ORDER OF THE PRESIDENT OF THE COURT OF 26 JUNE 1959[1]

Acciaieria e Tubificio di Brescia v High Authority of the European Coal and Steel Community

In Case 31/59

ACCIAIERIA E TUBIFICIO DI BRESCIA, a joint stock company having its registered office at Brescia, represented and assisted by Cesare Grassetti, Professor at the Faculty of Law of the University of Milan and Advocate at the Corte di Cassazione, Rome, with an address for service in Luxembourg at the office of Dr Guido Rietti, 15, boulevard Roosevelt,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented and assisted by its Legal Adviser, Dr Mario Berri, acting as Agent, with an address for service in Luxembourg at 2, place de Metz,

defendant,

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES has made the following

ORDER

By an application lodged at the Court Registry on 8 June 1959 the applicant initiated proceedings for the annulment for the decision of the High Authority of 15 April 1959 concerning the carrying out of an inspection at the applicant's works.

On 8 June 1959 the applicant also lodged an application in which it claims that the Court should suspend the operation of the decision of the High Authority of 15 April 1959 until final judgment is given in the main action, and should order the defendant to pay the costs if it contests the application for interim measures.

The defendant has not yet replied to the main application.

On 18 June 1959 it submitted its observations on the interim application, in which

1 – Language of the Case: Italian.

it contends that the Court should dismiss the request made by the applicant for suspension of the decision.

The applicant maintains that the provisional measure is justified on the ground that the application for annulment would be meaningless and the judgment to be given by the Court without effect if, in the meantime, the individual decision adopted by the High Authority were implemented.

In order to show the urgency of its application for interim measures the applicant alleges 'that it is necessary to prevent the adoption of irrevocable measures'.

The defendant maintains that the decision in question was necessary as a result of the applicant's refusal to permit the inspectors of the High Authority to examine documents and account on the ground that the said documents wholly or partly concern an industrial activity carried on by the applicant at the same time as its iron and steel production and not subject to the Treaty.

The defendant observes in addition that the 'purpose of the purpose of the special measure provided for under the second paragraph of Article 39 of the Treaty is to prevent irreparable or extremely serious damage being suffered by the person to whom the contested decision is addressed'.

In this instance the defendant considers that there is no danger of causing such damage or any appreciable damage whatever since the Treaty provides that it shall not disclose the information obtained and shall observe professional secrecy on all matters which, as regards undertakings, are covered by this safeguard.

The parties were duly summoned and appeared on 26 June 1959 to present oral argument before the Court.

They adhered to their conclusions.

Law

Both in their statements and in the pleadings the parties discussed in particular the question whether there is a presumption that the request in the main action is justified (*fumus boni juris*).

This question may only be resolved if it is shown that special circumstances require the suspension of the operation of the contested decision and, in particular, if its implementation would result in irreparable or at least serious damage.

The applicant maintains that the risk of irreparable material damage lies in the fact that if, in giving judgment in the main action, the Court found that the inspection

ordered was irregular, the information thus obtained would not be covered by the obligation of professional secrecy laid down in Article 47 of the Treaty.

This argument is inadmissible, since the obligation contained in the second paragraph of Article 47 of the Treaty, which applies to information lawfully obtained, applies *a fortiori* to information obtained unlawfully.

The applicant further alleges that the implementation of the contested decision is likely to cause it non-material damage since, once the information is obtained, the application for annulment will become purposeless.

This argument must also be dismissed. In fact, even if the High Authority obtained the information referred to, the Court would still be required to settle the very important question whether the High Authority is legally justified in requesting such information from the applicant.

The applicant maintains that the High Authority has no direct and urgent interest in making this inspection.

The High Authority disputes this statement.

However, it is unnecessary to consider this point since under the terms of Article 39 of the Treaty it is for the party which requests the suspension to show that a refusal to grant it would cause him serious damage and this has not been shown in this instance.

The application for suspension must therefore be dismissed.

On those grounds,

Having regard to Article 39 of the Treaty establishing the ECSC, Article 33 of the Protocol on the Statute of the Court of Justice of the ECSC and Articles 83, 84, 85 and 86 of the Rules of Procedure

THE PRESIDENT OF THE COURT

hereby orders:

1. **The application is dismissed;**
2. **The costs are reserved.**

Luxembourg, 26 June 1959.

A. Van Houtte
Registrar

A. M. Donner
President