JUDGMENT OF THE COURT (Fourth Chamber)
23 November 1989 *

In Case C-381/87

Hoogovens Groep BV, a company incorporated under Netherlands law, established at IJmuiden, represented by Professor B. H. ter Kuile, of the Bar at The Hague, and L. H. van Lennep, of the Bar at The Hague, with an address for service in Luxembourg at the Chambers of Jacques Loesch, 8 rue Zithe,

applicant,

v

Commission of the European Communities, represented by Rolf Wägenbaur, Legal Adviser, and by Thomas van Rijn, a member of the Commission's Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, also a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that Commission Decision C (87) 2031 final/3 of 10 November 1987 concerning a fine imposed under Article 58 of the ECSC Treaty is void,

THE COURT (Fourth Chamber)

composed of: C. N. Kakouris, President of Chamber, T. Koopmans and M. Díez de Velasco, Judges

Advocate General: G. Tesauro
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 23 May 1989,

* Language of the case: Dutch.

after hearing the Opinion of the Advocate General delivered at the sitting on 28 June 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 December 1987, Hoogovens Groep BV (hereinafter referred to as 'Hoogovens') brought an action before the Court under the second paragraph of Article 33 of the ECSC Treaty for a declaration, principally, that Commission Decision C (87) 2031 final/3 of 10 November 1987 imposing a fine under Article 58 of the ECSC Treaty and Article 12 of Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984, L 29, p. 1) is void in its entirety or in part. In the alternative, Hoogovens asks that the fine be reduced by an appropriate amount.

2 In the contested decision, the Commission states that Hoogovens failed to comply with the production quotas and the parts of such quotas which might be delivered in the common market in respect of the second and third quarters of 1985. The Commission found that Hoogovens had exceeded the quotas by the following amounts:

Quarter	*Category*	*Production (tonnes)*	*Delivery (tonnes)*
II/1985	Ib	—	4 070
	II	—	3 890
III/1985	Ia	1 142	—
	Ib	—	6 255

3 In the first place, the Commission observes that Hoogovens did not contest that it had exceeded the quotas by the amounts alleged. In order to consider what sanction would be appropriate, it then examined the three arguments put forward by Hoogovens in order to justify its having exceeded the quotas.

4 The Commission rejected the first argument to the effect that Hoogovens could not have avoided exceeding the quotas for products in categories Ib and II because it had always been obliged to purchase considerable quantities of quotas but that, in the case of the period in question, it had had difficulties in finding sufficient quantities to purchase. The Commission took the view that the fact that Hoogovens was unable to purchase quotas did not justify its disregarding its obligations under the quota system and that it was incumbent on it to plan its deliveries.

5 As for the second argument, to the effect that the need to purchase quotas for category Ib products stemmed from the unfavourable relationship between the part of the quota for delivery in the common market and the production quota (the I/P ratio), the Commission merely observed that those difficulties on the part of Hoogovens were recognized and had in fact prompted the Commission to adopt Decision No 1433/87/ECSC of 20 May 1987 on converting a proportion of the production quotas into quotas for delivery in the common market (Official Journal 1987, L 136, p. 37).

6 According to Hoogovens' third argument, it exceeded the production quota for category Ia products in respect of the third quarter of 1985 owing to the premature closure of a hot rolling mill for wide strip, which had been scheduled for the fourth quarter of 1985; this circumstance obliged Hoogovens to step up production in the third quarter so as to be able to meet its contractual obligations. As far as this argument is concerned, the Commission takes the view that the quota system applies on a quarterly basis, which rules out any possibility of setting one quarter off against another.

7 The part of the contested decision relating to the amount of the fine imposed on Hoogovens is worded as follows:

'In view of the infringements found, Hoogovens may be fined, under Article 58 of the ECSC Treaty, an amount not exceeding the value of the tonnages produced in disregard of the quota system.

Article 12(1) of Decision No 234/84/ECSC provides for a fine to be imposed in cases where quotas have been exceeded of, generally, ECU 100 for each tonne in excess.

In view of the details which emerged during the investigation carried out in the course of the infringement procedure, a fine of ECU 50 for each tonne in excess should be imposed.

In view of the quantities produced in excess, a fine of ECU 767 850 (seven hundred and sixty-seven thousand eight hundred and fifty) is justified.'

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 It must be observed that, neither in these proceedings nor in the pre-litigation stage, has Hoogovens contested the fact that it exceeded the production quotas. Its complaint is based on the lack of reasons in the part of the contested decision relating to the determination of the fine imposed on it and relates to the amount of the fine.

10 More specifically, the applicant claims that during the pre-litigation procedure it drew attention to circumstances such as to cause the fine to be set at a very low level. Yet the reasons given for setting the fine at the level chosen show that the Commission did not take those circumstances into account.

11 It must be observed in the first place that the contested decision examines point by point the arguments put forward by Hoogovens during the pre-litigation procedure. While rejecting two of those arguments, the Commission accepted the argument to the effect that Hoogovens I/P ratio was unfavourable and it based its reduction of the fine — which would normally amount to ECU 100 for each tonne in excess — on that fact, as is expressly stated in the decision.

12 The applicant's claim that the fine should be reduced by an appropriate amount should be considered in the light of all the information before the Court.

13 In this connection, the Court, by virtue of its unlimited jurisdiction under the second paragraph of Article 36 of the ECSC Treaty, considers that it is appropriate to reduce the amount of the fine imposed on Hoogovens to ECU 30 for each tonne in excess. In doing so, the Court has taken into account, in particular, the undertaking's unfavourable I/P ratio during the period when the quotas were exceeded, which the Commission has acknowledged, and the impact of that continuing unfavourable situation on Hoogovens' competitive position.

14 In view of the fact that the total quantities in excess amount to 15 357 tonnes, the amount of the fine imposed on Hoogovens by Article 2 of the contested decision must therefore be reduced to ECU 460 710.

15 The remainder of the application must be dismissed.

Costs

16 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. However, the first subparagraph of Article 69(3) provides that the Court may order the parties to bear their own costs in whole or in part if each party succeeds on some and fails on other heads. Since both Hoogovens and the Commission were unsuccessful in some of their submissions, they must be ordered to pay their own costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

(1) **Declares that the amount of the fine imposed on the Hoogovens undertaking by Article 2 of Commission Decision C (87) 2031 final/3 of 10 November 1987 is fixed at ECU 460 710;**

(2) **Dismisses the remainder of the application;**

(3) **Orders each party to bear its own costs.**

Kakouris Koopmans Díez de Velasco

Delivered in open court in Luxembourg on 23 November 1989.

J.-G. Giraud
Registrar

C. N. Kakouris
President of the Fourth Chamber