JUDGMENT OF THE COURT
21 JANUARY 1971[1]

Fonderie Acciaierie Giovanni Mandelli
v Commission of the European Communities

Case 56/70

In Case 56/70

FONDERIE ACCIAIERIE GIOVANNI MANDELLI, a partnership with limited liability having its registered office in Turin, represented by Mario Giuliano, Advocate of the Milan Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, avocat-avoué, Centre Louvigny, 34/B/IV rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Italo Telchini, acting as Agent, with an address for service in Luxembourg at the Chambers of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Application for revision of the judgment given by the Court on 8 February 1968 in Case 3/67 between the same parties,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars, P. Pescatore (Rapporteur) and H. Kutscher, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

1 — Language of the Case: Italian.

JUDGMENT

Issues of fact and of law

I — Facts and procedure

By an application lodged on 28 January 1967, the Mandelli undertaking asked the Court to annul two individual decisions of the High Authority of the ECSC dated 7 December 1966, the first fixing the tonnage of bought scrap consumed by the applicant undertaking for the period from 1 February 1957 to 30 November 1958, and the second demanding payment from it of the sum of Lit. 137 910 340 by way of contributions to the equalization scheme.

The Court by judgment of 8 February 1968 ([1968] ECR 25) dismissed the application as unfounded and ordered the applicant to pay the costs.

On 14 September 1970 the applicant undertaking in application of Article 38 of the Statute of the Court of Justice of the ECSC made an application for the revision of the said judgment.

The Commission submitted its observations on that application on 21 October 1970.

II — Conclusions of the parties

The *Mandelli undertaking* claims that the Court should:

— after recording the existence of a new fact and accepting that it is capable of justifying the opening of the revision procedure, declare the application admissible and consequently reopen the procedure concerning the substance of Case 3/67;

— after ordering, if necessary, the preparatory measures already requested in Case 3/67 and possibly other measures which the Court considers of its own motion to be necessary, annul completely the two individual decisions adopted on 7 December 1966 by the High Authority in respect of the applicant, for the reasons which the latter has already put forward in Case 3/67 and for all other reasons which it reserves the right to put forward at the proper time and place;

— order the defendant to pay the costs of both proceedings.

The *Commission* contends that the Court should:

— declare out of time or in any case inadmissible the application for revision of the judgment of 8 February 1968 given between the parties;

— order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *applicant for revision* relies in support of its request on the fact that it was informed on 16 July 1970, by way of notarially attested extracts, of a report on the audit made from 20 April to 1 July 1969 by two officials of the Italian financial departments concerning its declaration of income for the financial year 1958-1959.

This document confirms in particular that the declarations of consumption of ferrous scrap sent at the time to the High Authority were correct and that the undertaking had a complete system of accounting meeting the requirements of Italian law.

This report establishes 'the clear disproportion and the complete lack of relationship to reality' of the tonnage of assessable ferrous scrap which the High Authority, following an assessment which it made on its own initiative, used as the basis of the applicant's contributions to the equalization scheme.

The said report is thus claimed to constitute a new fact capable of exercising a decisive influence upon the case decided by the judgment of the Court of 8 February 1968.

The *Commission* maintains that in the present case neither the conditions of form nor the conditions of substance necessary for the admissibility of an application for opening the revision procedure are fulfilled; on the one hand, the application was not made, as is required by Article 98 of the Rules of Procedure, within three months of the date on which the applicant for revision received knowledge of the facts on which it was based, and on the other hand, the fact relied upon is not capable of justifying a revision of the judgment of 8 February 1968.

Grounds of judgment

1 The first paragraph of Article 38 of the Protocol on the Statute of the Court of Justice of the ECSC provides that: 'An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision'.

2 According to the second paragraph of the same article: 'The revision shall be opened by a judgment of the Court expressly recording the existence of a new fact, recognizing that it is of such a character as to lay the case open to revision and declaring the application admissible on this ground'.

3 By way of a new fact the applicant has produced extracts from a report on the audit of the accounts carried out from 20 April to 1 July 1959, by the competent financial authority, and dealing with the declaration of income of the undertaking for the financial year 1958-1959, a period coinciding partially with the period of contribution to the ferrous scrap equalization scheme taken into account by the decisions of the High Authority which were the subject of the disputes decided by the judgment of 8 February 1968.

4 According to the applicant, it is a question of an internal document of the Italian administration which came to its notice only on 16 July 1970. Upon that ground, the applicant alleges that this report of the audit constitutes a 'new fact', within the meaning of Article 38 of the Statute justifying the opening of proceedings for the revision of the judgment of 8 February 1968, although the applicant has not specified which parts of the report are to exercise a decisive influence.

5 In accordance with Article 38 of the Statute, it is appropriate to consider in the first place whether the communication by the competent financial authority on 16 July 1970 of the 'audit report' may be regarded as the discovery of a fact unknown, before the pronouncement of the judgment of 8 February 1968, both to the Court and to the applicant itself.

6 The applicant knew at the proper time of the audit carried out in its undertaking by two officials of the financial administration over a long period.

7 It could not have been unaware of the nature and scope of that inquiry, which was intended to check the declaration of receipts of the undertaking with a view to assessment to income tax.

8 Although it is true that the audit report made on that occasion constitutes an internal document of the financial administration, the applicant, in accordance with the legal requirements applicable, was given a 'report of facts ascertained', dated 1 July 1959, a copy of which was produced during these proceedings.

9 Thus the applicant could not have been unaware prior to the judgment of the Court of the existence in the hands of the competent financial authority of an audit report concerning three facts, that is to say, the amount of the receipts of the undertaking established from the sales invoices, the cost of raw materials checked by means of purchase invoices and the level of production of the undertaking.

10 Nothing prevented it at the time of the proceedings before the Court from taking the steps which resulted in the communication of that report on 16 July 1970.

11 In default of obtaining this information it could in any case have suggested that the Court should make a preparatory inquiry directed towards the production, under Article 24 of the Statute, of the document in question and any other relevant information in the hands of the Italian administration.

12 It appears, consequently, that the delivery of the document produced by the applicant in support of its application cannot be regarded as the discovery of a new fact within the meaning of Article 38 of the Statute.

13 The application must therefore be dismissed as inadmissible.

Costs

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

The applicant has been unsuccessful in its submissions.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 24 and 38 of the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69, 98, 99 and 100 (1),

THE COURT

hereby :

1. **Dismisses the application for revision as inadmissible;**

2. **Orders the applicant to pay the costs.**

Lecourt Donner Trabucchi

Monaco Mertens de Wilmars Pescatore Kutscher

Delivered in the Deliberation Room in Luxembourg on 21 January 1971.

A. Van Houtte
Registrar

R. Lecourt
President