Case 204/84

SpA Sideradria industria metallurgica
v
Commission of the European Communities

(Steel quotas — Annulment)

Summary

1. *ECSC — Production — Steel production and delivery quota system — Fixing of quotas — Application of the rules in force — Unjust and discriminatory nature — None*
(ECSC Treaty, Art. 58, Decision No 1831/81)

2. *Objection of illegality — Measures the illegality of which may be pleaded — Individual decisions — Excluded*
(ECSC Treaty, Art. 36; third paragraph)

OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 14 November 1985 *

Mr President,
Members of the Court,

1. The Court is sufficiently familiar with the Community rules concerning the supervision and regulation of steel production for there to be any need to repeat them here. Let me therefore turn to the facts of this case.

By a decision of 3 July 1984, the Commission of the European Communities notified Sideradria SpA, an Italian undertaking producing concrete reinforcing bars, of the quotas for the third quarter of 1984.

* Translated from the Italian.

The production quota totalled 9 304 tonnes, of which 4 733 could be sold on the common market. Sideradria at once took the view that such treatment was unacceptable because it was required thereby to sell within the Community a quantity of laminated products not in proportion to the size of its production. It therefore brought an action on 13 August 1984 for a declaration that the said decision was void.

That action is based on two grounds: manifest unfairness of the delivery quota and failure to take account of certain decisive factors. Before considering those grounds, however, I must point out that some of the arguments advanced by the applicant correspond to those already put forward by it in proceedings challenging a decision imposing a fine upon it for exceeding its quota (Case 67/84). Moreover, in the context of those proceedings, in which I was called upon to deliver the Opinion, the Court conducted various preparatory inquiries intended to clarify the scope and the accuracy of the contentions which Sideradria is again making in this case. The two cases therefore have some features in common with regard to which I would refer the Court to the Opinion that I delivered on 21 May 1985.

2. In its first submission, the applicant complains that the Commission unfairly allocated a small delivery quota to it. In its view, the Commission was at fault in two ways: in the first place, by permitting Sideradria to deliver on the common market only half of the goods which it produced, it obliged the applicant to use only 25% of its working capacity; secondly, by imposing such an 'abnormal limitation' on the applicant, the Commission discriminated against it in relation to the great majority of European undertakings, which are allowed to deliver practically their entire production on the common market. Although the latter contention is not supported by any evidence (the Commission has produced figures showing that as far as the ratio between production and deliveries is concerned, the applicant's situation is at least comparable to that of many other undertakings), the first contention is certainly insufficient to substantiate the allegation that the contested decision is unlawful. In fact, Sideradria does not deny that the supervisory authority, in fixing the disputed quota, complied scrupulously with the applicable rules. It claims however that 'confronted with the manifest unfairness of the situation in which the applicant finds itself, the Commission cannot take refuge behind a strict application of the rules in force'.

That argument cannot be sustained since it is clear that failure to discharge its obligation to determine the size of the quotas by applying the relevant rules would have constituted a misuse of powers on the part of the Commission in favour of Sideradria. That is so even if Sideradria's submission is understood as seeking to challenge not so much the size of the delivery quota as the methods of calculating it, and beyond that, the criteria used to determine the reference figures on the basis of which both types of quota are fixed. Those methods and criteria are set out in general decisions which have been definitive for some time and the lawfulness of which may not for that reason be directly challenged.

In conclusion, Sideradria's first submission does not concern the contested decision and, in any event, is not supported by appropriate arguments. It must therefore be rejected.

3. In its second submission, Sideradria charges the defendant with: (a) failing to take account of the gravity of the applicant's situation and not granting it the

required adjustments, or applying such adjustments erroneously (the applicant refers in particular to Article 8 (2) of Decision No 1831/81/ECSC of 24 June 1981, Official Journal, L 180, p. 1 — as amended by Decision No 2804/81/ECSC of 23 September 1981, Official Journal L 278, p. 1 — and to Article 14 of Decision No 234/84/ECSC of 31 January 1984, Official Journal L 29, p. 1); and (b) overlooking mistakes made in its own calculations which altered to the applicant's detriment the reference figures used in determining the quotas.

The adjustments referred to concern measures which the Commission adopted in the past at the request of the applicant. They were never contested and must therefore be regarded as definitive. With regard to the errors of calculation, I would repeat what I stated in my Opinion in Case 67/84, namely that Sideradria has never succeeded in producing any evidence of those errors or in justifying them. Both charges are therefore unrelated to the contested decision and, for that reason, do not support the application for its annulment.

4. In the light of the foregoing considerations, I propose that the Court dismiss the application lodged on 13 August 1984 by Sideradria SpA and, in accordance with the provisions of Article 69 (2) of the Rules of Procedure, order the applicant to pay the costs.