JUDGMENT OF THE COURT (FIRST CHAMBER)
7 OCTOBER 1982 [1]

Greek Canners Association and Others v Commission of the European Communities

(Validity of a Commission regulation)

Case 250/81

Application for a declaration of nullity — Natural or legal persons — Measures of direct and individual concern to them — Criteria

(EEC Treaty, Art. 173, second paragraph; Commission Regulation (EEC) No 1962/81)

Regulation (EEC) No 1962/81, which fixes the coefficients to be applied throughout the Community to the production aid granted to all producers of tomato concentrates in order to take account of the dry extract content and the different forms of packing, is exclusively legislative in nature and, although it may affect certain undertakings, it is not of direct and individual concern to them within the meaning of Article 173 of the EEC Treaty.

In Case 250/81

GREEK CANNERS ASSOCIATION,

ASTERIS SA,

ADELCAN KANAKARIS BROS, who all have their registered offices in Athens,

represented by Christoforos Argyropoulos and Emmanuel Kaldellis, of the Athens Bar, with an address for service in Luxembourg at the Chambers of André Elvinger, Advocate, 15 Côte d'Eich,

applicants,

1 — Language of the Case: English.

V

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Richard Wainwright, acting as Agent, assisted by François Lamoureux, both members of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Regulation (EEC) No 1962/81 of 10 July 1981 fixing, *inter alia*, the coefficients to be applied to production aid for tomato concentrates in the 1981/1982 marketing year (Official Journal 1981, L 192, p. 13) is void,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

Council Regulation (EEC) No 1152/78 of 30 May 1978 amending Regulation (EEC) No 516/77 on the common organization of the market in products processed from fruit and vegetables (Official Journal 1978, L 144, p. 1) introduced a system of production aids applicable, *inter alia*, to tomato concentrates. Payment of the aid to the processing undertaking is subject to certain conditions, including payment of a minimum price to the producer on a contractual basis. The amount of aid and the minimum price are determined by the

Commission, under the management committee procedure, for each marketing year (from 1 July to 30 June).

The criteria to be applied are set out in Articles 3 (a) and 3 (b) of Regulation No 516/77. As regards Greece, the criteria applicable in respect of the system of aid provided for by Article 3 (a) of Regulation No 516/77 are laid down in Article 103 of the Act concerning the Conditions of Accession of the Hellenic Republic [hereinafter referred to as "the Act of Accession"].

Commission Regulation (EEC) No 1963/81 of 10 July 1981 (Official Journal 1981, L 192, p. 16) fixes the minimum price to be paid to producers of tomatoes intended for processing as tomato concentrates and the amount of the production aid. There is a difference between the amount payable to Greek producers and that payable to producers from the other Member States.

Regulation No 1962/81 determines the coefficients to be applied to the amount of aid granted; the coefficients vary according to the dry extract content and the method of packaging.

By an application registered at the Court on 15 September 1981, the applicants brought this action, under Article 173 of the EEC Treaty, for a declaration that Regulation No 1962/81 is void. By a document dated 16 October 1981, the Commission raised an objection of inadmissibility pursuant to Article 91 of the Court's Rules of Procedure.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure on the objection of inadmissibility without any preparatory inquiry and, pursuant to Article 95 (1) and (2) of the Rules of Procedure, to assign the case to the First Chamber.

II — Conclusion of the parties

The applicants claim that the Court should:

Declare the application admissible; and

Declare the contested regulation void as regards Greek tomato concentrates and apply the law, with the result that it will be necessary to adopt a new regulation in accordance with Article 103 (3) of the Act concerning the Conditions of Accession of the Hellenic Republic and with the other provisions referred to in the application.

The defendant contends that the Court should:

Dismiss the application as inadmissible; and

Order the applicants to pay the costs.

III — Submissions and arguments of the parties

The *applicants,* a Greek canners' association and two undertakings engaged in the production of tomato concentrates, seek the annulment of Regulation No 1962/81 on the ground that it is contrary to the provisions of Article 103 of the Act of Accession in so far as it does not compare processing costs in the case of small packings weighing less than 5 kg. As regards the table of coefficients (percentages) which makes it possible to determine the amount of aid granted to Greece for different packings, the regulation should be based not only on a comparison of the processing costs for packings of 5 kg in Greece and in the other Member States but also on a comparison of the processing costs for different kinds of packings.

The *Commission,* by means of a separate document, raises an objection of inadmissibility.

Article 173 of the EEC-Treaty authorizes the Council, the Commission and the Member States to contest the validity of acts of the Council and the Commission before the Court, but it permits individuals to challenge only decisions which are addressed to them. An individual may however challenge any decision which, although in the form of a regulation, is of direct and individual concern to him. Accordingly, the applicants must establish: first, that the contested measure in fact constitutes a decision; secondly, that is concerns them directly and, thirdly, that it concerns them individually. Each of those conditions must be satisfied in order for the application to be held admissible. According to the Commission, the measure in question is, in substance, a regulation within the meaning of Article 189 of the Treaty; it enacts rules of general application and is not of "individual concern" to the applicants.

Rules of general application

Regulation No 1962/81 sets out the coefficients for calculating the amount of aid payable for a given quantity of tomato concentrate on the basis of its quality and its packaging. The coefficients are fixed for all producers of tomato concentrates, without any distinction. The fact that it is possible to determine the number of such producers does not in itself prevent the measure fixing the coefficient from being in the nature of a regulation. The Commission possessed no information on the identity of individual firms; hence it was unable to appreciate the possible effect on a particular firm of the coefficients fixed by Regulation No 1962/81, which, moreover, were calculated by reference to objective criteria relating to "dry extract content" and "immediate packing".

Those considerations support the view that Regulation No 1962/81 is in fact legislative in nature, that the rules which it contains are expressed in general terms, that they apply to anyone engaged in the manufacture of tomato concentrates and that their content was not determined by subjective considerations.

Direct and individual concern

The Commission does not dispute that Regulation No 1962/81 is of direct concern to the applicants, with the exception of the first applicant, the Greek Canners Association, in so far as the coefficients fixed by that regulation leave no margin of discretion to the national authorities. However, it disagrees with the contention that the regulation is of individual concern to the applicants.

The regulation concerns all processing undertakings in the Community engaged in the production of tomato concentrates, without any restriction or limitation. That argument is strengthened by the consideration that the regulation concerns not only processors in business at the time of its adoption but also any processor who subsequently starts up in business during the 1981/1982 marketing year and who fulfils the conditions laid down in order to qualify for the aid. Accordingly, the applicants cannot claim to be "directly and personally" concerned by the regulation within the meaning of Article 173 of the Treaty.

The first applicant's capacity to bring proceedings

The first applicant, the Greek Canners Association, is a trade association which, as specified in the application, has as its purpose to protect the interests of Greek canners.

The Commission observes that under Article 173 a trade association is entitled to institute proceedings for annulment only in order to defend its own interests as an association but not to defend the individual or collective interests of its members (judgment of 18 March 1975 in Case 72/74 *Union Syndicale* v *Council* [1975] ECR 401).

In their observations on the Commission's objection of inadmissibility, the *applicants* contend that the regulation at issue is of direct and individual concern to them. Asteris SA and Adelcan Kanakaris Bros, both of which are undertakings engaged in the production of tomato concentrates, produced such concentrates in packings weighing less than five kg and are entitled to receive a specific production aid; however, the regulation has deprived them of that right. Accordingly, those undertakings are being treated unfairly and inequitably by comparison with undertakings from the other nine Member States of the Community and are faced with unfair competition which is ruining them.

IV — Oral procedure

Oral argument was presented by the parties at the sitting on 1 July 1982.

The Advocate General delivered his opinion at the sitting on 15 July 1982.

Decision

1 By an application lodged at the Court Registry on 15 September 1981, the Greek Canners Association, together with Asteris SA and Adelcan Kanakaris Bros, undertakings engaged in the production of tomato concentrates, brought an action under Article 173 of the EEC Treaty for a declaration that Commission Regulation (EEC) No 1962/81 of 10 July 1981, fixing *inter alia* the coefficients to be applied to production aid for tomato concentrates in the 1981/1982 marketing year (Official Journal 1981, L 192, p. 13), is void in so far as it relates to tomato concentrates produced in Greece.

2 The applicants contend that the contested regulation is contrary to the provisions of Article 103 (3) of the Act concerning the Conditions of Accession of the Hellenic Republic [hereinafter referred to as "the Act of Accession"] in so far as it takes insufficient account of the processing costs for different kinds of packings used in Greece.

3 By a document dated 16 October 1981, the Commission of the European Communities raised an objection of inadmissibility under Article 91 of the Rules of Procedure of the Court of Justice.

4 According to the Commission, Regulation No 1962/81 is legislative in nature, the rules which it contains are expressed in general terms, they apply to anyone engaged in the manufacture of tomato concentrates and their content was determined not by subjective considerations but by reference to objective criteria relating to "dry extract content" and "immediate packing".

5 It follows that the provisions in question constitute a regulation, within the meaning of Article 189 of the EEC Treaty, containing rules of general application and concerning all producers of tomato concentrates in the Community; it is not a decision which, although in the form of a regulation, is of direct and individual concern to the applicants. Therefore, the applicants may not seek to have it declared void under Article 173 of the EEC Treaty.

6 The applicants maintain that the regulation in question is of direct and individual concern to them since both Asteris SA and Adelcan Kanakaris Bros are undertakings engaged in the production of tomato concentrates and have produced tomato concentrates in packings weighing less than 5 kg.

7 It must be remembered that Council Regulation (EEC) No 516/77 of 14 March 1977 (Official Journal 1977, L 73, p. 1), as most recently amended by Council Regulation (EEC) No 1118/81 of 28 April 1981 (Official Journal 1981, L 118, p. 10), established a system of production aid for tomato concentrates and provided that the amount of aid is to be determined by taking into account the minimum price payable to tomato producers and the processing costs and that the price payable to producers and the amount of aid are to be fixed by the Commission for each marketing year.

8 As regards Greece, Article 103 of the Act of Accession provides that the minimum price payable is to be established on the basis of prices paid in Greece to producers for a product for processing, recorded over a representative period to be determined. The amount of aid granted in Greece is to be determined by taking into account the minimum price fixed for Greece and the processing costs obtaining in Greece.

9 Commission Regulation (EEC) No 1963/81 of 10 July 1981 (Official Journal 1981, L 192, p. 16) fixes the minimum price to be paid to producers per 100 kg net weight of tomatoes for the Member States other than Greece, on the one hand, and for Greece, on the other. The same regulation fixes the amount of aid for tomato concentrates in an immediate packing of 1·5 kg or more and maintains the differentiation between Greece and the other Member States.

10 Regulation (EEC) No 1962/81, which the applicants seek to have declared void, fixes the coefficients to be applied to the production aid in order to take account of the dry extract content and the method of packing. The coefficients are the same for Greece and for the other Member States.

11 Accordingly, it is clear that the contested measure is a regulation which fixes the coefficients to be applied throughout the Community to all producers of tomato concentrates in order to take account of the dry extract content and the different forms of packing. Such a regulation is exclusively legislative in nature and, although it may affect the applicants, it is not of direct and individual concern to them within the meaning of Article 173 of the EEC Treaty. The application for a declaration that the regulation is void is therefore inadmissible.

Costs

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

On those grounds,

THE COURT (First Chamber)

hereby:

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

2. Orders the applicants to pay the whole of the costs.

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 7 October 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. O'Keeffe

President of the First Chamber

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 15 JULY 1982

My Lords,

The applicants are an association of Greek canners and two Greek companies engaged in the manufacture of tomato concentrate. They ask the Court to annul Commission Regulation No 1962/81 of 10 July 1981 (OJ 1981, L 192, p. 11) in so far as it fixes for the 1981-1982 marketing year the coefficients to be applied in Greece to production aid for tomato concentrate. The Commission raises a preliminary objection to the admissibility of the application and it is with that objection alone that the Court is concerned at this stage.

A system of production aid for tomato concentrate, among other products, is established by Articles 2 (a), 3 (a), 3 (b) and 3 (c) of Council Regulation No 516/77 of 14 March 1977 (OJ 1977, L 73, p. 1) as amended by Council Regulation No 1152/78 of 30 May 1978 (OJ 1978, L 144, p. 1). The system is concerned with contracts under which a processor engages with the producer for the purchase of specified quantities of tomatoes, over a specified period at an agreed price. For deliveries made under such contracts a "minimum price", which processors must pay to producers, calculated as laid down in paragraph 3 of Article 3 (a), is fixed before the