OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 21 November 1996 *

I — Introduction

1. The appellants have appealed against the judgment delivered by the Court of First Instance of the European Communities on 21 February 1995 in Case T-472/93. [1] Their appeal is however limited to the part of the judgment in which the Court of First Instance rejected the appellants' claim to be entitled to compensation for damage arising from the non-contractual liability which in their view was incurred by the Community as a result of the Council's adoption of Regulation No 3814/92.

II — Facts

2. Council Regulation (EEC) No 3814/92 of 28 December 1992 (hereinafter 'the Regulation') amending Regulation (EEC) No 1785/81 and introducing application in Spain of the sugar sector prices provided for by that regulation [2] provided for the alignment of sugar prices in that State with prices in the rest of the Community to be completed on 1 January 1993 with a view to achieving the single European market. Accordingly the Regulation brought to an end the transitional scheme applicable to that sector in consequence of the temporary derogation granted by Article 70(3)(a) of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community, [3] signed on 12 June 1985 ('the Act of Accession'), and which had been established on account of the higher prices prevailing in the sector in question in Spain at the time of accession.

3. In its judgment of 21 February 1995 the Court of First Instance found that the Regulation was a measure of general application and declared the appellants' application for annulment to be inadmissible. Consequently, it was held at first instance that the appellants could not bring an action for annulment of that measure since they did not have capacity to bring such proceedings. In addition, the Court of First Instance dismissed as unfounded the application for compensation for damage suffered by the appellants as a result of the breach of the principle of the protection of legitimate expectations and of

* Original language: Italian.

1 — Case T-472/93 *Campo Ebro and Others* v *Council* [1995] ECR II-421.

2 — OJ 1992 L 387, p. 7.

3 — OJ 1985 L 302, p. 9.

the principle of non-discrimination which they consider the Council to have committed in adopting the Regulation.

4. I refer to the account given in the judgment of the Court of First Instance of 21 February 1995 for a fuller description of the relevant provisions, the facts which gave rise to the proceedings before that court and the pleas in law put forward by the appellants in support of their action.

III — Grounds of appeal

5. The appellants have challenged that judgment of the Court of First Instance solely as regards the matter of compensation for damage, in respect of which they have put forward the grounds of appeal examined below.

6. First, the appellants claim that the Court of First Instance infringed Article 70(3)(b) of the Act of Accession, and at the same time the principle of protection of legitimate expectations and Article 190 of the EC Treaty, in finding that the appellants could not derive any legitimate expectation from the Act of Accession. Specifically, the appellants argue that, on the basis of Article 70(3)(b), they were, on the contrary, entitled to consider that the prices in question would not be aligned with market prices at the end of the seventh year following accession.

In my opinion, the reasoning of the Court of First Instance on this issue was correct and exhaustive. That court found that, on the basis of the actual wording of Article 70(3)(b) of the Act of Accession, it fell within the Council's discretion to legislate on that matter precisely in order to bring about the alignment of prices in the sector in point. It therefore considered that the Act of Accession could not have given rise to expectations such as those claimed by the appellants.

I concur with that reasoning of the Court of First Instance. In my opinion, it contains no defects of logic or erroneous interpretations of law and must therefore be upheld. Consequently, the first ground of appeal must be rejected.

7. Under the second and fourth grounds of appeal, which should be considered together since the arguments are substantially the same, the appellants claim that the Court of First Instance infringed both the principle of the protection of legitimate expectations and

Article 190 of the EC Treaty in incorrectly holding that Council Regulation (EEC) No 1716/91 of 13 June 1991 concerning the alignment of the sugar and beet prices applicable in Spain on the common prices [4] did not create any legitimate expectation on the part of the appellants, in particular as regards the fixing of the prices at issue as from 1 January 1993.

To my mind, the reasoning of the Court of First Instance on that point cannot be faulted. That court rightly pointed out that Regulation No 1716/91 did not specify the methods of price alignment for the second stage, that is to say the period following 1 January 1993. Regulation No 1716/91 provided for prices to be aligned with effect from 1 January 1993 and deferred the provision of measures, if any, for the future to other legislation which would have to be adopted subsequently. In this case too, then, the margin of discretion, as thus determined, available to the Community legislature remained sufficiently broad. For that reason I consider that the second and fourth grounds of appeal put forward by the appellants must be rejected.

8. Under the third ground of appeal the appellants contend that the Court of First Instance incorrectly applied Article 28 of the Single European Act and, in conjunction with this, infringed the principle of protection of legitimate expectations and Article 190 of the EC Treaty in holding that a prudent and well-informed trader ought to have taken into account the effects of the anticipated achievement of the single market on the intervention price of sugar.

Article 28 of the Single European Act is in my opinion irrelevant for the purposes of this case. Article 28 merely states that the provisions of the Single European Act are without prejudice to the provisions of the Act of Accession: consequently, the Single European Act neither takes anything away from nor adds anything to what is laid down in Article 70(3)(b), or in Regulation No 1716/91, which was in its turn adopted on the basis of the abovementioned provision of the Act of Accession.

Accordingly, I do not consider it necessary for me to examine the findings of the Court of First Instance regarding the question whether the realignment of prices in the Spanish sugar sector should have been foreseeable by an averagely prudent and well-informed trader. Those findings relate to matters of pure fact concerning developments on the Spanish sugar market and, in my view, fall outside the scope of this Court's power of review under Article 51 of its EC Statute.

The third ground of appeal must therefore also be rejected.

4 — OJ 1991 L 162, p. 18.

9. The fifth ground of appeal is based on the alleged general infringement by the Court of First Instance of various principles and provisions of Community law and, as the Commission has correctly observed, is not materially different from the first and second grounds. Consequently, it must meet with the same fate as those two grounds, which have been examined above.

10. Under the sixth ground of appeal the appellants complain that the Court of First Instance infringed the principle of non-discrimination by distinguishing the situation of Spanish sugar producers from that of the appellants as producers of isoglucose, and also that it committed a related breach of the requirement laid down in Article 190 of the Treaty.

The rationale of the appellants' case is that the factual circumstances on the two markets are similar and must therefore be treated similarly by the Community legislature. The appellants' objection is, essentially, that sugar producers and isoglucose producers are not treated equally. The Court of First Instance, on the other hand, draws a distinction between the two sectors on the basis of the specific particulars of the respective production processes and of the need to maintain vast stocks of the finished product, which exists, according to it, only in the case of sugar production and not in the case of isoglucose.

Here again, however, we are concerned with factual reconstructions of the market and of the related technical processes for producing sugar and isoglucose, which cannot be submitted for review by the Court in the context of an appeal. The sixth ground of appeal must therefore be rejected as well.

11. The same conclusion must be reached as regards the appellants' case under the seventh, eighth and ninth grounds of their appeal, inasmuch as they seek to contest the findings of the Court of First Instance regarding facts relating to various aspects of the structure of the sugar and isoglucose markets: the constitution of stocks of the product, the obligation to pay minimum prices to purchase raw materials, aid granted to sugar producers for stocks of the finished product and the reduction in the minimum price of beet.

12. Consequently, the appeal must be dismissed in its entirety.

IV — Costs

Under Article 69(2) and (4) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, with the exception of those incurred by institutions which have intervened.

The appellants must therefore be ordered to pay the costs of the proceedings, with the exception of those incurred by the Commission, which must be borne by that institution.

V — Conclusion

13. In the light of the foregoing considerations I propose that the Court should:

(1) dismiss the appeal as unfounded;

(2) order the appellants to pay the costs, with the exception of those incurred by the Commission;

(3) order the Commission to bear its own costs.