS authorises only undertakings or associations of undertakings — in addition to the parties referred to in the first paragraph — to institute proceedings for annulment. It cited the case-law of the Court of Justice, according to which Article 33 CS must be interpreted restrictively (Case 222/83 *Commune de Differdange and Others* v *Commission* [1984] ECR 2889, paragraph 8).

15 Secondly, the Court of First Instance pointed out, in paragraphs 32 to 34 of the order under appeal, that the appellants did not adduce any evidence to show that the action should be declared admissible in order to ensure uniform application of Community law or to safeguard the institutional balance laid down in the ECSC Treaty.

16 Finally, in paragraphs 35 to 39 of the order under appeal, the Court of First Instance rejected the appellants' arguments based on the principle of effective legal protection. It held that, although Article 33 CS is more restrictive than Article 230 EC, that circumstance is offset by the fact that the rules governing intervention in actions brought under the ECSC Treaty are more flexible than those governing intervention in actions brought under the EC Treaty. It pointed out, in that regard, that the appellants had been given leave to intervene in Case C-501/00 brought against the contested decision before the Court of Justice by the Kingdom of Spain.

The appeal

17 By their appeal, in support of which they raise three pleas, the appellants claim that the Court should:

— set aside the order under appeal and declare admissible the action brought before the Court of First Instance;

— refer the case back to the Court of First Instance and order it to give a judgment on the substance, without prejudice to the possibility of staying proceedings pending judgment by the Court of Justice in Case C-501/00 *Spain* v *Commission*;

— order the Commission to pay the costs of the proceedings at first instance and on appeal.

18 The Commission requests the Court to dismiss the appeal as unfounded and to order the appellants to pay the costs.

19 Under Article 119 of its Rules of Procedure, where an appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order, without opening the oral procedure.

The first plea

20 By their first plea, the appellants maintain that the Court of First Instance, before refusing them the right to bring an action under Article 230 EC, should have established whether the contested decision should have been based, as they maintained, on the EC Treaty rather than on the ECSC Treaty. They submit that, if the arguments of the Court of First Instance set out in paragraphs 20 and 21 of the order under appeal were accepted, the Commission, in order to avoid any action brought by an intra-State authority against one of its decisions, would need only to base that decision on the ECSC Treaty, even if it should have been based on the EC Treaty.

21 Assuming that the appellants' reasoning is relevant, it is clear from the contested decision that it concerns only aid granted by the appellants 'to ECSC steel undertakings established in Spain'. In consequence, the decision can have its legal basis only in the ECSC Treaty and the admissibility of the actions brought against it can therefore be assessed only in the light of that Treaty, particularly Article 33.

22 Therefore, the plea alleging that the Court of First Instance was wrong to refuse to consider the admissibility of the action in the light of Article 230 EC is manifestly unfounded.

The second plea

23 By their second plea, the appellants maintain that Article 33 CS, in particular the second paragraph, cannot be interpreted literally. They submit that the context of the article needs to be taken into account.

24 Article 33 CS should be interpreted in the light of the EC and ECSC Treaties, in particular, the fourth paragraph of Article 230 EC. This last provision confers *locus standi* on any person directly and individually concerned by a measure which is not addressed to him. The appellants maintain that the restrictions imposed by the second paragraph of Article 33 CS are due only to the fact that the authors of the ECSC Treaty had not envisaged that persons other than coal or steel producers could be affected by a measure adopted under that Treaty.

25 The appellants also claim that, likewise, a literal interpretation should not be given to the word 'undertaking' used in the second paragraph of Article 33 CS, because it is more of an economic term than a legal one. They therefore suggest that the word be given the meaning of 'natural or legal person which carries on a business activity or which finds itself in a similar situation'. According to the appellants, regional or territorial authorities which have adopted a measure classified as aid by a Commission decision are in a situation comparable to that of

the recipient and therefore have *locus standi*, in view of the fact that they are directly and individually concerned by that decision.

26 The Commission contends that a simultaneous reading of the second paragraph of Article 33 CS and the fourth paragraph of Article 230 EC shows unequivocally that *locus standi* in connection with an action for annulment is governed differently by those two provisions. Therefore, it is not possible, on the pretext of taking a dynamic approach, to attribute to one of those provisions the rules established by the other.

27 Contrary to what the appellants claim, there is nothing to justify departing from the wording of the second paragraph of Article 33 CS. It is reasonable to think that the authors of the Treaty signed in Rome on 25 March 1957 were aware of the ECSC Treaty, adopted six years previously, in particular of the content and scope of Article 33 CS, and intentionally gave a different scope to the provisions of Article 173 of the EEC Treaty (subsequently, following amendment, Article 173 of the EC Treaty; now, following further amendment, Article 230 EC). The Court has consistently held that Article 33 CS provides an exhaustive list of the persons entitled to bring an action for a declaration that a measure is void (*Commune de Differdange and Others* v *Commission*, paragraph 8).

28 The plea alleging an incorrect interpretation of the second paragraph of Article 33 CS is therefore manifestly unfounded.

The third plea

29 By their third plea, the appellants claim that, in any event, their action should have been declared admissible in accordance with the principle of effective legal

protection. They maintain that the fact that they have been granted leave to intervene in an action brought by a Member State does not satisfy the requirements of that principle, since the State could decide not to bring an action and, if it does bring it, not to raise the arguments which the regional authority considers relevant or to discontinue its action.

30 They also claim that, although the principle of effective legal protection does not mean that any person is entitled to bring proceedings before the Court of First Instance in any circumstances, it does require the establishment of an effective appeals system, even nationally. However, in the present case, nor do the appellants have such a remedy.

31 The Commission considers that, although it is true that the second paragraph of Article 33 CS does not afford intra-State authorities a direct right of action against Commission decisions based on the ECSC Treaty, that does not have the effect of denying them all legal protection. It maintains that, particularly in Spain, national coordination schemes enable regional authorities to express their views if they disagree with the central State.

32 The Court of First Instance rightly pointed out, in the order under appeal, that the restrictions stemming from the second paragraph of Article 33 CS are offset by flexible rules governing intervention. Under Article 34 of the ECSC Statute of the Court of Justice, any natural or legal person and, therefore, intra-State authorities, may intervene in an action for annulment brought by a Member State against a decision adopted on the basis of the ECSC Treaty, if it can establish an interest in the outcome of the case. As the Court of First Instance pointed out, the appellants have also been given leave to intervene in Case C-501/00, the action for annulment of the contested decision brought before the Court of Justice by the Kingdom of Spain.

33 In this instance, those proceedings have indeed afforded the appellants effective legal protection, contrary to what they maintain.

34 Besides, although the conditions for bringing an action before the Community judicature must be interpreted in the light of the principle of effective legal protection, such an interpretation cannot have the effect of setting aside a condition expressly laid down in the ECSC Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts (see, to this effect, Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677, paragraph 44).

35 It follows from the above that the plea alleging that the Court of First Instance infringed the principle of effective legal protection is manifestly unfounded.

36 In those circumstances, the appeal must be dismissed as manifestly unfounded.

Costs

37 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure pursuant to Article 118, 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 Commission has applied for costs against the appellants and they have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby orders:

1. **The appeal is dismissed.**

2. **The Territorio Histórico de Álava — Diputación Foral de Álava, the Territorio Histórico de Bizkaia — Diputación Foral de Bizkaia, the Territorio Histórico de Gipuzkoa — Diputación Foral de Gipuzkoa y Juntas Generales de Gipuzkoa and the Comunidad Autónoma del País Vasco — Gobierno Vasco shall pay the costs.**

Luxembourg, 28 March 2003.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber