ORDER OF THE PRESIDENT OF THE COURT
OF 27 MARCH 1979 [1]

Société des Aciéries de Montereau v Commission of the European Communities

Case 31/79 R

In Case 31/79 R

SOCIÉTÉ DES ACIÉRIES DE MONTEREAU, Montereau Fault Yonne, France, represented and assisted by Messrs Bruckhaus, Kreifels, Winkhaus, Lieberknecht, Canenbley and Moosecker, 2 Berliner Allee, Düsseldorf, with an address for service in Luxembourg at the Chambers of Alex Bonn, 22 Côte d'Eich,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Götz zur Hausen, a member of the Commission's Legal Department, with an address for service in Luxembourg at the office of Mario Cervino, Legal Adviser to the Commission, Jean Monnet Building, Kirchberg,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

makes the following

ORDER

Facts and Issues

The facts of the case may be summarized as follows:

The applicant is an undertaking manufacturing concrete reinforcement bars. By a decision of 10 January 1979 the Commission, the defendant, imposed upon it a fine amounting to 115 896 European units of account, that is to say, FF 670 000. That decision is based on Articles 61 and 64 of the ECSC Treaty and on Commission Decision No 962/77/ECSC of 4 May 1977 fixing

1 — Language of the Case: German.

minimum prices for certain concrete reinforcement bars (Official Journal No L 114, p. 1). The preamble to the decision of 10 January 1979 states that between June and December 1977 the applicant delivered credit notes for sales of concrete reinforcement bars and allowed discounts which were forbidden by Decision No 962/77/ECSC. The applicant has contested the Commission's decision of 10 January 1979 by an application for its annulment.

On 5 March the applicant further claimed that the Court should:

Order the suspension of the operation of the Decision of the Commission of the European Communities of 10 January 1979 regarding a fine imposed on the applicant ... until a decision has been reached in the proceedings initiated by application of 23 February 1979.

In support of this application the applicant points out that the suspension of operation is urgent because there is a risk that it will be enforced, because by letter of 17 January 1979 the Commission in fact invited it to pay an amount of FF 100 000 within two months counting from the notification of the decision of 10 January 1979, whilst declaring itself ready to discuss the detailed arrangements for payment of the remaining sum. The applicant claims that it is in an extremely difficult economic situation and that the payment of the fines will deprive it still more of liquid funds whilst the Commission has no lawful interest, according to the applicant, in demanding an instalment before the decision in the main action. The applicant takes the view that it is not compatible with the general principles of the rule of law for the Commission to insist on the damaging effects of the contested decision before the Court has given its judgment in the main action.

In its observations of 14 March 1979 the Commission contends that the application should be dismissed.

It observes in particular that the suspension of operation is not urgent. It states that the applicant does not run the risk of enforcement of the contested decision since before proceeding to enforcement the Commission once more expressly invites the undertaking in question to pay, whereas the letter of 17 January 1979 from the Commission did not amount to such a demand for payment. Furthermore the Commission states that it will not proceed to enforcement of the contested decision of 10 January 1979 whilst the main action is still pending.

Decision

1 According to Article 83 (2) of the Rules of Procedure, an application to suspend the operation of any measure adopted by an institution must state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

2 There is no need to consider whether the grounds invoked by the applicant, namely its "extremely difficult economic situation" and the financial disad-

vantages attached to immediate payment of the fine are of such a nature as to constitute a sufficient ground for suspending the operation of the contested decision.

As the Commission has stated that it is willing not to proceed to enforcement of the contested decision as long as the main action is pending it is in any event certain that the suspension of the operation of the Commission Decision of 10 January 1979 which has been requested is neither urgent nor justified.

The application must therefore be dismissed.

3 Costs should be reserved until final judgment in the main action.

On those grounds, the President, as an interlocutory decision, hereby orders as follows:

1. **The application is dismissed.**

2. **Costs are reserved until final judgment in Case 31/79.**

Luxembourg, 27 March 1979

A. Van Houtte
Registrar

H. Kutscher
President