JUDGMENT OF THE COURT
16 DECEMBER 1963[1]

Société des Aciéries du Temple
v High Authority of the European Coal and Steel Community[2]

Case 36/62

Summary

Wrongful act or omission inducing error on the part of a party concerned—Resulting injury—Direct causality—Criteria
(ECSC Treaty, Article 40)

The existence of a direct relationship of cause and effect between conduct of the administration constituting a wrongful act or omission and injury resulting from the fact that such conduct induced an error on the part of a person concerned presupposes that such conduct could and should cause such an error in the mind of a prudent person.

In Case 36/62

SOCIÉTÉ DES ACIÉRIES DU TEMPLE, a limited company having its registered office at Billancourt (Seine), represented by its general managing director in office, Eúgène de Sèze, assisted by Jean de Richemont, advocate of the Cour d'Appel, Paris, with an address for service in Luxembourg at the Chambers of Georges Margue, 20 rue Philippe - II,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Italo Telchini, acting as Agent, assisted by Jean Coutard, advocate at the Conseil d'Etat, Paris, with an address for service in Luembourg at its offices, 2 Place de Metz,

defendant,

Application for reparation for injury caused by an alleged wrongful act or omission on the part of the defendant;

1 — Language of the Case: French.
2 — CMLR.

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and A. Trabucchi (Presidents of Chambers), L. Delvaux, R. Rossi, R. Lecourt and W. Strauß (Rapporteur), Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

1. By Decisions 22/54 (*Official Journal*, 1954, pp. 286 et seq.), 14/55 (*Official Journal*, 1955, pp. 685 et seq.) and 2/57 (*Official Journal*, pp. 61/57 et seq.), the defendant set up the equalization scheme to which Community undertakings which were consumers of ferrous scrap were required to pay contributions. Under Article 3 of Decision 22/54, contributions were payable on 'the tonnage of ferrous scrap bought ... by each undertaking whether within the Community or imported from third countries', described briefly in Article 3 of Decision 14/55 and Article 4 of Decision 2/57 as 'bought ferrous scrap'. The last of these provisions also used for the first time the expression 'own resources' in the sense that these were exempted from the contribution.

2. The agencies charged with carrying out these Decisions, the Office Commun des consommateurs de ferraille (O.C.C.F.) (Joint Bureau of Ferrous Scrap Consumers) and the Caisse de péréquation de la ferraille importée (C.P.F.I.) (Imported Ferrous Scrap Equalization Fund), set up in Brussels, had doubts as to how far the obligation to pay contributions extended also to the supply of ferrous scrap between undertakings forming a group, and the O.C.C.F. put a question on this point to the defendant. The latter replied by letter of 18 December 1957 (*Official Journal* of 1 February 1958, pp. 45/58 et seq.) to the effect that only ferrous scrap 'recovered by (the undertaking) itself on its own premises bearing the same company name' could be considered as 'own resources'; the same basic concept should therefore continue to be used which 'from the beginning' the O.C.C.F. had 'by implication' adopted.

3. Previously, however, the O.C.C.F. and the C.P.F.I. had granted exemptions to the undertakings Breda Siderurgica and Hoogovens for ferrous scrap which these undertakings received from certain other companies with which they formed a group; the High Authority's representative at the O.C.C.F. and the C.P.F.I. had made reservations on this point.

In the letter of 18 December 1957 the defendant withdrew these reservations. In another letter to the O.C.C.F. of 17 April 1958 (*Official Journal* pp. 30/58 et seq.) it gave the following reason for its attitude: 'Although organic links exist between the companies, ... the sole criterion determining the grant of exemptions is that of local integration'.

4. By letter of 19 October 1956 addressed to the defendant, the Société nouvelle des usines de Pontlieue—Aciéries du Temple (SNUPAT), of which the present applicant is the successor, had asked whether it was, as seemed reasonable, exempted from the payment of contribution for those quantities of ferrous scrap which it received from Régie Renault; it did not receive any reply to this letter. On 31 March 1958, the company presented a request for exemption which was by implication rejected; in fact, the C.P.F.I. requested the applicant to pay its contribution for the ferrous scrap in question. In its applications Nos 32 and 33/58 made against these measures on 30 June 1958, the applicant expressed the view that the limitation of the exemptions to cases of 'local integration' was arbitrary and too narrow. It referred to its close links with Régie Renault in the organizational, commercial and financial fields, noting especially that:

(i) its factories had originally formed a division which was legally dependent on Renault and the separation was only for tax purposes;

(ii) 99.77 per cent of its shares were held by Renault;

(iii) it received its ferrous scrap exclusively from Régie Renault which, for its part, used almost all of the steel produced by the applicant.

In its judgment of 17 July 1959 (Rec. 1958-1959, pp. 282 et seq.) (hereinafter referred to as 'the first SNUPAT judgment'), the Court rejected SNUPAT's point of view and ruled generally that 'group ferrous scrap' was subject to payment of the contributions; this judgment included no pronouncement with regard to the exemption of Breda Siderurgica and Hoogovens.

5. A new application by SNUPAT (Case 49/59 of 31 October 1959) against the defendant resulted in the judgment of 22 February 1961 (Rec. 1961, pp. 109 et seq.) (hereinafter referred to as 'the second SNUPAT judgment'), which annulled the implied refusal to withdraw with retroactive effect the above-mentioned exemptions on the ground that this was also a case of 'group ferrous scrap' subject to payment of the contribution.

6. Thereupon, the defendant withdrew the two exemptions with retroactive effect. By judgment of 12 July 1962 (Rec. 1962, pp. 492 et seq.), the Court dismissed the application made by Hoogovens against that Decision (Case 14/61, hereinafter referred to as 'the Hoogovens judgment'); in that case the present applicant intervened in support of the High Authority, the defendant in the case.

7. On 28 December 1962 the Société des Aciéries du Temple made the present application for compensation.

II — Conclusions of the parties

The *applicant* claims that the Court should:

'apply Article 40 of the Treaty and order the High Authority to pay the applicant company the sum of 1 500 000 NFrs by way of compensation for a wrongful act or omission infringing Articles 3(b), 4(b) and 53 (b) of the Treaty and the basic Decisions establishing the financial arrangements for equalization; alternatively, order an assessment to be made by one or more experts to determine the exact amount of the damage suffered; order the High Authority to pay the costs and expenses of the proceedings.'

The *defendant* contends that the Court should:

'dismiss the application and subsequent request for an expert assessment as unfounded and order the applicant to pay the costs.'

III — Submissions and arguments of the parties

The submission and arguments of the parties may be summarized as follows:

1. *Wrongful act or omission*

A — Generally

The *applicant* maintains that the Court found the High Authority to have acted illegally. Any error of law is basically unjustifiable and therefore amounts to a wrongful act or omission. The wrongful act or omission arises also from the defendant's infringement of 'an established and still existing' right of the applicant, that of equality of treatment with all parties who pay contributions.

The defendant should have used economic and not solely legal criteria in determining which ferrous scrap was subject to the contribution. As the purpose of its decisions was to influence the ferrous scrap market, movements of ferrous scrap which could not have any repercussions on the market because they took place between undertakings forming a group ought to have been exempted. The *defendant* replies that these complaints related to the legality of decisions taken by the defendant subjecting group scrap to the contribution, and therefore also the case-law of the Court which had approved this principle. Only the exemptions granted to Hoogovens and Breda Siderurgica were illegal. This error is, however, not unjustifiable. The Hoogovens judgment expressly declared that there was no wrongful act or omission in the attitude of the defendant up to the second SNUPAT judgment, even though Hoogoven's position at that time was more unfavourable than that of the applicant whose requests for exemption had from the beginning been rejected by the defendant.

Furthermore, the precedents set by the Court show that questions as to the legality of a decision taken by the High Authority cannot be made the subject of an action for liability arising out of a wrongful act or omission on the part of that body.

The *applicant* states that it does not intend to question either the legality of the basic Decisions taken by the defendant or the case-law of the Court. It criticizes only the manner in which these Decisions have been applied, and the fact that, when considered in conjunction with the circumstances of the case, their wording suggests an interpretation different from that finally given by the Court, and that this fact led the undertakings concerned into error.

B — Failure of the basic Decisions to solve the problem of group ferrous scrap

The *applicant* considers that the concepts of 'bought ferrous scrap' and 'within the Community' used in these Decisions should have led the parties concerned to consider that only ferrous scrap purchased on the market was subject to the contribution, particularly since none of the voluntary equalization schemes set up by the undertakings consuming ferrous scrap before the establishment of the obligatory scheme in question had included group ferrous scrap. Moreover, the term 'group ferrous scrap' appears for the first time in the defendant's Decisions taken after the first SNUPAT judgment was given. The question also arises whether delivery contracts made between closely-linked undertakings are not contracts of exchange rather than contracts of sale. Although this problem was raised by these Decisions, they have provided no solution to it.

The *defendant* replies that, like the O.C.C.F. and the C.P.F.I., it has always been opposed to the exemption of group ferrous scrap. It is not aware which earlier equalization arrangements the applicant has in mind, but is in any case not obliged to follow the practice of a small group of undertakings.

C — Imprecise definition of 'bought ferrous scrap' at the time of implementation of the basic Decisions

The *applicant* claims that the defendant has actually only discussed the concept of 'own resources' and has never defined 'bought ferrous scrap', although such a definition had been necessary considering former practice in the commercial spheres concerned (see B above). It is only at first sight that the effect of this discussion is *a contrario* that all ferrous scrap which is not 'own resources' is regarded as 'bought ferrous scrap', as intermediate categories exist. Moreover, the term 'own resources' was used for the first time only in Decision 2/57 and then it was only a question of 'own resources in aggregate', a fact which encouraged the applicant in its view.

The *defendant* states that in fact the applicant's submissions only concern 'own resources' and are therefore contradictory. Furthermore, the defendant had to carry out the requisite investigation before being able to determine the application of the general Decisions to specific individual cases.

D — Delays and uncertainties in the defining of 'own resources'

The *applicant* observes that the defendant first sent information on the concept of 'own resources' of the O.C.C.F. by letter dated 18 December 1957; moreover, this communication had to be supplemented by the letter of 17 April 1958. The first of these letters shows that the representatives of the O.C.C.F. had been unable to agree on the definition of this concept. The information provided in the letter of 18 December 1957 on the concept of ownership dealt with mere platitudes and cast no real light on the question.

The *defendant* replies that the explanations given by the applicant in fact referred to alleged uncertainties on the part of the O.C.C.F. and the C.P.F.I. When the defendant was questioned on this subject, the answer given was quite clear and it was impossible for the applicant to have concluded that it was exempt from equalization. The second SNUPAT judgment (Rec. 1961, p. 150) declared, apparently without seeing anything unusual in it, that 'at the time when the letters of 18 December 1957 and 17 April 1958 were drafted and published in the *Official Journal,* the High Authority had still to resolve entirely the problem of defining the principles contained in basic Decision 2/57, which does not define the meaning of the terms 'own resources' and 'bought ferrous scrap'.

The numerous requests for exemption presented at the time show that the defendant's statement that in principle group ferrous scrap was subject to assessment had been clear.

The *applicant* replies that the defendant is forgetting its original reservations regarding the exemptions granted to Hoogovens and Breda Siderurgica and the subsequent withdrawal of these reservations, at first on the very vague grounds given in the letter of 18 December 1957; consequently, the defendant can also be criticized for having caused the uncertainties. Moreover, the wrongful acts or omissions of the O.C.C.F. and the C.P.F.I. must be regarded as those of the High Authority.

E — Illegal exemptions

The *applicant* states that the confusion brought about by the letter of 18 December 1957 was increased by the two exemptions which had been granted. It was only in its letter of 17 April 1958 that the defendant indicated the ground on which these exemptions, which dated from 1956, had been granted. As appears from the second SNUPAT judgment, these special rules are illegal on two grounds: first, because they exempt group ferrous scrap from the payment of contributions and, secondly, because they are based on the purely arbitrary criterion of 'local integration'. However, references in the letter of 17 April to 'organic links' and 'industrial complexes' encouraged the applicant's view that it was to be exempted.

The *defendant* contends that the exemptions were based on the concept of local integration rather than on that of group ferrous scrap. The applicant should, therefore, have realized that it could not claim exemption in favour of ferrous scrap from the Régie Renault works situated several hundred kilometres away.

F — Delay in replying to the applicant; refusal to withdraw the exemptions.

The *applicant's* first contention is that on 2 June 1958 the O.C.C.F. made only an evasive response to its request for exemption of 31 March 1958, stating that it was necessary to wait until the Court had ruled on the various applications already brought before it.

Moreover, the defendant's refusal after the first SNUPAT judgment to withdraw the two exemptions clearly amounts to an additional wrongful act or omission.

The *defendant* replies that this judgment did not rule on the question of 'local integration'. In fact, such a ruling was only given in the second SNUPAT judgment, the consequences of which were immediately seen by the defendant. Moreover, in the Hoogovens judgment the Court declared that there was no wrongful act or omission in the conduct of the High Authority prior to the second SNUPAT judgment.

The *applicant* contends in answer that the latter judgment only concerned Hoogovens whose application had not been based on a wrongful act or omission. Moreover, Hoogovens' position is quite different from that of the applicant who never acquiesced in an error made by the defendant, nor benefited from such an error.

2. *Injury and causal link*

The *applicant* maintains that the injury suffered consists 'basically' of having to pay, after the date for payment, its contributions in respect of the period from 1 January 1955 to November 1958. This injury is particularly severe since the defendant is claiming a very large sum, the first demand for payment amounting to 1 452 787.61 NFrs. It must also be remembered that, during the years in which the applicant was entitled to consider itself exempt from the payment of contributions it would, considering the favourable circumstances existing at the time, have been in a position to pass the contributions on to its customers. Since 1962 this is no longer possible, mainly because of the market in special structural steels which is very sensitive to the short-term economic situation. Had the defendant upheld the applicant's request of 30 July 1959 for the withdrawal of the exemptions, the loss suffered could have been reduced since at that period a certain increase in prices would still have been possible. This negligence on the part of the defendant led to further injury. The defendant's subsequent withdrawal of the exemptions made good only a part of the loss which amounts in total to 1.5 million NFrs. The applicant requests the Court to appoint an expert to assess the extent of the loss if the explanations given are judged insufficient.

The damage suffered is of a direct nature, and, on the grounds given under

1 above, is attributable to the wrongful act or omission on the part of the defendant. The balance-sheet drawn up by the applicant shows that no provision has been made for equalization contributions; furthermore, the applicant had no reason to make such provision, since over the years it was able to conclude from the defendant's attitude that it was exempt from the payment of contributions. Furthermore, the French Treasury would not readily have permitted such provision since, for the reasons set out above, the applicant would have had great difficulty justifying them.

The *defendant* contends that no injury has been suffered. There is none at present since the applicant has not yet paid any contributions and it cannot arise in future since, according to its own statements, the applicant has basically only one customer, Régie Renault, with which it is closely linked. In the Hoogovens judgment the Court rejected the same argument put forward by the applicant in that case, namely that it is impossible to include the cost of the contribution payments in prices; this judgment applies also to the applicant who intervened in that case. Moreover, if the applicant had been successful, it would mean that all undertakings using group ferrous scrap ought to be exempted from the contribution. As to the observation regarding the amount owed, the defendant emphasizes that it has never refused to allow settlement by instalments.

In addition, no causal link exists between the attitude of the defendant and the alleged damage suffered. It is clear from its own submissions that the error must be imputed to the applicant. Furthermore, the applicant's letter of 19 October 1956 and its subsequent request for exemption both show that it envisaged the possibility of being called on to make contributions. The first SNUPAT judgment should have removed for it all doubts on the subject. The defendant's error in exempting Hoogovens and Breda Siderurgica could not have caused the applicant damage, first, since it had been annulled and, secondly, since it did not affect the applicant, which has always been regarded by the defendant as subject to assessment.

The *applicant* replies that no payments have as yet been made precisely because no request has been made to this effect. There is no significance in the close links with Renault: the finding of the first SNUPAT judgment that even the internal group price is not independent of the market price leads to the conclusion that in relation to the Renault company the applicant was unable to enter in its books anything other than the market price.

As regards the Hoogovens judgment it has in no way the force of *res judicata* in respect of the applicant. Furthermore, in the judgment the Court only stated presumptions which may be contradicted by the facts. The position of the applicant is quite different from that of Hoogovens. It is not at all certain that the applicant has gained specific benefits from the fact that it has paid no contributions; it has also not been established that the benefits which may have accrued are equal to the damage now suffered. If need be, an expert should be appointed to establish this fact.

IV — Procedure

The procedure followed the normal course.

After hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

The hearing took place on 27 September and 17 October 1963.

At the hearing on 17 October, the Advocate-General delivered his opinion to the effect that the application should be dismissed.

Grounds of judgment

On the substance of the case

The applicant contends that the conduct of the High Authority in drafting and applying the basic Decisions governing the equalization scheme in question amounted to a wrongful act or omission.

This wrongful act or omission led the applicant's predecessor, SNUPAT, to the mistaken belief that the ferrous scrap which it received from Régie Renault was exempt from equalization. SNUPAT therefore carried on its business in a manner which subsequently proved detrimental.

The applicant submits that the wrongful act or omission which it imputes to the High Authority caused the injury of which it complains; it is, therefore, appropriate to examine this question first of all and to establish whether a causal link actually exists between the alleged wrongful act or omission and the alleged injury. For the purposes of this examination, one must ask not whether the conduct of the defendant in fact caused the error, but whether it could and should have caused such an error in the mind of a prudent person.

The basic Decisions which are thus at issue and which concern the successive rules of the equalization scheme (22/54, 14/55 and 2/57) must be considered not in the light of later-case-law, but according to the situation prevailing at the time of their publication.

Although these Decisions did not expressly refer to group ferrous scrap, certain factors must nevertheless have led the undertakings to consider that it was not excluded.

These Decisions, with a view to defining the number of contributors, used the concept of 'undertaking' within the meaning of Article 80 of the ECSC Treaty, a concept which distinguishes persons having rights and duties and which, unless the context otherwise provides, refers to an economic entity distinguished by a distinct legal personality.

Further, the term 'bought' used by Decisions 22/54 and 14/55 to identify the ferrous scrap liable to assessment could at least render possible and even likely the application of these arrangements to every sale or similar transaction between legally distinct undertakings.

This possibility became all the more likely since Decision 2/57, in order to define exempted ferrous scrap, also used the concept of 'own resources', thus evoking the legal concept of 'ownership'.

Even though they were capable of raising doubts in the minds of the undertakings concerned, the basic Decisions were ill-suited to provide assurance that the ferrous scrap in question was exempt from equalizaton. The applicant itself alleges that, by letter of 19 October 1956, SNUPAT had put this question to the defendant without receiving a reply. These circumstances confirm in fact that SNUPAT was aware of the possibility of assessment.

In this situation, if SNUPAT saw no point in taking the measures necessary in order to meet this possibility, and if its calculation of the cost price thus turned out to be wrong, it is the company's own lack of foresight which directly caused the difficulties which it now describes as injury.

Secondly, it should also be considered whether the attitude adopted by the defendant in applying the basic Decisions was likely to lead the applicant into error.

In this respect, the applicant's first contention is that the defendant's letter of 18 December 1957 only defined 'own resources' and thus left doubt as to the real meaning of the expression 'bought ferrous scrap'. The aim of this definition was clearly to determine which ferrous scrap was exempt. It could have been deduced *a contrario* that the defendant considered as assessable all ferrous scrap which did not comply with that definition. This complaint is thus unfounded.

The applicant next contends that there were 'delays and uncertainties' in defining the concept of 'own resources'.

It has already been declared that the basic Decisions, even before being interpreted by the defendant, could not lead to any certainty in the minds of those concerned. This complaint cannot be accepted.

Finally, the applicant maintains that the grant of certain exemptions and the refusal to withdraw them had let SNUPAT to consider that the ferrous scrap in question was not liable to assessment.

The letter of 17 April 1958 clearly showed that the defendant only intended to include in 'own resources' ferrous scrap transferred between 'locally integrated' undertakings.

Therefore SNUPAT, whose works were not locally integrated with those of Régie Renault, could not reasonably have anticipated being granted an exemption.

The most it could envisage was the mere possibility of annulment of the refusal to extend the exemptions to 'group ferrous scrap' other than that discussed in this letter. Here too therefore there was neither certitude nor probability.

Moreover, any such hopes were crushed by the first SNUPAT judgment on which the Court ruled that the ferrous scrap received by SNUPAT from Régie Renault should be subject to equalization.

The subsequent refusal of the defendant to withdraw the exemptions granted was thus incapable of leading SNUPAT into error in its own case. This last complaint is also unfounded.

It follows from all these considerations that there is no direct relationship of cause and effect between the behaviour imputed to the defendant and the alleged injury.

The application must therefore be dismissed as unfounded.

Costs

Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs.

In this case, the applicant has failed in all its submissions.

It must therefore be ordered to bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to Article 40 of the Treaty establishing the European Coal and Steel Community;
Having regard to the Protocol on the Statute of the Court of Justice of the European Coal and Steel Community;
Having regard to the Rules of Procedure of the Court, in particular Article 69 (2);

THE COURT

hereby :

1. **Dismisses the application as unfounded;**
2. **Orders the applicant to pay the costs.**

Donner Hammes Trabucchi

Delvaux Rossi Lecourt Strauß

Delivered in open court in Luxembourg on 16 December 1963.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL M. LAGRANGE DELIVERED ON 17 OCTOBER 1963[1]

Mr President,
Members of the Court,

You are asked to give judgment in an application, under Article 40 of the ECSC Treaty, made by the Société des Aciéries du Temple (the successor of the Société nouvelle des usines de Pontlieue—Aciéries du Temple, or SNUPAT, which you know well) for reparation for a wrongful act or omission on the part of the High Authority.

This wrongful act or omission is said to have consisted:

(1) in an *error of law* committed by the High Authority in the reconciliation which it was required to make between the aim of equalization, an essentially economic aim, and respect for the principle of equality between the contributors, a principle which, it is alleged, was infringed;

(2) in the persistence of the High Authority in that error and the uncertainty which it caused among the undertakings regarding their actual rights.

As regards the error of law, the applicant recalls at length—one might even say, with a certain nostalgia—the argument developed in its first application, according to which the essentially economic purpose of the equalization scheme should have been based on the concept of the *market*, from which it follows that movements of ferrous scrap having no repercussion on the market, such as those of group ferrous scrap, should not be taxed. It is in this sense that the creators of the Equalization Fund had always intended it. Certainly, the applicant declares that it submits to the decisions of the Court which have held otherwise, on the basis that the event giving rise to the contribution was the

1 — Translated from the French.