ORDER OF THE PRESIDENT OF THE COURT
5 OCTOBER 1969[1]

Government of the Federal Republic of Germany v Commission of the European Communities

Case 50/69 R

In Case 50/69 R[2]

FEDERAL REPUBLIC OF GERMANY, represented by Ulrich Everling, Ministerialdirigent at the Federal Ministry for Economic Affairs, with an address for service in Luxembourg at the office of the Head of Chancery at the Embassy of the Federal Republic of Germany, 3 boulevard Royal,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Walter Much, Assistant Director-General of the Legal Department, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Emile Reuter, 4 boulevard Royal,

defendant,

Application for suspension of the operation of the decision of the Commission of 1 October 1969 authorizing the Federal Republic to undertake certain protective measures in the agricultural sector,

THE COURT

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

Advocate-General: J. Gand
Registrar: A. Van Houtte

makes the following

1 — Language of the Case: German.
2 — The applicant withdrew in the original case; the case was removed from the Register by order of the Court dated 19 November 1969.

ORDER

Having regard to the report for the hearing.

On 30 September 1969 the Government of the Federal Republic of Germany applied to the Commission for authorization provisionally to take certain protective measures in the agricultural sector.

This application was made pursuant to Article 226 of the EEC Treaty.

By its decision of 1 October 1969 the Commission, whilst excluding any derogation from the Community rules in force, authorized the Federal Republic of Germany to suspend imports into Germany of various agricultural products.

In the present application for the adoption of an interim measure the Government of the Federal Republic of Germany requests suspension of the operation of the said decision of the Commission to the extent to which it would result in excluding all measures other than the suspension of imports.

Article 226 of the EEC Treaty provides that although, where difficulties arise which are serious and liable to persist in any sector of the economy or in a given area, a Member State may apply for authorization to take protective measures, it is for the Commission to determine the protective measures which it considers necessary specifying the circumstances and the manner in which they are to be put into effect.

Whlist the decision of 1 October 1969 authorized the Federal Republic of Germany to take such protective measures as the Commission considered necessary in that specific situation, it also constitutes a refusal to authorize under Article 226 measures which as those adopted in the order of the Federal Government of 29 September 1969, submitted to the Commission by the application lodged on 30 September 1969.

Although it contained no express provision to this effect, the decision in no way implied more than the authorization to take within the framework of Article 226 this single measure in derogation from Community rules and did not exclude the application of other aspects of Community law.

In those circumstances the application for the adoption of an interim measure cannot attain the object desired by the Government of the Federal Republic

of Germany, since suspension of the operation of a decision of refusal cannot be equivalent to the grant of the authorization refused by the Commission.

The Court has no authority to substitute itself for the Commission in order to take within the framework of Article 226 decisions instead and in place of the executive.

Consequently, the application for suspension of the operation of the decision of 1 October 1969 must be dismissed.

Costs

The costs are reserved.

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 the Treaty establishing the European Economic Community, especially Articles 109, 115, 185 and 226;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 36;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69, 83, 84, 85, 86 and 90,

THE COURT

as an interim ruling,

hereby orders:

The application for suspension of the operation of certain provisions of the Decision of the Commission of 1 October 1969 is dismissed;

The costs are reserved.

Done and ordered by the Court in Luxembourg on 5 October 1969.

A. Van Houtte
Registrar

R. Lecourt
President