JUDGMENT OF THE COURT
28 JUNE 1977 [1]

Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof (preliminary ruling requested by the Finanzgericht Berlin)

'Exemption from charges on grounds of natural justice'

Case 118/76

Community charge — Imposition — Exemption — Grounds of natural justice — National law — Applicability — Strict limits

The distribution of functions between the Community and the Member States may justify the application, by a national authority, of a rule of natural justice for which provision is made under its national legislation in connexion with the formalities applicable to the imposition of a charge introduced by Community law.

On the other hand, a national authority is not entitled to apply the provisions of its national law to an application for exemption, on grounds of natural justice, from charges due under Community law, where to do so would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question.

In Case 118/76

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court) Berlin for a preliminary ruling in the action pending before that court between

BALKAN-IMPORT-EXPORT GMBH, whose registered office is in Berlin,

and

HAUPTZOLLAMT BERLIN-PACKHOF,

on the question what rules or principles of law are applicable to a discretionary exemption on grounds of natural justice from monetary compensatory amounts imposed on the importation of agricultural products from a third country,

1 — Language of the Case: German.

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore, Presidents of Chambers, J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and issues

The facts, the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

On 24 March 1972, Balkan-Import-Export GmbH, whose registered office is in Berlin, imported 13 590 kg of Bulgarian white sheep's-milk cheese covered by tariff subheading 04.04 E I, in pursuance of a contract of purchase concluded on 6 November 1971 with the Bulgarian national trade department, Rodapaimpex.

By notice of 27 March 1972 the Hauptzollamt (principal customs office) Berlin-Packhof, acting pursuant to Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ, English Special Edition 1971 (I), p. 257) and Regulation No 548/72 of the Commission of 16 March 1972 amending the compensatory amounts fixed in the agricultural sector (JO L 66, p. 1), claimed, in addition to a levy and the turnover tax on the import, the payment of a monetary compensatory amount of DM 6 183·45, or DM 45·50 per 100 kg net, applicable on the day of importation.

Balkan brought an action before the Finanzgericht Berlin for the annulment of the notice of recovery. That action led to a reference for a preliminary ruling and the judgment of the Court of Justice of 24 October 1973 (Case 5/73, *Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof*, [1973] II ECR 1091).

In its judgment of 7 February 1975 on the substance of the case the Finanzgericht Berlin partly upheld the application. It applied to the import in question the rate of compensatory amount — DM 29 per 100 kg — in force at the date on which the contract was concluded. An appeal on a point of law

from the judgment of the Finanzgericht Berlin is at present pending before the Bundesfinanzhof.

In a letter dated 27 February 1974 Balkan applied to the Hauptzollamt Berlin-Packhof under Article 131 (1) of the Abgabenordnung (General Regulation on Taxation) for exemption on grounds of natural justice from payment of the monetary compensatory amounts claimed from it. It claimed that in the present case payment of the amounts in question would lead to a result which was clearly not desired by Community law and which must be corrected by applying the principles of natural justice. Article 131 (1) of the Abgabenordnung provides that:

'Total or partial exemption from taxes and other pecuniary charges may be granted in individual cases where, in a given case, their recovery would be contrary to natural justice.'

That application was dismissed by decision of the Hauptzollamt Berlin-Packhof of 10 July 1974.

A complaint by Balkan dated 18 July 1974 was rejected by a decision of the Oberfinanzdirektion (Regional Finance Office) Berlin of 26 March 1975. Balkan appealed against that decision to the Finanzgericht Berlin.

By order dated 23 November 1976, the IIIrd Senate of the Finanzgericht Berlin suspended the proceedings under Article 177 of the EEC Treaty until the Court of Justice has given a preliminary ruling on the following questions:

'1. Is a national customs authority entitled and, if necessary, obliged on grounds of natural justice, to deal with applications for exemption from charges due to the Community (in this instance, monetary compensatory amounts) on the basis of national law (in this instance, on the basis of Article 131 of the Reichsabgabenordnung)?
2. If the answer to the first question is in the negative, is there any legal basis (possibly under Community law) for exemption from payment of a monetary compensatory amount on grounds of natural justice?
3. What, in relation to the case to be decided here, is the legal principle resulting from such a legal basis if any?
4. Which authority, if any, is empowered to take a decision on a question concerning an exemption on grounds of natural justice?'

The order of the Finanzgericht Berlin was received at the Court Registry on 15 December 1976.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted on 22 February 1977 by Balkan-Import-Export GmbH, the plaintiff in the main action, on 25 February by the Government of the Federal Republic of Germany and on 3 March 1977 by the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

Balkan-Import-Export GmbH, the plaintiff in the main action, maintains that consideration of the questions referred to the Court must be limited to two aspects, since the main action is solely concerned, first, with objective considerations of natural justice which relate to the purpose of the charge rather than with subjective factors relating to the persons liable to pay it and, secondly, with monetary compensatory amounts alone, and not Community charges in general.

The first question

(a) The monetary compensatory amounts imposed when the importation was made are governed by national law. It is true that in levying them the Federal Republic of Germany exercised the authority contained in Article 1 of Regulation No 974/71, but they were imposed in pursuance of the regulation of 14 May 1971 on the imposition of a compensatory amount to protect German agriculture, which was itself based on Article 21 (2) (4) (f) of the Zollgesetz (German Customs Law). As compensatory customs duties, the compensatory amounts are governed by internal legislation enacted by the Federal Republic and the federal finance administration. The fact that they were levied by virtue of the authority conferred by Regulation No 974/71 is not in itself decisive since their imposition thereunder was not mandatory but fell within the area of the discretionary power of the legislatures of the Member States.

Decisions relating to exemptions on grounds of natural justice from charges imposed in pursuance of Article 21 of the Zollgesetz and of the regulation on the levying of a compensatory amount to protect German agriculture are governed solely by German procedural law and, in particular, by Article 131 of the Reichsabgabenordnung.

A decision on the first question is therefore unnecessary in order for the national court to give judgment.

(b) In its judgment of 16 December 1976 (Case 33/76, *REWE-Zentralfinanz eG and REWE-Zentral AG* v *Landwirtschaftskammer für das Saarland*), the Court of Justice held in relation to charges imposed by a national government that in the absence of Community rules on that subject, it is for the domestic legal system of each Member State to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law. That finding also applies to charges the imposition of which is provided for by Community law. The distortions which may result therefrom are inevitable in the present state of Community law.

The same considerations apply as regards questions of natural justice. Exemption from or repayment of Community charges on grounds of natural justice does not yet form the subject-matter of any uniform rules at Community level. A proposal for a regulation 'on the repayment or remission of import duties or export duties' (OJ C 54, 1976, p. 85) has not yet been adopted by the Council. However, it establishes that the need to allow remission on grounds of natural justice is fully acknowledged in Community law. As long as no Community rules have come into force and the application of the principles of natural justice has not been provided for by implementing regulations, it is necessary to have recourse to national law governing measures adopted in accordance with such principles.

The Commission acknowledged the special need to introduce principles of natural justice into the area of monetary compensatory amounts in Regulation No 1608/74 of 26 June 1974 on special provisions in respect of monetary compensatory amounts (OJ L 170, p. 38). It is true that that regulation deals only with one particular case of exemption on grounds of natural justice, but it nevertheless demonstrates the urgent need to find a remedy for certain cases of hardship which arise in that area.

In accordance with its judgment in Case 33/76, therefore, the Court should rule that measures on the basis of natural justice relating to monetary compensatory amounts imposed when the importation at issue in the main action took place must be considered in the light of national law.

(c) That view does not conflict with the judgment of the Court of Justice of 30 November 1972 (Case 18/72, *NV Granaria Graaninkoopmaatschappij* v *Produktschap voor Veevoeder,* [1972] ECR 1163) which held in particular that exemption from the levy granted by a Member State by national measures is contrary to the distribution of powers between the Member States and the Community. The main action differs in several respects from the case which gave rise to the judgment in Case 18/72:

— The monetary compensatory amounts were not imposed in pursuance of a uniform system of Community levies but rather as compensatory customs duties, in pursuance of national provisions;

— Case 18/72 did not involve a typical instance of the application of measures based on natural justice but rather the subsequent rectification of notices of levies which had in the meantime become incontestable;

— In Case 18/72 the Court of Justice held that the Community legislature alone may lay down general exceptions on legal grounds. Measures of natural justice are exemptions granted in individual cases on grounds of natural justice. They are therefore not exceptions for which legal provision has been made in advance but rather assessments made in specific cases on the basis of prior importation;

— The intention of the Court of Justice was to condemn the adoption of national legislative measures of a general nature, not implementing measures adopted by the national administration.

In its judgment of 24 November 1971 (Case 30/71, *Siemers & Co.* v *Hauptzollamt Bad Reichenhall,* [1971] II ECR 919) the Court accepted that the national customs authorities are entitled to give official information which is binding upon the administration, since such a procedure in no way lays down legal rules of general application and fits into the framework of the normal procedures for the application of the tariff classification provisions to individual cases. The same view must apply *a fortiori* to measures adopted on objective grounds of natural justice: by their nature such measures arise out of the application of the law to specific individuals and specific imports. Furthermore, under German law the time-limit for submitting applications for exemption on grounds of natural justice is rather short.

The other questions

It is unnecessary to give any opinion on the other questions submitted to the Court of Justice.

There is no basis in Community law for exemption on grounds of natural justice from monetary compensatory amounts levied when the importations in question were effected.

Regulation No 1604/68 is applicable only to imports effected after 4 June 1973. It is therefore unnecessary to consider whether it affects the national provisions relating to measures of natural justice which are outside its area of application.

As a result of the judgment of the Court of Justice in Case 33/76 there can be no doubt that national provisions relating to measures adopted on grounds of natural justice are applicable until such time as uniform Community provisions concerning such measures have been adopted.

The *Government of the Federal Republic of Germany* considers that Article 131 of the Abgabenordnung does not permit an exemption from Community charges to be granted in all cases but only in certain cases to which the provision applies.

(a) The rules laid down by Article 131 (1) of the Abgabenordnung constitute an

essential part of the German law on taxation, which is based in particular on the principle of the highest degree of justice in fiscal matters. In cases in which, as a result of particular circumstances, the application of a law imposing taxation which was conceived in the abstract leads to a result which is contrary to natural justice and subjects the person concerned to an intolerable tax burden, Article 131 (1) enables a specific and individual measure of natural justice to be adopted, subject to stringent conditions. Over a long period, case-law and academic writing have laid down detailed criteria for the application of the provision. In particular, a distinction has been drawn between cases of taxation which is unfair on objective grounds and those where it is unfair on subjective grounds. Where the grounds are objective the person liable to pay the charge is adversely affected in a way which is at once undesirable and contrary to the aim of the law. The factors which enable the element of unfairness to be judged with certainty are linked to the actual facts with regard to the taxation, and the effects of both substantive rules and procedural provisions are taken into account. Such cases must be individual cases of hardship which were not envisaged by the legislature; difficulties caused by the very objective of the taxation cannot in principle justify the adoption of measures of natural justice.

Decisions according to natural justice adopted on the basis of so-called objective grounds may be subdivided into two groups. To the extent to which the hardship which is felt in an individual case arises from the objective effect of the tax law, a decision based on natural justice automatically restricts the material content of that law. In such a case the result of the application of Article 131 is to restrict the substance of the legal rule. If, on the other hand, the case of hardship results solely from the application of a procedural provision, a correction made in accordance with the principles of natural justice falls within the area of procedural law. In such a case the result of the application of Article 131 is to amend the law on taxation procedure.

(b) The national authorities can apply Article 131 of the Abgabenordnung in order to grant an exemption on so-called objective grounds of natural justice from charges due to the Community only in cases in which the hardship results from the application of national rules of procedure and in which the measures of natural justice adopted modify taxation procedure alone. However, Article 131 cannot constitute the legal basis for a measure of natural justice intended to relieve hardship resulting from the objective effect of the rule in question — in this instance a rule of Community law.

Decisions according to natural justice on so-called subjective grounds should, for their part, be accepted.

The conclusion results, in the final analysis, from the fact that Community law takes precedence over national law. Provisions of internal law concerning natural justice apply only within the limits set by the tenor and aim of the Community rule. Their application cannot challenge the uniform and independent validity of the Community rule.

(c) Since grounds of natural justice of an objective nature are concerned, that principle excludes measures of natural justice which involve a limitation on the substantive content of the rule on taxation in question. That finding applies in particular to the exemption applied for by the plaintiff in the main action. The national customs authorities could accept such an application only by modifying the substance of the Community provision. The principle of natural justice which exists in internal law does not provide any legal basis for such an interference with the scope of Community law.

(d) As regards measures adopted on objective grounds of natural justice in order to relieve individual cases of hardship caused by the procedural provisions of taxation law, in particular in the matter of time-limits or formal requirements, the national customs authority remains competent. The adoption of rules governing the procedure applying to the recovery of charges is still a matter for the Member States: to the extent to which Community law does not lay down procedural provisions in that area it does not restrict the internal law of procedure of the States. That principle has been confirmed on several occasions by the case-law of the Court of Justice.

(e) Article 131 of the Abgabenordnung is in the nature of a regulating factor, which is essential for the authorities responsible for administering the charge in question. That fact results from the particular features of German tax law which, as a general rule, requires all the circumstances of the charge to be apparent and takes considerations of natural justice into account only when a later assessment is made. The possibility of making such an assessment cannot be abandoned as long as no corresponding Community rules exist. However, the need for such rules at Community level is recognized; the Council is at present considering a proposal for a regulation which is intended to fix conditions for the post clearance collection of import duties or export duties which have not yet been claimed from the person liable to pay them.

(f) Although the main action is solely concerned with a measure based upon objective grounds of natural justice, it is, however, necessary to emphasize that Article 131 of the Abgabenordnung may also be applied to Community charges in cases of exceptional hardship which justify the adoption of measures on subjective grounds of natural justice. Such measures are governed by the general principles of the legal orders of the Member States, which form an integral part of Community law. It is current practice in the Member States to make adjustments in exceptional circumstances on the basis of natural justice.

The *Commission of the European Communities* emphasizes that the aim of Article 131 of the Abgabenordnung is to enable an individual measure of natural justice to prevail over the formal application of necessarily general criteria of taxation in exceptional circumstances for which no provision has been made by the legislature in matters of taxation. As it is an exception to the principle that taxation shall be of general application, an exemption on grounds of natural justice may be granted only where the application of the tax laws entails hardship which does not result from the essential nature of the tax in question. Article 131 is intended to enable the tax authorities to deal with cases for which no provision has been made by the legislature.

As regards customs duties and equivalent charges, an exemption on grounds of natural justice is normally considered only after the sum owed by way of tax has been fixed.

A distinction is made between 'subjective' grounds of natural justice, which relate to the personal circumstances of the person liable to pay the charge, and 'objective' grounds, which may be relied on where, on the basis of the express or presumed will of the legislature in matters of taxation, it may be deduced that if the question to be settled according to natural justice had been expressly dealt with by the legislature it would have been settled along the lines of the measure envisaged.

The decision to grant or to reject an application for exemption on grounds of natural justice falls within the discretionary power of the competent authority.

Exemption on grounds of natural justice under Article 131 of the Abgabenordnung is characterized by the following features: it constitutes a legal rule, the purpose of which is to ensure justice in individual cases by consideration of subjective or objective reasons; such decisions are subject to review by the courts, even if only to a limited extent; the application of Article 131 presupposes the existence of exceptional circumstances for which no provision could be made by the legislature; exemption has a direct effect on the existence of the right to levy taxation and is not merely a procedural rule for dealing with the situation regarding the tax or fiscal charge.

The main action is solely concerned with objective grounds of natural justice. The purpose of the questions referred is essentially to determine whether, in that area, the Member States have retained the power to make regulations governing exemption from charges based upon Community law or, if not, whether Community law contains any principle of natural justice comparable to that to be found in German law, and in that case, to determine its content and the court, if any, which is empowered to apply it.

The question of national powers

(a) The question of the power to grant exemptions from certain compensatory charges imposed under Community law on the importation into the Community of goods from third countries is related to the problem of the distribution of legislative powers between the Community and the Member States.

In the absence of any general 'presumption of powers' that distribution results from the provisions of the Treaty relating to the aims and tasks of the Community and to the powers of the bodies set up in order to carry them out. In so far as the Community exercises sovereign powers in accordance with those provisions it is impossible for each State to exercise its own powers.

The legal basis for the imposition of monetary compensatory amounts is to be found in Regulation No 974/71 of the Council and Regulation No 548/72 of the Commission. In its judgment of 24 October 1973 (Case 5/73) the Court of Justice found that in this matter the institutions of the Community made a proper use of their powers in order to achieve an aim provided for by Community law. Member States are therefore prohibited from drawing up or applying national provisions which may affect the scope of the Community rules. The use of independent national rules of law in order to modify the basis in Community law for the imposition of monetary compensatory amounts would affect the scope of Community law in an undesirable way. For a Member State to grant an exemption under national law on grounds of natural justice from sums due by way of taxation which have previously been fixed in pursuance of a correct application of the provisions of the Community law in force would constitute an arbitrary and undesirable intervention by that State within the area of application of the Community rules in question.

Furthermore, in view of the abovementioned serious effects of the grant of an exemption on grounds of natural justice, the use of national provisions cannot be justified by the argument that they fill a 'lacuna' in Community law, since it is the very application of Community law which has been challenged.

That view is confirmed by the case-law of the Court of Justice, in particular by its judgments of 30 November 1972 (Case 18/72, *Granaria*), of 15 December 1970 (Case 31/70, *Deutsche Getreide- und Futtermittelhandelsgesellschaft mbH* v *Hauptzollamt Hamburg-Altona* [1970] II ECR 1055) and of 2 February 1977 (Case 50/76, *Amsterdam Bulb* v *Produktschap voor Siergewassen*).

No comparison may be made with the effect of 'customs tariff notifications binding the administration' issued under Article 24 of the German Customs Law. Such notifications represent an application of the law to a specific citizen in respect of specific goods. They are in no way legislative and form part of the normal machinery for applying tariff provisions to individual cases. An exemption on grounds of natural justice under Article 131 of the Abgabenordnung, on the other hand, would constitute not an application of Community law to a particular case but rather a decision not to apply that Community law adopted on the basis of independent rules of domestic law.

The position is different as regards national provisions of a formal and procedural nature which are necessary for the application of Community law. As long as the Community legislature has taken no steps towards harmonizing the laws of procedure, it must rely on solutions adopted in that area by the Member States, both as regards rights to contest national measures which individuals may derive from Community law and as regards the fixing and imposition by the authorities of the Member States of charges based on Community law. A sum owed by way of taxation which is determined entirely by the application of national procedural provisions accepted by Community law may be modified by national rules of natural justice, provided that the area of application of Community law is not thereby affected.

It must therefore be noted that Article 131 of the Abgabenordnung cannot be put forward as the legal basis for exemption from charges governed by Community law in so far as it is an independent national rule laying down an exception to the application of Community law on objective grounds of natural justice.

(b) In the light of the terms of the first question, it must be emphasized that the essential factor cannot be that the charges are 'due to the Community' but that their imposition is based upon a provision or authorization which forms part of Community law. The purpose of the charge at issue is not relevant to the question to what extent the national authorities are still empowered to grant an exemption in this field in an independent manner on grounds of natural justice.

The question of the existence of a principle of Community law

(a) Certain rules of Community law make express reference to 'principles of natural justice'. However, in every case the references occur in specific rules which are intended to apply to particular circumstances and are in most cases linked to monetary events.

(b) The area of application of the proposal for a regulation on the repayment or remission of import duties or export duties far exceeds that which, even in the Federal Republic of Germany, may be regarded as falling within the concept of a measure of natural justice and, as regards structure, it is clearly distinguishable from the potestative provision constituted by Article 131 of the Abgabenordnung. However, none of the cases envisaged by the proposal covers the situation which gave rise to the main action.

In so far as that proposal, which is based upon broadly comparable principles from the customs law of the Member States, goes beyond such 'customary Community law', it creates a new Community law under which exemption from sums owed by way of taxation is compulsory. National provisions at present in force concerning exemption from or repayment of charges of that nature are, in so far as they concern the area to which Community rules have been extended, contrary to Community law and therefore inapplicable.

In its proposal the Commission acknowledged that, apart from the cases expressly provided for in the regulation, other situations may arise which would also justify exemption from or repayment of duties on grounds of natural justice. The spirit of that provision, which is not certain to be adopted by the Council in the form proposed, clearly shows that the Commission was not content to draw up merely a general provision dealing with natural justice but that it wished rather to fix detailed conditions for its application according to a particular procedure. In all probability therefore, the regulation which will be adopted by the Community legislature will be fundamentally different from the rules governing natural justice at national level and, in particular, from Article 131 of the Abgabenordnung. It is, therefore, impossible to claim that the absence of any provision of natural justice governing exemption from or repayment of duties arises out of a 'temporary hiatus' between the national law which was formerly applicable and the Community law which will be applicable in future.

(c) The question arises whether the legal orders of the Member States contain any common principle on the basis of which Community law might recognize a similar unwritten principle of natural justice allowing exemption, in certain circumstances, from payment of a sum owed by way of tax. Analysis of the legal situation in the Member States shows that it is impossible to establish the existence of any such general legal principle common to the Member States which is comparable to the provision contained in Article 131 of the Abgabenordnung.

Furthermore, the practical application of such a principle in the context of Community law would raise virtually insoluble problems. In order to determine whether or not to allow exemption the national authorities responsible for levying the duties would in each case be required to examine not only the relevant provisions of Community law but also those of the national laws of all the Member States. Furthermore, the causes of uncertainty are so great that the limits of an interpretation and application of Community law in accordance with the principle of legal certainty might be reached or even exceeded.

Even if it is accepted that there is a certain practical need for a uniform Community system, there appears to be no absolute legal necessity for a principle of natural justice to be recognized in Community law.

In most cases, it is possible to arrive at a satisfactory solution by means of an interpretation of the aim and spirit of the provisions of Community law relating to the duties to be levied. Furthermore, an individual affected by a provision of Community law is already protected in cases in which the effects of the application of an otherwise irreproachable Community rule are undesirable and excessive in a particular case.

Secondary considerations

Even if the Court were to reach the conclusion that Community law allows an exemption to be granted on objective grounds of natural justice, either because the Member States are empowered to make their own regulations in that area or because a principle of Community law permits it, the main action cannot give rise to an exemption on grounds of natural justice. Such exemption cannot be considered in cases such as the present in which the fact that certain of the legal effects of a measure will be unfair has been accepted in advance by Community law. In order to satisfy the requirements of speed and effectiveness which are essential in a temporary measure it was accepted that in certain cases the effects provided for by Regulation No 974/71 would not be produced or would be produced only in part.

The Commission therefore considers that the following reply must be given to the questions referred:

1. It is incompatible with Community law for national customs authorities to exercise discretionary power under provisions of internal law to authorize exemption from or repayment of charges governed by Community law on objective grounds of natural justice;
2. There is at present no general legal basis in Community law for granting an exemption on objective grounds of natural justice from charges fixed in accordance with the relevant provisions of Community law.

III — Oral procedure

Balkan-Import-Export GmbH, the plantiff in the main action, represented by Dietrich Ehle, Advocate at the Cologne Bar, the Government of the Federal Republic of Germany, represented by Martin Seidel, Ministerialrat im Bundesministerium für Wirtschaft, (Ministerial Counsellor at the Federal Ministry for Economic Affairs) and the Commission of the European Communities, represented by its Legal Adviser, Peter Gilsdorf, presented oral argument at the hearing on 5 May 1977.

The Advocate General delivered his opinion at the hearing on 24 May 1977.

Decision

1 By order of 23 November 1976, received at the Court Registry on the following 15 December, the Finanzgericht Berlin referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty certain questions relating to the interpretation of the general scheme of the Community rules on monetary compensatory amounts and, in particular, of Regulation (EEC) No 974/71 of the Council of 12 May 1971 on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States (OJ, English Special Edition 1971 (I), p. 257), as well as of the implementing regulations adopted by the Commission.

The questions referred ask what rules or principles of law may be applied to exemptions on grounds of natural justice from payment of monetary compensatory amounts levied on agricultural products imported from third countries.

2 The questions referred to the Court arose in the context of an action before the Finanzgericht concerning the levy of compensatory amounts on sheep's milk cheese imported from Bulgaria, during the course of which the Finanzgericht asked the Court, by an order of 19 January 1973, to give a preliminary ruling on the interpretation and validity of certain provisions of the regulations to which reference was made.

In its judgment of 24 October 1973 *(Balkan-Import-Export GmbH* v *Hauptzollamt Berlin-Packhof,* Case 5/73 [1973] II ECR 1091), the Court ruled that examination of the questions referred had not revealed any elements capable of affecting the validity of Regulation No 974/71 of the Council or of the implementing regulations adopted at the time by the Commission.

After the Court had given judgment the plaintiff in the main action applied to the Hauptzollamt Berlin-Packhof for exemption from the monetary compensatory amounts which it was required to pay on the ground that, in that particular case, payment of the amounts in question would lead to a result which was contrary to the objectives of the Community rules and which should be corrected by the application of the principles of natural justice enshrined in Article 131 (1) of the Abgabenordnung (General Regulation on Taxation).

When that application was rejected by the customs authorities the plaintiff brought an action before the Finanzgericht Berlin, which has referred four questions to the Court for a preliminary ruling.

3 The first question asks whether a national customs authority is entitled and, if necessary, obliged on grounds of natural justice, to deal with applications for exemption from charges due to the Community (in this instance, monetary compensatory amounts) on the basis of national law (in this instance, on the basis of Article 131 of the Reichsabgabenordnung).

4 The solution to the question referred is related to the distribution of powers between the Community and the Member States at the period as regards the introduction and collection of the charge in dispute.

5 Monetary compensatory amounts were introduced by the Community for the purpose of regulating the Community market in agricultural products following alterations in the exchange rates of the currencies of the Member States.

Although all questions concerning the basis of assessment, the manner of imposition and the amount of the charge in dispute were fixed by Community law, the recovery of the charge, together with all the formalities attaching thereto, was entrusted to the competent authorities in the Member States, as the Court has had occasion to point out in other contexts (judgment

of 25 October 1972, Case 96/71, *R and V Haegeman* v *Commission of the European Communities* [1972] II ECR 1005; jugdment of 4 April 1974, Joined Cases 178, 179 and 180/73, *Belgian State and Grand Duchy of Luxembourg* v *Mertens and Others,* [1974] I ECR 383; judgment of 5 May 1977, Case 110/76, *Pretore of Cento* v *A Person or Persons Unknown).*

Although that distribution of functions between the Community and the Member States may justify the application, by a tax authority, of a rule of natural justice for which provision is made under its national legislation in connexion with the formalities applicable to the imposition of a charge introduced by Community law, such a rule may not be applied in so far as its effect would be to modify the scope of the provisions of Community law concerning the basis of assessment, the manner of imposition or the amount of a charge introduced by that law.

The result is, in particular, that a national authority cannot grant an application for exemption on grounds of natural justice if the reasons for such application relate to the economic justification for the charge in question.

6 The reply to the first question must therefore be that a national customs authority is not entitled to apply the provisions of its national law to an application for exemption, on grounds of natural justice, from charges due under Community law — in this instance, monetary compensatory amounts — in so far as to apply national law would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question.

7 The second and third questions ask whether there is any legal basis under Community law for exemption from payment of monetary compensatory amounts on grounds of natural justice and, if such basis exists, what, in relation to the case to be decided here, would be the legal principle applicable, if any.

8 In its present state, Community law contains no provision, such as that existing in German legislation, which enables exemption from charges introduced by Community law to be granted by administrative action.

A proposal to that effect which was submitted by the Commission to the Council on 30 December 1975, that is, at a date subsequent to the events which gave rise to the present case, has so far not been acted upon by the Council.

9 As regards the case under consideration, it must, however, be observed that the criticisms of the plaintiff in the main action concerning the economic repercussions of the regulations on which the charge in dispute is based have already been considered by the Court within the context of Case 5/73.

In its judgment of 24 October 1973 the Court referred to the reasons which, having regard to the need to balance opposing interests, justify the introduction of the machinery for compensatory amounts according to the system adopted by the Council and subsequently implemented by the Commission.

10 The reply to be given to the second and third questions must therefore be that there is no legal basis under Community law for exemption from monetary compensatory amounts on grounds of natural justice.

11 In the light of the foregoing it is unnecessary to examine the fourth question.

Costs

12 The costs incurred by the Government of the Federal Republic of Germany and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the Finanzgericht Berlin, the decision as to costs is a matter for that court.

On those grounds,

THE COURT

in reply to the questions referred to it by the IIIrd Senate of the Finanzgericht Berlin by order of 23 November 1976, hereby rules:

1. **A national customs authority is not entitled to apply the provisions of its national law to an application for exemption, on grounds of natural justice, from charges due under Community law — in this instance, monetary compensatory**

amounts — in so far as to apply national law would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question.

2. There is no legal basis under Community law for exemption from monetary compensatory amounts on grounds of natural justice.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 28 June 1977.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 24 MAY 1977 [1]

Mr President,
Members of the Court,

On 6 November 1971 the plaintiff in the main action, who is already known to us from the reference for a preliminary ruling dealt with in Case 5/73 (judgment of 24 October 1973, *Balkan-Import-Export GmbH* v. *Hauptzollamt Berlin-Packhof* [1973] II ECR 1091), concluded with the Bulgarian national trade department 'Rodapaimpex' a contract of purchase expressed in German marks for the delivery of Bulgarian sheep's milk cheese. The goods were imported into West Berlin on 24 March 1972. In pursuance of the provisions of Regulation No 974/71 (OJ English Special Edition 1971 (I), p. 257), which was adopted as a result of the floating of the rates of exchange of the German mark and the Dutch guilder effected in May 1971, monetary compensatory amounts were levied on that importation. The rate applied was that which was in force on the day of importation and which had been fixed by the Commission in Regulation No 548/72 of 16 March 1972 (JO L 66, p. 1).

1 — Translated from the German.