In Case 2/68

UFFICIO IMPOSTE DI CONSUMO DI ISPRA (Ispra Excise Duty Office), represented by its Chief Excise Officer Narciso Cavion, assisted by Giovanni Baldi, Advocate of the Novara Bar and by André Elvinger, Advocate of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Elvinger,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its legal adviser Antonio Marchini-Camia, acting as Agent, with an address for service in Luxembourg at the office of Henri Manzanarès, Centre Louvigny, rue Aldringen,

defendant,

Application for the authorization of the Court to make a visit of inspection for the purpose of checking the materials used for the construction of the club house and sports centre at the Ispra Research Centre,

THE COURT

composed of: R. Lecourt, President, A. Trabucchi and J. Mertens de Wilmars (Rapporteur), Presidents of Chambers, A. M. Donner, W. Strauß, R. Monaco and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

makes the following

ORDER

Facts

On 5 October 1965 the Excise Duty Office for the Commune of Ispra served the Joint Research Centre of the European Atomic Energy Community at Ispra with a notice headed 'Avviso di accertamento costruzioni edilizie' (Notice of inspection of building constructions) stating that an official appointed by the Office would carry out on 12 October a valuation of the materials used for the construction, on the premises of the Centre, of a club house and sports centre. This visit of inspection was to be made for the purpose of the assessment of the European Atomic Energy Community to the local excise duty on the use of building materials.

The Director of the Centre, referring to Article 1 of the Protocol on the Privileges

and Immunities of the European Atomic Energy Community, later replaced by the Protocol on the Privileges and Immunities of the European Communities (hereinafter referred to as 'the Protocol') and to Articles 1, 2, 6 and 7 of Annex F to the Agreement concluded on 22 July 1959 between the Italian Government and the Commission for the establishment of a Joint Nuclear Research Centre (hereinafter referred to as 'Annex F'), informed the Excise Duty Office in a first letter that the access which it sought must be subject to the Commission's approval and in a second letter, dated 9 November 1965, that the Commission took the view that it was exempt from the duty in question and that it must therefore refuse the permission asked for.

As a result of this refusal the Excise Duty Office applied to the Court on 30 July 1967 for the removal of the prohibition preventing the technical expert appointed by the Commune of Ispra from undertaking a valuation of the materials used in the construction of the abovementioned premises. For its part, the Commission contended that the Court should declare the request inadmissible, or at least dismiss it as unfounded, and order the applicant to bear the costs.

Law

A — Admissibility

The Commission raises a number of objections to the admissibility of the application, some of which are based on the failure to observe the rules on jurisdiction and procedure contained in Annex F to the abovementioned Agreement of 22 July 1959 and the remainder of which are based on the failure to comply with the formal requirements of and to observe the time-limits prescribed for an application for annulment.

In order to adjudicate upon these objections it is necessary first of all to examine the subject-matter of the request and the jurisdiction of the Court to entertain it.

1. *The subject-matter of the request and the jurisdiction of the Court*

The Commission alleges that what is concerned is an application for annulment of the decision of refusal addressed to the Excise Duty Office.

The applicant replies that its request 'seeks the revocation of the Commission's refusal' and that this 'amounts in substance to a request to the Court for authorization under Article 1 of Annex F'.

The request seeks to obtain from the Court legal authority enabling the authorized representatives of the Excise Duty Office to enter legally, if need be contrary to the wishes of the institution, upon the premises and buildings of that institution in order to take certain action constituting the preliminary phase in the preparation of an assessment to a local duty. An intervention of this kind by a national administrative authority in the sphere of interest of a Community institution constitutes an administrative measure of constraint within the meaning both of Article 1 of Annex F and of the present Article 1 of the Protocol on the Privileges and Immunities of the

European Communities (and of Article 1 of the former Protocol on the Privileges and Immunities of the European Atomic Energy Community) and therefore requires the authorization of the Court. In view of the true nature of its subject-matter, the request must be construed as a request for authorization and the Court, by virtue of Article 1 of the present Protocol (and of the former Protocol), has jurisdiction to entertain it.

2. *Other objections to admissibility*

(a) The Commission alleges that under Articles 35, 36, 37 and 40 of Annex F only itself and the Italian Government are entitled, after mutual consultation, to bring the matter before the Court of Justice.

By virtue of Article 35 of the said Annex F the Commission is obliged to take, in agreement with the Italian Government, all measures necessary to prevent the abuse of the advantages conferred. Under Article 36 the Italian Government undertook to take all measures necessary for the procedures for implementing the provisions of Annex F to enable the Centre to function properly. Under Article 37, where there is an abuse in the implementation of the said provisions, the contracting parties shall consult together on the measures to be taken. Finally, under Article 40 'the Court of Justice of the European Communities alone shall have jurisdiction to decide any dispute relating to the implementation and interpretation of this agreement which may arise between the Government and the Commission'.

These provisions by no means have the restrictive effect which the Commission attributes to them. Article 1 of the present Protocol (and of the former Protocol) allows certain measurs of constraint subject to their prior authorization by the Court of Justice. Although the Commission, in order to implement the Protocol and if need be to supplement it, was entitled to conclude an agreement with a Member State for the establishment of the seat of a Community institution in the territory of that State, that agreement cannot, however, diminish the rights and guarantees which flow directly from the said Protocol in favour of the Member States and their agencies as well as of the Community institutions and of individuals. The admissibility of a request founded directly upon the Protocol cannot therefore be called in issue by special provisions agreed between the Commission and the government of a Member State. The provisions relied on by the Commission and, more particularly, Article 40 of Annex F, accordingly only apply to disputes which, were it not for these provisions, would have fallen outside the jurisdiction of the Court under the provisions of the Treaty relating to the Court and more especially Article 155 thereof. In these circumstances the submission of inadmissibility put forward by the Commission must be rejected.

(b) The Commission goes on the allege that the request was lodged after the expiry of the period of two months prescribed by Article 146 of the Treaty.

However, the present request does not seek the annulment of a measure adopted by the Commission so that the period of two months for the institution of proceedings for annulment does not apply.

(c) According to the Commission it is difficult to establish the identity in law of the applicant and under Italian law the Excise Duty Office has no capacity to institute legal proceedings.

On the one hand, it is sufficiently clear from the request that the applicant is the Excise Duty Office, Ispra, represented by its Chief Excise Officer, Narciso Cavion. On the other, an authority which under its national law is competent to carry out the administrative measure of constraint in question is, by virtue of Article 1 of the present Protocol (and of the former Protocol), entitled to request the authorization for which provision is made in that Article.

This submission must therefore be rejected.

B — The substance of the case

The Commission justifies its refusal on the ground that under Article 7(3) of Annex F it is exempted from the local duty imposed by the Commune of Ispra on building materials and that therefore a visit of inspection would serve no purpose.

Article 7(3) of Annex F provides that 'The Community shall, in respect of the construction and functioning of the Centre, be exempt from local excise duties'.

The parties are agreed that the duty in question is in fact a local excise duty within the meaning of Article 7(3) of Annex F. It is a tax falling within the provisions of the second paragraph of Article 3 of the Protocol in its present and former versions and the State concerned can make the grant of exemption from this tax subject to certain conditions.

Under Article 14 of Annex F the benefit of Article 7(3) is to be granted in each individual case by the Ministry of Finance upon request by the Commission. It has not been alleged by the Commission that such a request has been either made or granted. In those circumstances, since any exemption from the duty claimed is still uncertain, the applicant has a legal interest in carrying out the necessary checks for the purpose of establishing the basis of assessment to this duty.

Nothing has emerged from the examination of this case which would indicate that the measure proposed would raise difficulties which might place in jeopardy the functioning, independence or security of the Centre and its departments. In those circumstances, the authorization requested from the Court may be granted. However, a visit of inspection of this nature made prior to a possible assessment to duty in no way pre-judges any decisions which may be taken later.

C — Costs

Since the applicant has succeeded in its request the Commission should under Article 69(2) of the Rules of Procedure bear the entire costs of the proceedings. However, since the applicant has not sought an order for costs against the Commission it must under the same provision bear its own costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Articles 146, 153, 155, 191, 193 and 207 of the Treaty establishing the EAEC;
Having regard to the Protocol on the Privileges and Immunities of the European Communities, especially Article 1;
Having regard to the Protocol on the Statute of the Court of Justice of the EAEC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby orders:

1. **The applicant is authorized to carry out the inspection of building materials referred to in the 'Avviso di accertamento costruzioni edilizie' served on the Commission on 5 October 1965;**

2. **The parties shall bear their own costs.**

Luxembourg, 17 Decembre 1968.

A. Van Houtte — Registrar

R. Lecourt — President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 23 OCTOBER 1968[1]

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1 — Translated from the German