JUDGMENT OF THE COURT OF 17 FEBRUARY 1977 [1]

Confédération Française Démocratique du Travail (CFDT) v Council of the European Communities

Case 66/76

Costs — Order that the parties bear their own costs — Exceptional circumstances Rules of Procedure, Article 69 (3)

When a trade union institutes proceedings with the sole aim of ensuring that the Consultative Committee is representative, a requirement expressly laid down by Article 18 of the ECSC Treaty, this constitutes an exceptional circumstance justifying an order that the parties should bear their own costs.

In Case 66/76,

CONFÉDÉRATION FRANÇAISE DÉMOCRATIQUE DU TRAVAIL, (CFDT), having its head office in Paris, represented by its Secretary-General, Edmond Maire, assisted by Pierre Edouard Weil, Advocate at the Cour de Paris, with an address for service in Luxembourg at the Chambers of Mr Vogel, Advocate at the Court, 30 rue Goethe,

applicant,

v

COUNCIL OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Antonio Sacchettini, acting as Agent, with an address for service in Luxembourg at the office of Mr Van den Houten, Director of the Legal Department of the European Investment Bank, 2 place de Metz,

defendant,

Application for the annulment of the decision of the Council of 1 June 1976 and of the refusal of the Secretary-General of the Council contained in his letter of 1 July 1976 to submit to the Council the candidates put forward by the Confédération Française Démocratique du Travail for membership of the Consultative Committee referred to in Article 18 of the ECSC Treaty,

1 — Language of the Case: French.

THE COURT

composed of: H. Kutscher, President, P. Pescatore, President of Chambers, M. Sørensen, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and the arguments developed by the parties in the course of the written procedure may be summarized as follows:

I — Facts and procedure

1. Under Article 18 of the Treaty establishing the ECSC:

'A Consultative Committee shall be attached to the High Authority. It shall consist of not less that sixty and no more than eighty four members and shall comprise equal numbers of producers, of workers and of consumers and dealers.

The members of the Consultative Committee shall be appointed by the Council.

In the case of the producers and workers, the Council shall designate representative organizations amongst which it shall allocate the seats to be filled. Each organization shall be required to draw up a list containing twice as many names as there are seats to be allotted to it. Appointment shall be made from this list. ...'

2. Since the term of office of the members of the Consultative Committee (hereinafter referred to as 'the Committee') appointed by decision of the Council of 25 June 1974 was due to expire on 24 June 1976 the Council adopted on 1 June 1976 a decision 'designating representative organizations required to draw up lists of candidates' for the Committee (OJ L 149, 1976, p. 12). The organizations 'of producers and workers' (Cf. Article 1 of the decision) so designated were listed for each Member State in the annex to the decision. The Confédération Française Démocratique du Travail (the French Democratic Confederation of Labour, hereinafter referred to as 'the Confederation') was not included among the workers' organizations. The Council also decided on this occasion that it would subsequently determine the seats allotted to the workers' associations for Belgium and Italy.

By a letter of 4 June 1974 the Confederation then notified the Secretary-General of the Council of the names of two candidates for one of the seats to be allotted to the workers' representative organizations for France.

The Secretary-General of the Council replied to this communication by a letter of 1 July 1976 in which he pointed out that 'the organizations which must hold office on the Committee are designated by the Council on the proposal of the Governments of the Member States' and concluded that as the Confederation did not appear amongst the workers' organizations in the abovementioned decision of 1 June 1976 it was impossible for him to submit the proposed candidates to the Council.

By a decision of 10 July 1976 (OJ L 194, 1976, p. 16) the Council completed the decision of 1 June 1976.

On 14 July 1976 the Confederation lodged an application for the annulment of the decision of the Council of 1 June 1976 which was also directed against the refusal of the Secretary-General contained in his letter of 1 July 1976.

3. In a document lodged on 20 September 1976 the Council maintained pursuant to Article 91 (1) of the Rules of Procedure of the Court of Justice that the application was inadmissible.

addition, by a document dated 9 December 1976, the Confederation lodged an application before the Conseil d'État against the Prime Minister concerning its exclusion from the list of workers' representative organizations submitted to the Council for membership of the Consultative Committee of the ECSC.

On 30 November 1976 the Confederation submitted written observations in accordance with Article 91 (2) of the Rules of Procedure.

Having heard the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided to open the oral procedure relating to the plea of inadmissibility in accordance with Article 91 (4) of the Rules of Procedure.

II — Conclusions of the parties

With regard to the admissibility of the application the *defendant* contends that the Court should give a ruling on the plea of inadmissibility without considering the substance of the application and should dismiss the application as inadmissible.

The *applicant* claims that the Court should:
- dismiss the plea of inadmissibility which has been put forward and order the inquiry which has been requested;
- alternatively, reserve its decision on the objection for the final judgment and order the measures of inquiry which have been requested.

III — Submissions and arguments of the parties

A — The *defendant* maintains that the application is inadmissible both with regard to the decision of 1 June 1976 and the refusal of 1 July 1976 of the Secretary-General of the Council.

1. The annulment of the decision of 1 June 1976

The application is inadmissible having regard to the first and second paragraphs of Article 33 of the ECSC Treaty since according to this article:
- such proceedings may only be instituted against measures adopted by the High Authority whereas these proceedings concern a measure of the Council;
- only the undertakings or associations of undertakings referred to in Article 48 of the Treaty are entitled (second paragraph of Article 33) to institute proceedings whereas the Confederation is neither an undertaking within the meaning of Article 80 of the Treaty nor an association of undertakings within the meaning of Article 48.

The application is also inadmissible having regard to *Article 38* of the Treaty since this article expressly states that:

— only the Member States or the High Authority are entitled to institute proceedings against an act of the Council;

— the only grounds for such proceedings shall be lack of competence or infringement of an essential procedural requirement whilst the present application is based upon the ground of infringement of Article 18 of the Treaty.

2. The refusal of the Secretary-General contained in his letter of 1 July 1976

The application is inadmissible because:

— the applicant does not constitute one of the bodies referred to in Articles 33, 38, 48 and 80 of the Treaty;

— the subject-matter of the application is not either a decision or a recommendation of the High Authority (Article 33) or an act of the Assembly or of the Council (Article 38), since the Secretary-General's letter amounts to a mere memorandum;

— assuming, which is impossible, that the letter in question may be considered as an 'act' of the Council, the ground relied upon in support of the application, infringement of the Treaty, is not amongst those which may be put forward under Article 38 of the Treaty.

B — In its written observations the *applicant* replies first of all that since the selection of workers' organizations required to draw up a list of candidates for the Committee is in practice left to the governments concerned, the very fact that the Council does not actually exercise the powers reserved to it by the second paragraph of Article 18 of the Treaty seems to indicate that in this case there was not 'compliance with essential procedural requirements'. In order to clarify this point the Confederation suggests that the Court should order:

(a) the production of the documents which the French Government sent to the Council containing the list of workers' representative organizations in France together with 'the correspondence arising from this procedure';

(b) the examination of Mr Hommel, Secretary-General of the Council, and of Mr J.-R. Bernard, Secretary-General of the Interministerial Committee on European Economic Cooperation, who can explain to the Court how the representation of the French trade-union organizations is in fact determined.

The Confederation then notes that:

— Since the first paragraph of Article 33 of the Treaty does not refer to applications against the Council, it does not apply to the present case and thus cannot be invoked in order to contest the admissibility of the present application.

Furthermore it is untrue that workers' organizations are not entitled to institute proceedings against decisions of the High Authority;

— the purpose of the application lodged by the Association is a request for the enforcement of Community law, in particular Article 18 of the ECSC Treaty. According to Article 31 of the Treaty it is in fact the task of the Court of Justice to ensure that Community law is observed. As is stated not only in the aforesaid Article 31 but also in the third paragraph of Article 40 and in Article 41 of the Treaty the jurisdiction of the Court in this sphere is, moreover, exclusive. Accordingly the French courts have no jurisdiction in this matter.

— Bringing the present action before the Court does not conflict with Article 38 of the Treaty which entitles Member States alone to contest the 'acts' of the Council. The application does not in fact concern an 'act' of the Council but a 'refusal to act' since the Council has not acted but has merely substituted for its act a 'purely administrative confirmation'.

There is no provision which prohibits bringing this failure to act before the Court. Nor must it be forgotten that since the Council has left the initiative to the Member States it is impossible for them or one of their number to bring their own decisions before the Court of Justice.

IV — Oral procedure

The parties presented oral argument at the hearing on 13 January 1977.

The Advocate-General delivered his opinion at the hearing on 2 February 1977.

Law

1 By an application lodged at the Court on 14 July 1976 the Confederation requested the annulment of the decision of the Council of 1 June 1976 (OJ L 149, 1976, p. 12) 'designating representative organizations required to draw up lists of candidates' for the Consultative Committee referred to in Article 18 of the ECSC Treaty.

2 By the same application the Confederation requested the annulment of the refusal of the Secretary-General of the Council contained in his letter of 1 July 1976 to submit to the Council the candidates proposed to him by the Confederation in its letter of 4 June 1976 for one of the seats to be allotted to workers' representative organizations for France.

3 In support of its claims the applicant maintains that its exclusion since 1966 from the workers' representative organizations designed to fill one of the seats on the Consultative Committee allotted to France constitutes an infringement of the provisions of the EEC Treaty, in particular Article 18.

4 By an application lodged on 20 September 1976 the defendant submitted an objection of inadmissibility pursuant to Article 91 of the Rules of Procedure.

5 In support of this objection it claims that neither Article 33 nor Article 38 of the ECSC Treaty empowers the Confederation to submit such an application and it infers from this that the application should be dismissed as inadmissible without considering the substance of the case.

6 The Confederation argued that this objection was not well-founded and maintained in particular that the admissibility of the application flows from

the basic principle of Article 31 of the ECSC Treaty whereby 'the Court shall ensure that in the interpretation and application of this Treaty, and of the rules laid down for the implementation thereof, the law is observed'.

7 It further maintains that in the absence of a real opportunity to institute proceedings within the national legal system there is a risk that the inadmissibility of the action before the Court of Justice will mean that its case cannot be heard.

8 Whilst the principles upon which the applicant relies call for a wide interpretation of the provisions concerning the institution of proceedings before the Court with a view to ensuring individuals' legal protection they do not permit the Court on its own authority to amend the actual terms of its jurisdiction.

9 Pursuant to Article 38 of the ECSC Treaty an act of the Council may be declared void by the Court only on an application by a Member State or the High Authority.

10 Since the proceedings were instituted with regard to subject-matter other than that defined by Article 38 the application fails to fulfil an essential condition as to admissibility laid down by this provision.

11 Since Article 33 of the Treaty permits an application to be made only against acts of the Commission it is not applicable to the present case which is an application against the Council.

12 Moreover, although the provisions of the ECSC Treaty do not entitle the applicant to submit a direct application against acts of the Council it still remains possible for the Court to review the validity of acts of the Council at the instigation of a national court on the conditions laid down in Article 41 of the Treaty.

13 In so far as the application is directed against the letter of the Secretary General of the Council of 1 July 1976 it likewise lacks a legal basis on the said Articles 33 and 38.

14 Furthermore this letter merely confirms the contested decision of the Council and recalls the procedure followed by it in appointing members of the Consultative Committee.

15 For these reasons the application must be dismissed as inadmissible.

16 Finally, with regard to the request to stay the procedure of the appointment of new members of the Consultative Committee contained in the application this request becomes irrelevant from the point when the Court declares the application inadmissible.

Costs

17 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to bear the costs.

18 Nevertheless under Article 69 (3) of the Rules of Procedure the Court may order that the parties should bear their own costs, where the circumstances are exceptional.

19 Those circumstances may be held to obtain when a trade union institutes proceedings with the sole aim of ensuring that the Consultative Committee is representative, a requirement expressly laid down by Article 18 of the Treaty.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application as inadmissible.**

2. Orders each party to bear its own costs.

Kutscher Pescatore Sørensen

Mackenzie Stuart Bosco O'Keeffe Touffait

Delivered in open court in Luxembourg on 17 February 1977.

A.Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 2 FEBRUARY 1977 [1]

Mr President,
Members of the Court,

The case on which I am giving my opinion today concerns the formation of the Consultative Committee provided for in the ECSC Treaty.

Under Article 18 of that Treaty this committee consists of representatives of producers, workers, consumers and dealers. As regards the workers' representatives, the only ones relevant to these proceedings, Article 18 further provides that the Council shall designate workers' representative organizations among which it shall allocate the seats to be filled. The organizations thus appointed are required to draw up a list containing twice as many names as there are seats allotted to them. The Council then appoints the members of the Consultative Committee from this list for two years.

This procedure had to be followed once more in Summer 1976 as the term of office of the Committee appointed in 1974 came to an end on 24 June 1976.

The applicant, a French trade union with members from the iron and steel industry, knowing this fact, sent a letter to the Secretary-General of the Council of Ministers on 4 June 1976. It pointed out that although it was the second largest of the French unions in the abovementioned sector, it had not had a seat on the Consultative Committee since 1966. In addition it nominated two candidates for a seat to which, in its opinion, its organization should be entitled.

However, this letter met with no success. In fact the Council had already designated, by Decision of 1 June 1976 (OJ L 149, p. 12), the representative organizations which are under a duty to draw up lists of candidates for the Consultative Committee. However, the applicant organization was not listed in the annex to this decision as one of the four French workers' organizations to

1 – Translated from the German.