Judgment of the Court of Justice, Unión de Pequeños Agricultores v Council, Case C-50/00 P (25 July 2002)

Caption: In its judgment of 25 July 2002, in Case C-50/00 P, Unión de Pequeños Agricultores, the Court of Justice points out that, under the Community system of legal remedies and procedures, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty (now Article 230), directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty (now Article 241) or to do so before the national courts and to ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a reference to the Court of Justice for a preliminary ruling on validity.

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Judgment of the Court of 25 July 2002 (1)
Unión de Pequeños Agricultores v Council of the European Union

Case C-50/00 P

(Appeal - Regulation (EC) No 1638/98 - Common organisation of the market in oils and fats - Action for annulment - Person individually concerned - Effective judicial protection - Admissibility)

In Case C-50/00 P,

Unión de Pequeños Agricultores, having its registered office in Madrid (Spain), represented by J. Ledesma Bartret and J. Jiménez Laiglesia y de Oñate, Abogados, with an address for service in Luxembourg,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Third Chamber) of 23 November 1999 in Case T-173/98 Unión de Pequeños Agricultores v Council [1999] ECR II-3357, seeking to have that order set aside,

the other parties to the proceedings being:

Council of the European Union, represented by I. Díez Parra, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

supported by

Commission of the European Communities, represented by J. Guerra Fernández and M. Condou-Durande, acting as Agents, with an address for service in Luxembourg,

intervener in the appeal,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric, S. von Bahr (Presidents of Chambers), C. Gulmann (Rapporteur), D.A.O. Edward, A. La Pergola, J.-P. Puissochet, M. Wathelet, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: F.G. Jacobs,

Registrar: D. Louterman-Hubeau, Head of Division,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 November 2001, at which Unión de Pequeños Agricultores was represented by J. Jiménez Laiglesia y de Oñate, the Council by I. Díez Parra and the Commission by J. Guerra Fernández and M. Condou-Durande,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2002,

gives the following

Judgment

1. By application lodged at the Court Registry on 16 February 2000, Unión de Pequeños Agricultores brought an appeal, pursuant to Article 49 of the EC Statute of the Court of Justice, against the order of the Court of First Instance of 23 November 1999 in Case T-173/98 Unión de Pequeños Agricultores v Council [1999] ECR II-3357 (the contested order), by which that court dismissed its application for partial annulment of Regulation (EC) No 1638/98 of 20 July 1998 amending Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ 1998 L 210, p. 32; the contested regulation).

The legal framework

2. On 22 September 1966, the Council adopted Regulation No 136/66/EEC on the establishment of a common organisation of the market in oils and fats (OJ, English Special Edition 1965-1966, p. 221). In particular, that regulation set up a common organisation of the markets in olive oil, structured around a system of guaranteed prices and production aid. Several subsequent amendments were made to the mechanisms introduced by Regulation No 136/66. The common organisation of the olive oil markets, as amended, laid down schemes in respect of intervention prices, production aid, consumption aid and storage, as well as imports and exports.

3. On 20 July 1998 the Council adopted the contested regulation which reforms, in particular, the common organisation of the olive oil markets. For that purpose, the previous intervention scheme was abolished and replaced by a system of aid for private storage contracts. Consumption aid and the specific allocation of aid to small producers were discontinued. The stabiliser mechanism for production aid based on a maximum guaranteed quantity for the Community as a whole was amended by being apportioned among the producer Member States in the form of national guaranteed quantities. Finally, olive groves planted after 1 May 1998 are excluded, subject to certain exceptions, from any future aid scheme.

Procedure before the Court of First Instance and the contested order

4. By application lodged at the Registry of the Court of First Instance on 20 October 1998, Unión de Pequeños Agricultores, a trade association which represents and acts in the interests of small Spanish agricultural businesses and which has legal personality under Spanish law, brought an action, pursuant to the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), for annulment of the contested regulation, with the exception of the aid scheme for table olives.

5. By separate document lodged at the Registry of the Court of First Instance on 23 December 1998, the Council raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

6. By the contested order, the Court of First Instance upheld that objection of inadmissibility, with the result that it dismissed the application as manifestly inadmissible.

7. First, the Court of First Instance pointed out in paragraph 34 of the contested order that, according to settled case-law, the fourth paragraph of Article 173 of the Treaty allows individuals to challenge any decision which, although in the form of a regulation, is of direct and individual concern to them and that the test for distinguishing between a regulation and a decision is whether or not the measure in question is of general application. The Court held, in paragraph 44 of that order, that the contested regulation is, by its nature and its scope, legislative in character and does not constitute a decision within the meaning of Article 189 of the EC Treaty (now Article 249 EC).

8. Next, the Court of First Instance pointed out in paragraph 45 of the contested order that, in certain circumstances, even a legislative measure which applies generally to the economic operators affected by it may be of individual concern to some of them and that, therefore, a Community measure may be in the nature of a legislative provision and also, in respect of some of the operators affected, of a decision. The Court held:

- in paragraph 46 of the contested order, that [t]o establish this, however, natural or legal persons must be able to show that they are affected by the measure in question by reason of certain attributes which are peculiar to them or by reason of factual circumstances in which they are differentiated from all other persons ... and,

- in paragraph 47 of that order, that, furthermore, actions brought by associations may, in this context, be held admissible at least in situations where a legal provision expressly grants a series of procedural powers to trade associations, where the association represents the interests of undertakings which would, themselves, be entitled to bring proceedings and where the association is distinguished individually because of the impact of the contested measure on its own interests as an association, in particular because its negotiating position has been affected by the measure whose annulment is being sought.

9. In the present case, the Court of First Instance held, in paragraph 48 of the contested order, that the appellant could not rely on any of these three situations in order to establish the admissibility of its action.

10. In that regard, the Court of First Instance particularly noted, in paragraph 50 of the contested order, that the applicant has not established that its members are affected by the contested regulation by reason of certain attributes which are peculiar to them or by reason of factual circumstances in which they are differentiated from all other persons. In that regard it need merely be pointed out that the fact that the regulation may, at the time it was adopted, have affected those of the applicant's members then operating in the olive oil markets and, in some circumstances, caused them to cease trading, cannot differentiate them from all the other operators in the Community, since they are in an objectively determined situation comparable to that of any other trader who may enter those markets now or in the future ... The contested regulation concerns the applicant's members only on the basis of their objective capacity as operators trading in those markets, in the same way as all the other operators who trade in them.

11. The Court of First Instance also pointed out, in paragraphs 53 to 55 of the contested order, that nor could the appellant validly claim, in support of the admissibility of its action, that the contested regulation affected some of its specific interests and it held, in paragraph 58 of that order, that the appellant was not differentiated by reason of any of the tests established by case-law for the admissibility of an action for annulment brought by an association.

12. Finally, the Court of First Instance examined the last argument put forward by the appellant to prove that it was individually concerned by the provisions of the contested regulation, namely that there is a risk that it will not receive effective judicial protection. In that regard, it held as follows:

61 The argument that no effective legal protection is afforded consists of the complaint that there are no legal remedies under national law which make it possible, if necessary, to review the legality of the contested regulation by means of a reference for a preliminary ruling under Article 177 of the [EC] Treaty [(now Article 234 EC)].

62 It must be pointed out, in this connection, that the principle of equality for all persons subject to Community law in respect of the conditions for access to the Community judicature by means of the action for annulment requires that those conditions do not depend on the particular circumstances of the judicial system of each Member State. In this regard it should also be observed that, in accordance with the principle of sincere cooperation laid down in Article 5 of the EC Treaty (now Article 10 EC), the Member States are required to implement the complete system of legal remedies and procedures established by the EC Treaty to permit the Court of Justice to review the legality of measures adopted by the Community institutions (see, on this point, the judgment in [Case 294/83] Les Verts v Parliament [[1986] ECR 1339], paragraph 23).

63 However, these factors do not provide the Court of First Instance with a reason for departing from the system of remedies established by the fourth paragraph of Article 173 of the Treaty, as interpreted by case-law, and exceeding the limits imposed on its powers by that provision.

64 Moreover, the applicant cannot validly base any argument on the possible length of proceedings under Article 177 of the Treaty. That circumstance cannot justify a change in the system of remedies and procedures established by Articles 173, 177 and 178 of the EC Treaty (now Article 235 EC) which is designed to give the Court of Justice the power to review the legality of acts of the institutions. In no case can such an argument enable an action for annulment brought by a natural or legal person which does not satisfy the conditions laid down by the fourth paragraph of Article 173 of the Treaty to be declared admissible (order of the Court of Justice in Case C-87/95 P CNPAAP v Council [1996] ECR I-2003, paragraph 38).

13. In the light of those considerations, the Court of First Instance held, in paragraph 65 of the contested order, that the appellant could not be regarded as individually concerned by the contested regulation and that since it did not satisfy one of the conditions for admissibility laid down by the fourth paragraph of Article 173 of the Treaty, it was not necessary to consider whether it was directly concerned by that regulation.

The appeal

14. By its appeal, the appellant claims that the Court should:

- set aside the contested order;

- declare its main action admissible and refer the case back to the Court of First Instance for judgment on the merits.

15. The Council contends that the Court should:

- declare the appeal manifestly inadmissible or, in the alternative, manifestly unfounded;

- order the appellant to pay the costs.

16. By order of the President of the Court of 12 September 2000, the Commission was given leave to intervene in support of the forms of order sought by the Council.

17. In support of its appeal, the appellant relies on four pleas in law.

18. First, it submits that the Court of First Instance, in paragraph 61 of the contested order, misinterpreted its argument that no effective judicial protection would be afforded if the application were declared inadmissible. It did not base that argument on the mere absence of remedies under national law, but on the fact that a declaration of inadmissibility would not in the present case meet the requirement of effectiveness attaching to the fundamental right relied upon. Second, the appellant claims that the reasoning of the contested order is inadequate because the order does not address the arguments of fact and of law put forward in its application and in its observations on the objection of inadmissibility but merely, in paragraph 64, selects one of those arguments which, moreover, it reproduces incorrectly. Third, the appellant claims that paragraph 62 of that order is contradictory. In that regard, it argues that if the principle of sincere cooperation requires the creation of a remedy under national law enabling, where necessary, a reference to be made for a preliminary ruling on the question of the validity of a Community measure, respect for an individual's right to effective judicial protection does indeed depend on the particular circumstances of the judicial system of each Member State. Fourth, the appellant claims that, by failing to examine in the present case whether the fact of declaring the application inadmissible did not entail, given all the elements of fact and of law, an infringement of the fundamental right to effective judicial protection, the contested order infringed a fundamental right which forms part of the Community legal order.

Admissibility of the appeal

19. The Council, like the Commission, raises a plea of manifest inadmissibility of the appeal on the ground that the appellant had no legal interest in bringing proceedings. All the reasoning of the Court of First

Instance on effective judicial protection is obiter, since the actual ground of the inadmissibility of the action is, as stated in paragraph 65 of the contested order, that the appellant does not satisfy one of the conditions for admissibility laid down by the fourth paragraph of Article 173 of the Treaty. Even if national law does not afford any opportunity to bring proceedings before the courts, the Community Courts should still continue to apply that Treaty provision by assessing whether the conditions for admissibility which it lays down are fulfilled or not.

20. Therefore, they contend, for its action to be successful, the appellant should have appealed on the ground that the contested order infringed the fourth paragraph of Article 173 of the Treaty and, more specifically, by demonstrating that it was individually concerned by the contested regulation, and not on the ground of a possible failure to afford effective judicial protection which, as Community development now stands, could not in any event render that action admissible.

21. It should be recalled that for a person to have an interest in bringing appeal proceedings the appeal must be likely, if successful, to procure an advantage for that party (Case C-174/99 P Parliament v Richard [2000] ECR I-6189, paragraph 33).

22. The contested order dismissed as inadmissible the appellant's application before the Court of First Instance.

23. If the appeal were successful, the appellant would procure a definite advantage since its application could be examined on its merits. The question whether the alleged right to effective judicial protection may or may not, in certain circumstances, render admissible an action for annulment of a regulation brought by a natural or legal person relates to the substance of the appeal and cannot, in any event, prejudge the question whether the appellant has an interest in bringing appeal proceedings.

24. In those circumstances, the appeal must be declared admissible.

Substance of the appeal

Arguments of the parties

25. By its four pleas in law, which it is appropriate to examine together, the appellant claims essentially that the dismissal of its application as inadmissible, in so far as it is based on the reasoning set out in paragraphs 61 to 64 of the contested order, infringes its right to effective judicial protection for the defence of its own interests or those of its members.

26. According to the appellant, the disputed provisions of the contested regulation, which abolish the intervention scheme, consumption aid and aid to small producers, do not require any national implementing legislation and do not occasion the taking of any measures by the Spanish authorities. Consequently, the appellant cannot, under the Spanish legal system, seek annulment of a national measure relating to the disputed provisions. A reference for a preliminary ruling to assess their validity is therefore precluded. Furthermore, the appellant or its members cannot even infringe such provisions so as to be in a position to challenge the validity of any sanction that might, if appropriate, be imposed on them.

27. The appellant contends that the contested order has infringed a fundamental right which forms part of the Community legal order in that it failed to examine whether, given the circumstances of the case, the fact of declaring inadmissible the application for partial annulment of the contested regulation does not lead to disregard for the effectiveness of the appellant's right to judicial protection.

28. The appellant submits that the right to effective judicial protection requires a specific examination of the particular circumstances of the case. A right cannot be truly effective unless consideration is given to its effectiveness in practice. In reality, such an examination necessarily entails an inquiry into whether, in the particular case, there is an alternative legal remedy. In that regard, the appellant refers to paragraphs 32 and

33 of the judgment in Case C-321/95 P Greenpeace Council and Others v Commission [1998] ECR I-1651, which, in its submission, confirms that where there is no legal remedy under national law an application for annulment under the fourth paragraph of Article 173 of the Treaty must be held admissible.

29. The Council and the Commission contend in substance that the appeal is, in any event, manifestly unfounded since there is no provision in the fourth paragraph of Article 173 of the Treaty to the effect that the lack of access to a judicial remedy under national law constitutes a criterion or a circumstance such as to justify the admissibility of a direct action for annulment brought by a natural or legal person against a Community measure of general application. The only relevant test is whether the applicant is directly and individually concerned by the contested measure. The appeal does not address the question whether the appellant is individually and directly concerned but refers solely to the analysis of the Court of First Instance of the arguments put forward on the subject of effective judicial protection.

30. The Council and the Commission recall in addition that the Treaty has established a complete system of legal remedies designed to enable the Court to review the legality or validity of acts of the institutions and, in particular, of acts of general application. Admittedly, according to the Commission, a Member State which makes it excessively difficult, or even impossible, to submit a question for a preliminary ruling infringes the fundamental right to effective judicial protection and thereby fails to fulfil its duty of sincere cooperation laid down in Article 5 of the Treaty. However, even in that case, such infringement cannot be overcome by straining the meaning of the fourth paragraph of Article 173 of the Treaty. Instead, infringement proceedings should be brought against the Member State in question, in accordance with Article 226 EC.

31. The Commission states, furthermore, that it does not understand how the appellant can assert that Spanish law does not provide any judicial remedy against the contested regulation. It observes that the regulation is a binding measure which directly produces rights and obligations on the part of individuals, so that any infringement of its provisions may be invoked before the national courts. In Spanish law, as no doubt in other legal systems of the Member States, the administrative authorities are required to take decisions on applications made by the persons concerned. If, beyond a certain time-limit, the competent authorities have failed to adopt a position on those applications, such silence is treated as a negative response or, on the contrary, a positive response in certain cases, which enables proceedings to be brought where the applicant in question is not satisfied with the response given. Once judicial proceedings have been initiated, there is nothing to prevent that individual from invoking all the rules of Community law and requesting, where appropriate, a reference for a preliminary ruling under Article 234 EC on the interpretation or validity of the contested measure.

Findings of the Court

32. As a preliminary point, it should be noted that the appellant has not challenged the finding of the Court of First Instance, in paragraph 44 of the contested order, to the effect that the contested regulation is of general application. Nor has it challenged the finding, in paragraph 56 of that order, that the specific interests of the appellant were not affected by the contested regulation or the finding, in paragraph 50 of that order, that its members are not affected by the contested regulation by reason of certain attributes which are peculiar to them or by reason of factual circumstances in which they are differentiated from all other persons.

33. In those circumstances, it is necessary to examine whether the appellant, as representative of the interests of its members, can none the less have standing, in conformity with the fourth paragraph of Article 173 of the Treaty, to bring an action for annulment of the contested regulation on the sole ground that, in the alleged absence of any legal remedy before the national courts, the right to effective judicial protection requires it.

34. It should be recalled that, according to the second and third paragraphs of Article 173 of the Treaty, the Court is to have jurisdiction in actions brought by a Member State, the Council or the Commission on

grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers or, when it is for the purpose of protecting their prerogatives, by the European Parliament, by the Court of Auditors and by the European Central Bank. Under the fourth paragraph of Article 173, [a]ny natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

35. Thus, under Article 173 of the Treaty, a regulation, as a measure of general application, cannot be challenged by natural or legal persons other than the institutions, the European Central Bank and the Member States (see, to that effect, Case 92/78 Simmenthal v Commission [1979] ECR 777, paragraph 40).

36. However, a measure of general application such as a regulation can, in certain circumstances, be of individual concern to certain natural or legal persons and is thus in the nature of a decision in their regard (see, in particular, Case C-358/89 Extramet Industrie v Council [1991] ECR I-2501, paragraph 13; Case C-309/89 Codorniu v Council [1994] ECR I-1853, paragraph 19, and Case C-41/99 P Sadam Zuccherifici and Others v Council [2001] ECR I-4239, paragraph 27). That is so where the measure in question affects specific natural or legal persons by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (see, in particular, Case 25/62 Plaumann v Commission [1963] ECR 95, 107, and Case C-452/98 Nederlandse Antillen v Council [2001] ECR I-8973, paragraph 60).

37. If that condition is not fulfilled, a natural or legal person does not, under any circumstances, have standing to bring an action for annulment of a regulation (see, in that regard, the order in CNPAAP v Council, cited above, paragraph 38).

38. The European Community is, however, a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the Treaty and with the general principles of law which include fundamental rights.

39. Individuals are therefore entitled to effective judicial protection of the rights they derive from the Community legal order, and the right to such protection is one of the general principles of law stemming from the constitutional traditions common to the Member States. That right has also been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (see, in particular, Case 222/84 Johnston [1986] ECR 1651, paragraph 18, and Case C-424/99 Commission v Austria [2001] ECR I-9285, paragraph 45).

40. By Article 173 and Article 184 (now Article 241 EC), on the one hand, and by Article 177, on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure judicial review of the legality of acts of the institutions, and has entrusted such review to the Community Courts (see, to that effect, Les Verts v Parliament, paragraph 23). Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 173 of the Treaty, directly challenge Community measures of general application, they are able, depending on the case, either indirectly to plead the invalidity of such acts before the Community Courts under Article 184 of the Treaty or to do so before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid (see Case 314/85 Foto-Frost [1987] ECR 4199, paragraph 20), to make a reference to the Court of Justice for a preliminary ruling on validity.

41. Thus it is for the Member States to establish a system of legal remedies and procedures which ensure respect for the right to effective judicial protection.

42. In that context, in accordance with the principle of sincere cooperation laid down in Article 5 of the Treaty, national courts are required, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables natural and legal persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a

Community act of general application, by pleading the invalidity of such an act.

43. As the Advocate General has pointed out in paragraphs 50 to 53 of his Opinion, it is not acceptable to adopt an interpretation of the system of remedies, such as that favoured by the appellant, to the effect that a direct action for annulment before the Community Court will be available where it can be shown, following an examination by that Court of the particular national procedural rules, that those rules do not allow the individual to bring proceedings to contest the validity of the Community measure at issue. Such an interpretation would require the Community Court, in each individual case, to examine and interpret national procedural law. That would go beyond its jurisdiction when reviewing the legality of Community measures.

44. Finally, it should be added that, according to the system for judicial review of legality established by the Treaty, a natural or legal person can bring an action challenging a regulation only if it is concerned both directly and individually. Although this last condition must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually (see, for example, Joined Cases 67/85, 68/85 and 70/85 Van der Kooy v Commission [1988] ECR 219, paragraph 14; Extramet Industrie v Council, paragraph 13, and Codorniu v Council, paragraph 19), such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community Courts.

45. While it is, admittedly, possible to envisage a system of judicial review of the legality of Community measures of general application different from that established by the founding Treaty and never amended as to its principles, it is for the Member States, if necessary, in accordance with Article 48 EU, to reform the system currently in force.

46. In the light of the foregoing, the Court finds that the Court of First Instance did not err in law when it declared the appellant's application inadmissible without examining whether, in the particular case, there was a remedy before a national court enabling the validity of the contested regulation to be examined.

47. The appeal must therefore be dismissed.

Costs

48. Under Article 69(2) of the Rules of Procedure, which applies to the procedure on appeal by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Council had applied for the appellant to be ordered to pay the costs and the appellant has been unsuccessful, the latter must be ordered to pay the costs.

49. Under the first subparagraph of Article 69(4) of the Rules of Procedure, which also applies to the procedure on appeal by virtue of Article 118, the institutions which intervened in the proceedings are to bear their own costs. In accordance with that provision, the Commission must bear its own costs.

On those grounds,

THE COURT,

hereby:

1. Dismisses the appeal;

2. Orders Unión de Pequeños Agricultores to pay the costs;

3. Orders the Commission of the European Communities to bear its own costs.

Rodríguez Iglesias
Jann
Macken
Colneric
von Bahr
Gulmann
Edward
La Pergola
Puissochet
Wathelet
Schintgen
Skouris
Cunha Rodrigues

Delivered in open court in Luxembourg on 25 July 2002.

Registrar
R. Grass

President
G.C. Rodríguez Iglesias

(1) Language of the case: Spanish.