ORDER OF THE COURT
3 February 1988 *

In Case 191/87

(1) **Covale — Cooperativa veneta allevatori equini,** Verona,

(2) **Cooperativa agricola zootecnica San Antonio,** Salizzone,

(3) **Cooperativa agricola San Valentino,** Bussolengo,

represented by N. Muscolo, of the Trieste Bar, with an address for service in Luxembourg at the Chambers of C. Revoldini, 21 rue Aldringen,

applicants,

v

Commission of the European Communities, represented by S. Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Luxembourg,

defendant,

APPLICATION for the annulment of Article 1 (2) of Commission Regulation No 1121/87 of 23 April 1987 (Official Journal 1987, L 109, p. 12), amending Article 1 (3) of Commission Regulation No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening (Official Journal 1977, L 77, p. 18),

* Language of the Case: Italian.

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot, C. Kakouris, R. Joliet, T. F. O'Higgins and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: P. Heim

makes the following

Order

1 By an application lodged at the Court Registry on 18 June 1987, Covale — Cooperativa veneta allevatori equini, Cooperativa agricola zootecnica San Antonio and Cooperativa agricola San Valentino, three Italian cooperative societies, brought an action for the annulment of Article 1 (2) of Commission Regulation No 1121/87 of 23 April 1987 (Official Journal 1987, L 109, p. 12), amending Article 1 (3) of Commission Regulation No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening (Official Journal 1977, L 77, p. 18).

2 Each of the applicants imported young male bovine animals for fattening. In order to be able to import those animals without paying a levy they lodged the security provided for in Regulation No 612/77. However, they were late in complying with another condition laid down in the regulation in respect of exemption from the levy, namely that they inform the competent authority within one month following the date of importation of the production unit where the animals were to be

fattened. Because of that delay the Trieste customs office considered that, pursuant to Article 1 (3) of Regulation No 612/77, the security should be forfeited in its entirety.

3 The applicants challenged those decisions before the Tribunale Civile e Penale (Civil and Criminal District Court), Trieste. They claimed that the provision applied by the customs office was contrary to the principle of proportionality since it provided for forfeiture of the whole security as a result of mere delay in performing a secondary obligation.

4 Before judgment was delivered in these cases, the Commission, with a view to taking account of the principle of proportionality, amended the provision which provided for forfeiture of the security in its entirety by adopting the provision which forms the subject-matter of the application. Under the new provision, delay in designating the production unit entails loss of the security in the amount of 15%, increasing by 2% of the remaining amount for each day by which the time limit is exceeded.

5 Applying that new provision to the cases before it, the Tribunale considered that the decision by the customs office that the security should be forfeited in its entirety was no longer justifiable but that a percentage of the security calculated in accordance with the new text should be forfeit.

6 The applicants state that they have not appealed against those judgments of the Tribunale. They have brought these proceedings before the Court of Justice for the annulment of the new provision. They maintain that it is contrary to the principle of proportionality and vitiated by misuse of powers inasmuch as it provides, in addition to a standard forfeiture of 15% of the security when there has been a delay, for a reduction of 2% of the remaining amount for each day by which the time-limit is exceeded.

7 The Commission contests the application on its merits. However, as the application also appears manifestly inadmissible it does not believe it necessary to refute the applicants' submissions.

8 Pursuant to Article 92 (2) of the Rules of Procedure, the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case and dismiss the application without hearing oral argument by the parties if it considers that the documents before it contain all the information necessary for it to arrive at a decision.

9 Secondly, the second paragraph of Article 173 of the EEC Treaty makes the bringing of an application for annulment by a natural or legal person against a regulation dependent on the condition that that regulation in fact constitutes a decision of direct and individual concern to the applicant.

10 The purpose of the contested regulation is to provide for progressive forfeiture of the security whenever an importer of young male bovine animals for fattening is late in designating the production unit where the animals are to be fattened. That provision therefore applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract. It thus has general application within the meaning of the second paragraph of Article 189 of the Treaty and cannot be of individual concern to the applicants for the purposes of the second paragraph of Article 173 of the Treaty.

11 It follows from the foregoing that the application must be dismissed as inadmissible.

Costs

12 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions they must be ordered jointly and severally to pay the costs.

On those grounds,

after hearing the views of the Advocate General,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible;

(2) The applicants are ordered jointly and severally to pay the costs.

Luxembourg, 3 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President