ORDER OF THE COURT
17 OCTOBER 1984 [1]

F. B.
v Commission of the European Communities

Case 135/84

Application for a declaration that a measure is void — Measures in respect of which an action may be brought — Acts bringing about a change in the applicant's legal position (Art. 173 of the EEC Treaty)

Only a measure whose legal effects are binding on the applicant and are capable of affecting his interests by bringing about a distinct change in his legal position in an act or decision which may be the subject of an action under Article 173 for a declaration that it is void.

In Case 135/84

F. B., residing at H. (France), represented by Michel Kostigoff, of the Luxembourg Bar, 15 Côte d'Eich, Luxembourg, with an address for service at the latter's chambers,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Mr Götz zur Hausen, a member of its Legal Department, 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,

concerning, at the present stage of the proceedings, the admissibility of an action brought under the second paragraph of Article 173 of the EEC Treaty for a declaration that the letter from the Director General of the Commission's Legal Department of 27 March 1984 is void,

1 — Language of the Case: French.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due and C. Kakouris (Presidents of Chambers), P. Pescatore, A. O'Keeffe, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

having heard the views of the Advocate General,

makes the following

ORDER

1 By an application lodged at the Court Registry on 23 May 1984, F. B., a French national residing at H., brought an action under the second paragraph of Article 173 of the Treaty for a declaration that the letter from the Director General of the Commission's Legal Department of 27 March 1984 is void. In that letter the Director General replied to a "complaint", dated 27 February 1984, sent by the applicant to the Secretary General of the Commission, drawing the Commission's attention to a judgment of the Luxembourg Cour de Cassation [Court of Cassation] which, in the applicant's view, was in breach of Community law.

2 By that judgment the Cour de Cassation of the Grand Duchy of Luxembourg upheld at last instance the prison sentence imposed on the applicant for burglary and for contravention of the Law of 28 March 1972 on the entry and residence of foreigners in the Grand Duchy of Luxembourg.

3 In his complaint of 27 February 1984, the applicant expressed the view that, in delivering the above-mentioned judgment without first asking the Court of Justice to give a preliminary ruling on the interpretation of certain provisions of Community law on the free movement of workers, the Cour de Cassation had infringed the third paragraph of Article 177 of the EEC Treaty. He stated however that the complaint was not sent "with a view to securing the institution of the infringement procedure provided for in Article 169 of the Treaty", but that its purpose was "principally to enable the Commission to keep itself adequately informed as to national practices which are clearly contrary to the Treaty".

4 In the contested letter the Director General of the Commission's Legal Department observes first of all that "the complaint would appear . . . to be intended to provide information". In addition he makes the following remarks: "Article 177 of the EEC Treaty does not in itself establish an additional means of securing the revision of a judgment. In principle that provision leaves intact national rules governing access to the courts. Consequently, my own view is that it is not for the Commission to express an opinion on the correctness of a judgment based on national rules of that nature".

5 The Commission took the view that the contested letter did not represent an act in respect of which an action could be brought under Article 173 of the Treaty and raised an objection of inadmissibility pursuant to Article 91 (1) of the Rules of Procedure. Since the Court has sufficient information before it, it is appropriate for it to give a decision on the objection raised pursuant to Article 91 in the form of an order and to dispense with the oral procedure.

6 Under Article 173 of the Treaty, an action for a declaration of nullity may be brought in respect of acts of the Council and the Commission other than recommendations or opinions. The Court has consistently held that only a measure whose legal effects are binding on the applicant and are capable of affecting his interests by bringing about a distinct change in his legal position is an act or decision which may be the subject of an action under Article 173 for a declaration that it is void.

7 It is clear both from the contents and the context of the contested letter that it does fall within that definition. Indeed the letter merely expresses the

opinion of the competent Commission department on the legal question raised by the applicant's complaint. It does not alter in any way whatsoever the applicant's legal position.

8 The purely informative nature of that letter is brought out even more clearly by the fact that it was intended as a reply to the applicant's complaint, which stated explicitly that its sole purpose was to draw the Commission's attention to the decision of a national court and that it was not intended to prompt the Commission to take steps in respect of the alleged infringement.

9 In those circumstances the action must be dismissed as inadmissible.

10 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. As the applicant has failed in his submissions, he must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

1. **The application is dismissed as inadmissible.**

2. **The applicant is ordered to pay the costs.**

Luxembourg, 17 October 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President