JUDGMENT OF THE COURT (Sixth Chamber)

15 February 1996 *

In Case C-209/94 P,

Buralux SA, Satrod SA and Ourry SA, represented by Pierrot Schiltz, of the Luxembourg Bar, and Jean-Claude Fourgoux and Christian Huglo of the Paris Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities of 17 May 1994 in Case T-475/93 *Buralux, Satrod and Ourry* v *Council* (not published in the ECR), seeking to have that judgment set aside,

the other party to the proceedings being:

Council of the European Union, represented by Arthur Alan Dashwood, Director in its Legal Service, and Bjarne Hoff-Nielsen, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Bruno Eynard, Manager of the Legal Directorate at the European Investment Bank, 100 Boulevard Konrad Adenauer,

* Language of the case: French.

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris, President of the Chamber, G. Hirsch, G. F. Mancini, F. A. Schockweiler and P. J. G. Kapteyn (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 23 November 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 15 July 1994, Buralux SA, Satrod SA and Ourry SA (hereafter 'the appellants') lodged an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 17 May 1994 in Case T-475/93 *Buralux, Satrod and Ourry* v *Council* (not published in the European Court Reports), which dismissed as inadmissible the applicants' action for the annulment of Article 4(3)(a)(i) of Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community (OJ 1993 L 30, p. 1; hereafter 'Regulation No 259/93'), for a declaration that the Community was non-contractually liable for the damage allegedly suffered by the applicants, and for damages.

2 The findings of the Court of First Instance show that the appellants are three undertakings which carry out the collection, shipment and dumping of household waste originating in Germany and exported to France, and that they operate together: whilst Buralux concludes contracts for the collection and removal of household waste, Ourry deals with transport and Satrod manages the French disposal sites (paragraph 1).

3 It was on that basis that, mostly in 1990, Buralux concluded renewable five-year contracts with various public bodies in Germany (paragraph 2).

4 However, the importation of household waste into France terminated with the adoption of French Decree No 92-798 of 18 August 1992, amending and supplementing Decree No 90-267 of 23 March 1990 on the importation, exportation and transit of noxious waste. Under the new provisions of Article 34-1 of that decree, the importation of household waste for dumping purposes is prohibited, subject to certain exceptions (paragraph 3).

5 On 1 February 1993, the Council adopted Regulation No 259/93, which establishes a uniform and comprehensive system for the transfer of all types of waste, whether hazardous or otherwise, not only between Member States but also between the Community and non-member countries. Title II of that regulation concerns shipments of waste between Member States and contains Article 4(3)(a)(i), which reads as follows:

'In order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels in accordance with Directive 75/442/EEC, Member States may take measures in accordance with the Treaty to prohibit generally or partially or to object systematically to shipments of waste. Such measures shall immediately be notified to the Commission, which will inform the other Member States.'

6 Considering that the purpose of that provision was to 'legalize' the French decree in Community law, the appellants brought an action before the Court of First Instance for annulment under the fourth paragraph of Article 173 of the EC Treaty and an action for damages in respect of the Council's non-contractual liability under Articles 178 and 215 of the Treaty.

The order of the Court of First Instance

7 On 17 May 1994, pursuant to Article 111 of its Rules of Procedure, the Court of First Instance made an order dismissing the action as inadmissible.

8 Having referred to the established case-law of the Court concerning the admissibility of an action for annulment brought by an individual, the Court of First Instance found that 'Article 4(3)(a)(i) of Regulation No 259/93 — in so far as it provides that Member States may prohibit generally or partially, or systematically object to, shipments of waste in order to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national levels — is intended solely to establish the framework within which Member States may introduce restrictions on waste shipments. Therefore, the legal effects which it is capable of producing concern categories of persons envisaged generally and in the abstract' (paragraph 23).

9 The Court therefore held that 'the contested provision concerns the applicants only in their objective capacity as economic operators in the waste management and transport business, in the same way as any other operator in an identical situation, so that the applicants are not concerned individually' (paragraph 24). The Court decided that, in those circumstances, and without there being any need to determine whether the applicants were directly concerned by the contested provision of Regulation No 259/93, the action had to be dismissed as inadmissible in so far as it sought the annulment of that provision (paragraph 25).

10 As for the action in respect of the Council's non-contractual liability under Articles 178 and 215 of the Treaty, the Court of First Instance pointed out that Article 38(1)(c) of the Rules of Procedure of the Court of Justice, which applied at the time the action was commenced, requires the application initiating proceedings to state the subject-matter of the proceedings and a summary of the pleas in law on which the application is based (paragraph 30). Finding that neither the application initiating proceedings nor the reply contained proof of the amount of compensation claimed by each of the applicants (paragraph 31), the Court held that that part of the action was also inadmissible (paragraph 32).

The pleas in law and arguments of the parties regarding the order of the Court of First Instance

11 In their action for annulment under Article 173 of the Treaty, the appellants make three arguments to show that the Court of First Instance was wrong to consider that they were not directly and individually concerned by Article 4(3)(a)(i) of Regulation No 259/93 (hereafter 'the contested regulation').

12 First, by regarding the contested provision as a 'framework' for action addressed to general and abstract categories of persons, the Court misinterpreted it. The provision allows Member States, at any time and without justification, and in a sensitive area, to take specific measures, such as the prohibition of the importation of waste from another Member State. It thus entails catastrophic economic and financial consequences for the appellants, who are practically the only operators transporting waste from Germany to France and for whom such transportation constitutes their principal activity.

13 Secondly, the Court of First Instance wrongly refused to apply the case-law in Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207 to the facts of this case. Like the applicants in *Piraiki-Patraiki*, the applicants in the present case concluded contracts before the adoption of the contested measure which were due for execution during the period of the measure's validity.

14 Finally, by taking insufficient account of the factual circumstances of this case, the Court disregarded the concept of a party's interest in bringing proceedings and the rights of applicants to a legal remedy against the acts of Community institutions.

15 As for the action in respect of the Council's non-contractual liability under Articles 178 and 215 of the Treaty, the appellants complain that the Court of First Instance held the action to be inadmissible for failure to provide precise proof of the amount of the alleged damage, whereas the existence of that damage is indisputable and its amount may be established from all the invoices, the addition of which enables the appellants' turnover to be determined.

16 In its response, the Council argues primarily that the appeal is clearly inadmissible, and, in the alternative, that it is unfounded.

17 As for the action for annulment, the contested provision of Regulation No 259/93 constitutes a general legislative provision addressed to all the Member States, and does not therefore apply individually and directly either to current or to future operators.

18 Secondly, it was only in a whole series of special circumstances that the Court held in *Piraiki-Patraiki* v *Commission*, cited above, that the action was admissible. The same reasoning cannot be applied to the present case.

19 Finally, the Council emphasizes that, in the case of legislative measures adopted by Community institutions, individuals may always bring an action against national decisions taken pursuant to such measures before the national courts, which may

request the Court of Justice to rule on the validity of such measures under Article 177 of the EC Treaty.

20 Concerning the claim for non-contractual liability, the Council considers that the mere production of invoices does not prove the existence of damage or enable the amount of the compensation claimed to be evaluated.

Findings of the Court

21 As regards that part of the appeal which concerns the decision of the Court of First Instance to dismiss the action in non-contractual liability as inadmissible, it suffices to note that the question whether the amount of compensation claimed by each of the appellants has been sufficiently proven in the application and the reply requires an assessment of the facts which lies beyond the jurisdiction of the Court, which is merely to review the compliance of the contested order with rules of law.

22 As for the arguments against the decision to dismiss the annulment action as inadmissible, it must be ascertained whether the Court of First Instance could rightly conclude that the applicants were not individually concerned by the contested provision of Regulation No 259/93.

23 Under the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against decisions which, although in the form of a regulation, concern that person directly and individually.

24 It is settled case-law that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure, such as the contested provision of Regulation No 259/93, applies does not in any way imply that it must be regarded as being of individual concern to them, as long as it is established that such application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, for example, the judgment in Case C-264/91 *Abertal and Others* v *Council* [1993] ECR I-3265, paragraph 16, and the order in Case C-131/92 *Arnaud and Others* v *Council* [1993] ECR I-2573, paragraph 13).

25 For such persons to be capable of being regarded as individually concerned, their legal position must be affected because of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as a person to whom a measure is addressed (see, in particular, the judgment in Case 26/86 *Deutz und Geldermann* v *Council* [1987] ECR 941, paragraph 9).

26 In paragraph 23 of the contested order, the Court of First Instance rightly pointed out that the sole purpose of the contested provision of Regulation No 259/93 is to establish the framework within which Member States may introduce restrictions on the transfer of waste, and that, therefore, the legal effects which it is capable of producing concern categories of persons envisaged generally and in the abstract.

27 The contested provision authorizes all Member States, and not merely the French Republic, to take measures prohibiting generally or partially, or systematically objecting to, shipments of waste, provided such measures are intended to implement the principles of proximity, priority for recovery and self-sufficiency at Community and national level in accordance with Directive 75/442, cited above.

28 That provision therefore concerns the appellants only in their objective capacity as economic operators in the business of waste transfer between Member States, in the same way as any other operator in that business, so that, by holding that the

appellants were therefore not individually concerned, the Court of First Instance did not make any error of law.

29 That finding is not negated by the fact that the appellants are practically the only operators who transport waste from Germany to France. A circumstance of that kind is not sufficient to differentiate the appellants from any other operator in the light of the contested provision, which deals generally with waste shipments between Member States without distinction.

30 As for the alleged failure of the Court of First Instance to take proper account of the judgment in *Piraiki-Patraiki* v *Commission*, cited above, the situation which gave rise to that judgment was clearly different from the situation in this case.

31 In its judgment in *Piraiki-Patraiki*, it was only in view of a series of special circumstances that the Court acknowledged, having held that the mere capacity as exporters to France was not sufficient, that the undertakings in question were individually and directly concerned by the contested decision.

32 First, unlike the situation in the present case, that judgment concerned a decision by the Commission authorizing a single Member State, pursuant to Article 130(3) of the Act concerning the Conditions of Accession of the Hellenic Republic and the Adjustments to the Treaties (OJ 1979 L 291, p. 17), to adopt a temporary protective measure concerning the importation into that State of certain products from a single other Member State.

33 Secondly, the Court found the action admissible only after having established, at paragraph 28 of that judgment and when examining the merits, that the Commission was obliged under Article 130(3) of the Act of Accession to inquire into the negative effects which its decision might have upon the economy of that Member State and upon the undertakings concerned, and to consider also in that context, so far as possible, the contracts which such undertakings, relying on the continuation of free trade within the Community, had already entered into and whose execution would be wholly or partially prevented by the decision authorizing the protective measure.

34 According to paragraph 31 of the judgment, it was because of the existence of such an obligation on the part of the Commission that the undertakings which were party to such contracts were to be considered as individually concerned for the purpose of the admissibility of the action, as members of a limited class of traders identified or identifiable by the Commission and by reason of those contracts particularly affected by the decision at issue.

35 As for the appellants' argument that the Community case-law is too strict, and does not give effective protection to traders when a right they enjoy under the Treaty, such as the full application of the principle of the free movement of goods, is infringed, it should be noted that, under the procedure laid down by Articles 3 to 5 of Regulation No 259/93, shipments of waste from one Member State to another are subject to prior notification, by the natural or legal person intending to make or arrange such shipment, to the competent authority designated by the receiving Member State. That authority then has 30 days following dispatch of the acknowledgement to the notifier to take its decision authorizing the shipment, with or without conditions, or refusing it.

36 It is therefore possible for the appellants to argue, in support of an action challenging a refusal given under the contested provision of Regulation No 259/93, that that provision is unlawful, thereby obliging the national court to rule on all

of the claims made in that respect, after a preliminary reference to the Court for an assessment of its validity.

37 It follows from all those considerations that the appellants' pleas in law in support of their appeal are unfounded, so that the appeal must be dismissed.

Costs

38 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellants to pay the costs.

Kakouris Hirsch Mancini

Schockweiler Kapteyn

Delivered in open court in Luxembourg on 15 February 1996.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber