JUDGMENT OF THE COURT
10 DECEMBER 1957[1]

Acciaierie Laminatoi Magliano Alpi (ALMA) SpA v High Authority of the European Coal and Steel Community

Case 8/56

Summary

1. *Procedure — Letter sent by the High Authority — Registered mail — Delivery to employee of the addressee undertaking — Effects*

   If, before imposing a fine on an undertaking, the High Authority gives that undertaking, by way of a registered letter, the opportunity to submit its comments pursuant to Article 36 of the Treaty, the statement contained in that letter becomes fully effective as soon as the postal employee delivers that letter in due course to an employee of the undertaking at its registered office, the effect of which is to bring the letter within the control of that undertaking
   (Treaty, Article 36).

2. *Prices — Publication — System — Communication to the High Authority of price lists and conditions of sale*

   The Treaty is not infringed when the High Authority determines the extent and manner of publication of price lists and conditions of sale, pursuant to Article 60 (2) (a) of the Treaty, laying down, inter alia, *that they shall be communicated to it. Article 60 (2) (a) must be viewed in this connexion as a special provision in relation to Article 47*
   (Treaty, Articles 47 and 60).

3. *Prices — Publication — System — Offences — Fines*

   Article 64 also covers offences against decisions of the High Authority regulating publication of prices and conditions of sale pursuant to Article 60 (2) (a)
   Treaty, Articles 60 (2) (a) and 64).

4. *Procedure — Action in which the Court has unlimited jurisdiction — Fine — Reduction — Powers of the Court*

   If a decision of the High Authority imposing a fine is the subject-matter of an action, the Court is empowered not only to annul but also to amend the decision taken, by reducing the amount of an excessive fine, since this is an action in which the Court has unlimited jurisdiction. It has this power even in the absence of formal conclusions to that effect
   (Treaty, Article 36).

In Case 8/56

ACCIAIERIE LAMINATOI MAGLIANO ALPI (ALMA) SpA, having its registered office in Turin, represented by its sole director, Mario Beltrandi, engineer, assisted by Arturo Cottrau, Advocate of the Turin Bar and before the Corte di Cassazione,

1 — Language of the Case: Italian.

Rome, with an address for service in Luxembourg at the Chambers of Georges Margue, 6 rue Alphonse München,

applicant,

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Professor Giulio Pasetti-Bombardella, Advocate, acting as Agent, assisted by Alberto Trabucchi, Professor at the University of Padova, Advocate before the Corte di Cassazione, Rome, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

Application for the annulment of the decision of the High Authority of 24 October 1956 notified to the applicant by registered letter of 9 November 1956 imposing on the applicants a fine of Lit 800 000,

THE COURT

composed of: M. Pilotti, President, Ch. L. Hammes and P. J. S. Serrarens, Presidents of Chambers, O. Riese, L. Delvaux, J. Rueff and A. van Kleffens, Judges,

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

gives the following

JUDGMENT

Facts

I – Conclusions of the parties

The *applicant* claims that the Court should:

'find in favour of the present application and annul the decision of the High Authority of 24 October 1956, notified on 14 November 1956, as annexed to the file:

order the High Authority to pay the costs.'

The *defendant* contends that the Court should:

'reject all the claims made by the ALMA company in their application, notified to the High Authority on 13 December 1956;

order the company to pay the costs of the action.'

II – Background to the case

The applicant is an iron and steel undertaking having its registered office in Turin, its works being situated at Magliano Alpi, a small town about 100 km from that city.

1. On 4 November 1955 the High Authority sent to the applicant a registered letter recording that the undertaking had not yet sent to the High Authority its price lists and conditions of sale, that it had therefore infringed the provisions of Article 60 (2) of the Treaty and those of the High Authority's Decisions Nos 31/53 and 2/54 and that it had thereby rendered itself liable to the sanctions laid down in Article 64 of the Treaty. The applicant was invited to submit reasoned comments on this subject within fifteen days, in the absence of which the High Authority would order it to pay a fine.

2. Since this letter remained unanswered, on 24 October 1956 the High Authority took the decision contested in this case. The said decision, based in particular on Articles 36, 60 and 64 of the Treaty and on the High Authority's Decisions Nos 31/53, 2/54 and 37/54, imposed on the applicant a fine of Lit 800 000 for infringement of the duty to publish its price lists. This decision was notified by registered letter dated 9 November 1956, delivered to a senior employee of the applicant company on 13 or 14 November 1956.

3. On 10 December 1956 the applicant commenced the present proceedings against the abovementioned decision.

III — Submissions and arguments of the parties

In support of its application the applicant claims:

'an infringement of Article 36 of the Treaty and a failure to examine an important fact;'

'an infringement of Article 64 of the Treaty.'

A — *Infringement of Article 36*

(a) The applicant maintains in its application that the warning letter of 4 November 1955 arrived neither at its registered office nor at its works. In its reply and at the hearing it merely stated that the letter was never delivered to its sole director at Magliano Alpi.

The fact that it went astray was due to an error on the part of officials of the High Authority, who addressed the letter to a company supposedly of 'Mag*liona* Alpi, Corso *Regiodarco* 33, Torino', instead of using the correct spelling: 'Mag*liano*' and *'Regio Parco'*.

Before taking the contested decision, therefore, the High Authority did not give the applicant the opportunity to submit its comments; it therefore infringed Article 36 of the Treaty.

Furthermore, the High Authority failed to examine an important fact in that it did not inquire whether the lack of a reply to its letter of 4 November 1955 was due to an error on the part of the applicant.

(b) The defendant denies that it infringed Article 36. It annexes to its statement of defence a photocopy of the acknowledgement of receipt of its letter of 4 November 1955, which bears, besides the signature, the seal of ALMA. It is therefore clear that the errors in the address, which were in any event very slight, had no effect. It does not matter whether or not the letter was forwarded to Magliano Alpi; it is sufficient that it was delivered at the applicant's registered office to a person authorized to receive mail on behalf of ALMA.

B — *Infringement of Article 64*

(a) In the applicant's view the High Authority was unaware that Article 64 of the Treaty may be used as the basis for determining a fine only where the sanction is imposed in respect of prohibited practices such as discrimination and unfair competition, which are offences of which the applicant has never been guilty. Indeed, that article provides for fines 'not exceeding twice the value of the sales effected [in disregard of the provisions]'. The High Authority's argument would therefore lead to the absurd result that, in view of the volume of sales effected on the basis of the price lists which were not communicated to the High Authority, the applicant could have been ordered to pay a fine of between Lit 100 and 200 million.

The High Authority has confused publication and communication of price lists. The applicant merely infringed the obligation to

communicate its price lists to the High Authority. In so doing, it rendered itself liable to the sanctions provided for in Article 47, but not those of Article 64. The High Authority has therefore confused the provisions of those two articles.
Finally, the amount of the fine is excessive. The applicant is a small undertaking, virtually a cottage industry; the company capital amounts to Lit 6 million. A fine of Lit 800 000 is therefore extremely severe, especially in view of the fact that the applicant has already been obliged to request the High Authority to arrange a three-year repayment plan for the discharge of arrears due in respect of levies.

(b) The defendant replies that the applicant's argument is totally devoid of foundation. Article 64, which is perfectly clear, also provides for fines in the case of infringements of preventive rules, such as decisions adopted for the purpose of regulating the publication of price lists. Although it enables very heavy fines to be imposed, it does not, however, require the High Authority to fix them at the maximum provided. The applicant cannot complain that it has incurred a sanction which could have been much more severe.
The High Authority has laid down the procedure for publication of price lists providing, *inter alia*, that they should be communicated to it. It has not therefore exceeded the powers which it holds under Article 60 (2) (a). The relationship between that provision, on the one hand, and Article 47, on the other, is that of a special rule to a general rule.

IV – Procedure

The application is in due form and has been brought within the prescribed period.
The powers of the Agents and counsel of the parties do not give rise to any objection.
The written procedure followed the normal course. The parties' statements, together with a certain number of annexes, were submitted within the prescribed periods and were presented in due form.
At the request of the Court, the applicant produced certain documents containing information on its financial situation.

Law

A – Infringement of Article 36 of the Treaty

The applicant complains that the High Authority imposed the contested fine without having previously given it the opportunity to submit its comments pursuant to the first paragraph of Article 36 of the Treaty. In this connexion, it claims that the registered letter sent by the High Authority on 4 November 1955, which, without any doubt, constituted an invitation satisfying the requirements of the said provision, never arrived at Magliano Alpi, where the works of the applicant company are situated, since the address contained spelling errors.
It is unnecessary to examine whether this complaint is also, or exclusively, one of infringement of essential procedural requirements, since the Court is of the opinion that it is unfounded.
The High Authority has submitted to the Court a photocopy of the acknowledgement of receipt of the above-mentioned letter, bearing the seal of ALMA, the authenticity of which has not been challenged. It has therefore shown that the letter was delivered to an employee of the applicant at a building situated at 33 Corso Regio Parco, Turin, being the address which the applicant, in its application, states to be that of its registered office.

This being so, it is of little importance whether the letter—as stated by the applicant—was not conveyed from Turin to Magliano Alpi. Since it is established that it duly arrived at the applicant's registered office, application may be made of a principle of law recognized in all countries of the Community, namely that a written declaration of intent becomes effective as soon as it arrives in due course within the control of the addressee.
The submission concerning infringement of Article 36 must therefore be rejected.

B — Infringement of Article 64 of the Treaty

According to the applicant, the High Authority failed to appreciate the scope of Article 64 of the Treaty; it claims that the offence of which it was guilty should have been punished on the basis of Article 47.
This argument must be rejected.
According to Article 64 fines may be imposed upon undertakings which infringe the provisions of Chapter V of the Treaty or decisions taken thereunder by the High Authority. That chapter covers offences against the provisions concerning publication of price lists and conditions of sale, contained in Article 60(2)(a), as well as offences against the rule of non-discrimination. Since the applicant did not fulfil its obligation to publish its price lists, as well as infringing the High Authority's Decisions Nos 31/53, 2/54 and 37/54, laying down the extent and manner of such publication, the High Authority correctly applied Article 64 to it.
Contrary to the applicant's belief, the Treaty is not infringed when the High Authority determines the extent and manner of publication of price lists pursuant to Article 60(2)(a) of the Treaty, laying down, *inter alia*, that those lists shall be communicated to it. As its Agent has noted, Article 60(2)(a) must be viewed in this connexion as a special provision in relation to Article 47.
The applicant wrongly maintains that the argument adduced by the High Authority would lead to absurd consequences in that it would allow the imposition of very heavy fines in respect of infringements of purely preventive provisions. In fact, Article 64 does not lay down a minimum; it therefore allows and requires the High Authority to assess the amount of the fine in relation to the nature of the rule infringed. Furthermore, the rules relating to publication of prices are not of minor importance, but are on the contrary a fundamental principle of the common market.
The submission concerning infringement of Article 64 must therefore also be rejected.

C — Amount of the fine

The Court has examined the question whether the amount of the fine should be reduced.
It notes that the action before it is one in which it has unlimited jurisdiction (second paragraph of Article 36) and that, therefore, it is empowered not only to annul but also to amend the decision which has been adopted.

Although the applicant has put forward no formal submission to this effect, the Court believes, the Advocate-General concurring, that that part of the application stressing the modest financial circumstances of the applicant may be interpreted as an alternative submission requesting such a reduction. Furthermore, even in the absence of any formal submission, the Court is authorized to reduce the amount of an excessive fine since such a result would not have an effect *ultra petita*, but would on the contrary amount to a partial acceptance of the application. In accordance with the views expressed by the Advocate-General the Court is, however, of the opinion that the amount of the fine is not excessive in this case. As regards the gravity of the offence, account should be taken of the importance of the principle of the publication of prices, on the one hand, and of the fact, on the other hand, that the applicant persistently disregarded the rules in question for more than three years, thereby betraying considerable negligence at the very least. Furthermore, as regards the applicant's financial situation the Court refers to the figures quoted in the Advocate-General's Opinion. It notes, moreover, that the accounts for 1955 and 1956 contain items on the debit side entitled 'Extraordinary Reserve Fund', amounting to Lit 18 043 659 and 18 621 034 respectively. This being the case, no manifest injustice has been established and the Court does not intend to substitute its assessment for that of the High Authority.
The Court is not unaware of the difficulties which the applicant may encounter as the result of the coincidence of its obligations to pay the fine and discharge arrears in respect of levies. The Court relies on the High Authority's judgment regarding the manner in which the fine is to be paid.

D — Costs

Since the applicant has failed in all heads of its application it must bear the costs of the action in accordance with Article 60 of the Rules of Procedure of the Court.

Upon reading the pleadings;
Upon hearing the oral observations of the parties;
Upon hearing the Opinion of the Advocate-General;
Having regard to Articles 36, 47, 60 and 64 of the Treaty;
Having regard to Decisions Nos 31/53, 2/54 and 37/54 of the High Authority;
Having regard to the Rules of Procedure of the Court as well as the Rules of the Court concerning costs,

THE COURT

hereby:

Dismisses the application brought against the decision of the High Authority of 24 October 1956 imposing on the applicant a fine of Lit 800 000;

Orders the applicant to pay the costs.

Pilotti Hammes Serrarens

Riese Delvaux Rueff Van Kleffens

Delivered in open court in Luxembourg on 10 December 1957.

M. Pilotti
President

O Riese
Judge-Rapporteur

A. Van Houtte
Registrar

OPINION OF MR ADVOCATE-GENERAL LAGRANGE[1]

Mr President,
Members of the Court,

The company ALMA (Acciaierie Laminatoi Magliano Alpi) asks you to annul a decision of the High Authority dated 24 October 1956 imposing on it, pursuant to Article 64 of the Treaty, a fine of Lit 800 000 for failure to publish its price lists and conditions of sale. This is an action based on Article 36, therefore an action in which the Court has unlimited jurisdiction.
The application is in due form and was submitted within the period of one month from notification of the decision pursuant to the provisions of Article 33 of the Treaty and Article 39 of the Protocol on the Statute of the Court. It is therefore admissible.

With regard to substance, two submissions have been raised:

The first is based on an infringement of the first paragraph of Article 36, according to which: 'Before imposing a pecuniary sanction or ordering a periodic penalty payment as provided for in this Treaty, the High Authority must give the party concerned the opportunity to submit its comments.'
The file contains a copy of a letter dated 4 November 1955, signed by a member of the High Authority, the content of which undoubtedly fulfils the formality required by the first paragraph of Article 36. Moreover, this point is not contested.
But the applicant claims that it never received the letter in question.
However, the file contains a photocopy of an acknowledgement of receipt in respect of a letter posted on 7 November 1955 in Luxembourg by the High Authority addressed to 'Acc. e Lam. di Magliona Alpi' (instead of 'Magliano Alpi'), Corso Regiodarco, 33 (instead of Corso Regioparco, 33), Turin, Italy. The acknowledgement of receipt itself bears the stamp of the receiving office (Turin, 9/11/55), the signature of the employee of the receiving office and (and this seems to me to be the decisive point and to justify the new arguments developed in the oral hearing) *the signature of the addressee preceded by the seal of the company:* 'ALMA', which proves that the minor spelling mistakes contained in the written address did not prevent delivery of the letter to the addressee at the very place indicated by the company as being its registered office. The fact (which has, moreover, not been established) that the company official whose duty it is to receive the mail did not in fact convey the letter to the place at

1 — Translated from the French.