ORDER OF THE PRESIDENT OF THE COURT
30 JUNE 1961[1]

In Joined Cases 42 and 49/59 — Third party proceedings — application for the adoption of an interim measure

BREEDBAND N.V., a limited company constituted under Dutch law, having its registered office at IJmuiden, Velsen, Netherlands, represented by its manager, P. R. Bentz van den Berg, assisted by J. Mertens de Wilmars, advocate of the Antwerp Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 27 Avenue Guillaume,

applicant,

v

1. HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, I. Telchini, acting as Agent, assisted by J. Coutard, advocate at the Conseil d'Etat of France, with an address for service in Luxembourg at its office, 2 Place de Metz,

2. SOCIÉTÉ DES ACIÉRIES DU TEMPLE, a limited company having its registered office at Billancourt (Seine), France, represented by E. de Sèze, managing director in office, assisted by J. de Richemont, advocate at the Cour d'appel in Paris, with an address for service in Luxembourg at the Chambers of G. Margue, 20 rue Philippe-II,

3. KONINKLIJKE NEDERLANDSCHE HOOGOVENS EN STAALFABRIEKEN N.V., a limited company having its registered office at Velsen, Netherlands, represented by its manager, Professor J. F. ten Doesschate, assisted by C. P. Kalff and Baron H. Collot d'Escury, advocates at the Gerechtshof in Amsterdam, with an address for service in Luxembourg at the Chambers of E. Arendt, 27 Avenue Guillaume,

4. BREDA SIDERURGICA, SOCIETÀ PER AZIONI, a limted company having its registered office in Milan, represented by G. Rebua, its managing director in office, assisted by C. Grassetti, of the Foro Milano, advocate at the Corte di Cassazione in Italy, Professor in the Faculty of Law, University of Milan, with an address for service in Luxembourg at the Chambers of G. Rietti, 15 Boulevard Roosevelt,

defendants in the application for the adoption of the interim measure,

1 — Language of the Case: French.

Having regard to the following considerations of fact:

Whereas, by an application lodged at the Registry of the Court on 5 June 1961, the applicant instituted third party proceedings against the judgment delivered by the Court on 22 March 1961 in Joined Cases 42 and 49/59;

Whereas on the same day the applicant lodged an application requesting a stay of execution of the said judgment until the Court had given a ruling in the third party proceedings instituted against that judgment;

Whereas on 16 June 1961 the High Authority, the first defendant herein, lodged its written observations, contending that the Court should dismiss the application;

Whereas on 17 June 1961 the Société des Aciéries du Temple, the second defendant herein, lodged its written observations, leaving it to the Court's discretion to decide upon the substance of the application for a stay of execution;

Whereas on the same day Hoogovens, the third defendant herein, submitted its written observations, associating itself with the applicant's request for a stay of execution;

Whereas Breda Siderurgica, the fourth defendant herein, has submitted no written observations;

Whereas the parties have been summoned in due form and, with the exception of the intervener Breda, appeared on 28 June 1961;

And whereas the parties have adhered to their conclusions;

Having regard to the following considerations of law:

Whereas the applicant refers to Article 97(2) of the Rules of Procedure which provides that where third party proceedings have been instituted, the Court may, on application by the third party, order a stay of execution of the judgment;

Whereas the defendants have put forward three objections to the grant of a stay of execution, namely:

(a) that the application originating third party proceedings made by the applicant is clearly inadmissible, or at least that it is unfounded;

(b) that the purpose of the application is clearly to obtain a stay of execution of the decisions of the High Authority, which could not be considered to constitute execution of the contested judgment;

(c) that the circumstances of the case do not warrant an order for a stay of execution;

Whereas any of these submissions, if well-founded, would entail dismissal of the application;

Whereas it is appropriate to consider first of all the third objection raised by the defendants;

Whereas the second sentence of Article 97(2) of the Rules of Procedure provides that the provisions of Title 3, Chapter 1, of such Rules shall apply in a corresponding manner; and whereas the reference to the said Title means, in this case, that a stay of execution of the judgment may be ordered under the same conditions as are prescribed regarding applications for a stay of execution of decisions and recommendations of the High Authority;

Whereas it is not apparent, as one of the defendants has rightly observed, for what reasons the dismissal of the application might lead to an almost hopelessly involved situation; and whereas the measures of which a stay of execution is sought will in fact lead to the payment of certain sums which might later prove, wholly or in part, not to have been due and which would require to be reimbursed;

Whereas it has not been alleged, and it would, moreover, appear improbable, that payment of such sums would constitute a major financial embarrassment to the applicant; and whereas there has equally been no allegation that reimbursement of any payments found not to have been due would create any difficulties — which would appear improbable, considering the nature of the High Authority as a public authority;

Whereas the applicant has also argued that legal problems might arise regarding both the sums involved in possible reimbursements and the time at which they are to be made; and whereas at first sight this argument is irrelevant, since if the stay of execution were granted, equally serious difficulties of a contrary nature might also arise;

And whereas the facts and circumstances of this case are therefore not sufficient to warrant an order for a stay of execution and for this reason alone the application must be dismissed;

Having regard to Article 39 of the ECSC Treaty and Articles 83 and 97 of the Rules of Procedure;

Having regard to the judgment of the Court of 22 March 1961 in Joined Cases 42 and 49/59;

THE PRESIDENT OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

hereby orders:

1. The application is dismissed;

2. The costs are reserved.

Luxembourg, 30 June 1961.

A. Van Houtte
Registrar

A. M. Donner
President