JUDGMENT OF THE COURT (First chamber)
23 April 1986 *

In Case 204/84

SpA Sideradria industria metallurgica, whose registered office is in Adria (Rovigo, Italy), represented by Giuseppe Marchesini, Avvocato at the Corte di Cassazione [Court of Cassation] of the Italian Republic, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B IV rue Philippe-II,

applicant,

v

Commission of the European Communities, represented by Oreste Montalto, a member of its Legal Department, acting as Agent, assisted by Wilma Viscardini Donà, of the Padua Bar, Avvocato at the Corte di Cassazione of the Italian Republic, with an address for service in Luxembourg at the office of Manfred Beschel, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the decision of 3 July 1984 fixing that part of its production quota which the applicant company may deliver within the common market during the third quarter of 1984 is void,

THE COURT (First Chamber)

composed of: R. Joliet, President of the Chamber, T. Koopmans and T. F. O'Higgins, Judges,

Advocate General: G. F. Mancini
Registrar: D. Louterman, Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 14 November 1985,

* Language of the Case: Italian.

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 13 August 1984, Sideradria SpA, whose premises are located in Adria (Italy), brought an action under the second paragraph of Article 33 of the ECSC Treaty for a declaration that the Commission Decision of 3 July 1984 fixing its production and delivery quotas for the third quarter of 1984 is void.

2 Sideradria is a steel undertaking producing concrete reinforcing bars. It is therefore subject to the system set up by Decision No 1831/81 of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal L 180, p. 1).

3 In that general decision, the Commission introduced a quota system which limits the production of each undertaking (hereinafter referred to as 'the production quota') and the part of that production which may be delivered within the common market (hereinafter referred to as 'the delivery quota'). The decision provides that those quotas are to be calculated on the basis of sales effected during a reference period. Among the provisions of the general decision of interest in the present case, reference should first be made to Article 8 (2), which permits the Commission to adjust an undertaking's delivery quota if that undertaking can prove that a quota fixed in accordance with the ususal criteria would cause it grave difficulty. Furthermore, Article 14 of the same decision also permits the Commission to make an adjustment to production and delivery quotas 'if . . . the quota system creates exceptional difficulties for an undertaking'. However, that is not possible if the undertaking was the subject of penalties in respect of the price rules or did not pay fines due.

4 On several occasions, Sideradria applied to be allowed to benefit from Article 8 (2) of Decision No 1831/81 but that provision was applied to it only at the time that its delivery quota for the fourth quarter of 1982 was fixed.

5 Furthermore, Sideradria made several applications to have Article 14 of Decision No 1831/81 applied to it in respect of the third and fourth quarters of 1983. Those applications were rejected on 6 June 1984. However, a further application based on the same provision in respect of the first quarter of 1984 was accepted by the Commission, which increased Sideradria's delivery quota by 508 tonnes. The subsequent applications were rejected on the ground that a fine had been imposed on Sideradria on 26 January 1984 for exceeding its delivery quota for the third quarter of 1981. In its judgment of 12 December 1985 (Case 67/84 *Sideradria* v *Commission* [1985] ECR 3983), the Court dismissed the action brought against that decision, although it reduced the amount of the fine which had been imposed.

6 The present action is directed against the Commission Decision of 3 July 1984 fixing Sideradria's production quota for the third quarter of 1984 at 9 400 tonnes and its delivery quota for the same period at 4 773 tonnes.

7 Sideradria advances two submissions in support of its application, the admissibility of which is not contested, namely that the contested decision was unjust and that the Commission refused to take account of certain decisive factors.

The unjust nature of the contested decision

8 The applicant considers that the fact that its delivery quota represents only 50% of its production quota is clearly unjust. On the one hand, the production quota is already a restriction in itself. In this case, Sideradria is able to use only 50% of its production capacity. On the other hand, since markets outside the Community have become inaccessible, that part of the production quota which may not be delivered within the common market is impossible to sell. A strict application of the rules in force thus causes the applicant to be unable to use more than about 25% of its production capacity. The applicant considers that it is the victim of discrimination since the great majority of European steel undertakings are entitled to deliver almost all of their production within the common market.

9 For its part, the Commission merely emphasizes that in calculating the applicant's delivery quota, it scrupulously applied the rules in force. With regard more particularly to the complaint of discrimination, the Commission indicated at the hearing that application of the rules in force has also prevented other steel undertakings from selling more than a very small part of their production quota on the common market.

10 It must first be pointed out that the applicant does not claim that the Commission Decision of 3 July 1984 should be declared void because it is contrary to Decision No 1831/81, upon which it is based. On the contrary, the applicant itself admits that the Commission decision is in conformity with Decision No 1831/81. It thus appears that in reality, the applicant is criticizing the system which that general decision established. None the less, the applicant puts forward no factor casting doubt on the lawfulness of Decision No 1831/81.

11 With regard to the complaints concerning the discrimination of which the applicant is alleged to be the victim, it must be noted that in any event, the applicant has produced no proof of its affirmations. The Commission, by contrast, has supplied to the Court figures which the applicant has not contested and which show that other steel undertakings are in the same situation as the applicant and that application of the rules in force to those undertakings led to delivery quotas being fixed which represented only a very small part of their production quota.

12 In those circumstances, the first submission must be regarded as unfounded.

The refusal to take account of certain decisive factors

13 The applicant considers first that the Commission, when it had recourse to Article 8 (2) of Decision No 1831/81 in respect of the third quarter of 1982, should have increased the applicant's delivery quota to a greater extent than it did. The applicant then emphasizes that the Commission delayed in taking its decision on the applications submitted under Article 14 of the same decision, with the consequence that the applicant could no longer rely on Article 14 since a fine had been

imposed on it in the interim. Finally, the applicant emphasizes that there were mistakes in the figures transmitted to the Commission on the basis of which the production and delivery quotas were fixed. It refers in that connection to Case 67/84, in which it put forward the same argument. Its reasoning is as follows: it discovered that value-added tax had been paid by the purchasers of its products. However, that tax would not have had to be paid if the products had been exported out of Italy. Therefore, the products in question were sold in Italy and that ought to have led to a higher delivery quota being fixed.

14 For its part, the Commission draws attention first to the fact that Sideradria obtained the benefit of Article 8 (2) of Decision No 1831/81 in respect of the third quarter of 1982. If the applicant considered that the increase granted to it was insufficient, it should have challenged that decision at the appropriate time. Since it did not do so, it may no longer do so now. With regard to the application of Article 14 of Decision No 1831/81, several applications were refused by the Commission without its decisions being criticized. Finally, the Commission points out that, as in Case 67/84, it has the gravest doubts as to the value of the evidence advanced by the applicant as proof of the errors which it claims were committed by it.

15 It must be pointed out in regard to the applicant's first two arguments that the Commission's decisions to apply Article 8 (2) and to refuse to apply Article 14 of Decision No 1831/81 were not contested by the applicant at the appropriate time. However, the Court has consistently held that an applicant may not, in the course of proceedings for the annulment of an individual decision, raise by way of objection the illegality of another individual decision which was addressed to him and which has become definitive.

16 With regard to the alleged errors in fixing the delivery quota, it must be pointed out that in its judgment of 12 December 1985, cited above, the Court declared that 'the applicant did not establish either that the payment of value-added tax by purchasers constituted conclusive evidence of the final destination of the product or, consequently, that the volume of sales outside the common market had been miscalculated'.

17 In those circumstances, the applicant's second submission must also be rejected.

Costs

18 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

(1) Dismisses the application;

(2) Orders the applicant to pay the costs.

Joliet Koopmans O'Higgins

Delivered in open court in Luxembourg on 23 April 1986.

P. Heim
Registrar

R. Joliet
President of the First Chamber