

ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
1 June 1999 *

In Case T-73/99,

Karl L. Meyer, farmer, residing at Uturoa, Isle of Raiatea, French Polynesia, represented by Jean-Dominique des Arcis, of the Papeete Bar, with an address for service in Luxembourg at the office of Horst Pakowski, Ambassador of the Federal Republic of Germany, 20-22 Avenue Emile Reuter,

applicant,

v

Council of the European Union

and

Commission of the European Communities,

defendants,

APPLICATION for annulment of Article 133(3) of the EC Treaty (now, after amendment, Article 184(3) EC) and Article 106(1) of Council Decision 91/482/

* Language of the case: French.

EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: M. Jaeger, President, K. Lenaerts and J. Azizi, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 On 24 December 1998 there was published in the *Official Journal of French Polynesia* Decree No 662 DRCL of 8 December 1998 adopted by the High Commissioner of the French Republic in French Polynesia promulgating Law No 96-575 of 28 June 1996 authorising the approval of the third protocol dated 6 October 1995 annexed to the general agreement on trade in services (together with the engagement lists whose translation is annexed to that law), which was published in the *Official Journal of the French Republic* of 29 June 1996, and

Decree No 98-1065 of 18 November 1998 publishing the third protocol dated 6 October 1995 annexed to the general agreement on trade in services (together with the engagement lists whose translation is annexed to that law), which was published in the *Official Journal of the French Republic* of 27 November 1998.

- 2 Under those circumstances, by application lodged at the Court Registry on 11 March 1999, the applicant, a tropical-fruit farmer on the island of Raiatea in French Polynesia, brought this action. Considering that that publication constituted official recognition by the French Republic of the applicability in French Polynesia of the rules of the general agreement on trade in services (OJ 1994 L 336, p. 191, hereinafter the 'GATS agreement') contained in Annex 1B to the agreement establishing the World Trade Organisation (hereinafter the 'WTO agreement') approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round (1986-1994) (OJ 1994 L 336, p. 1) he is seeking annulment of Article 133(3) of the EC Treaty (now, after amendment, Article 184(3) EC) and of Article 106(1) of Council Decision 91/482/EEC of 25 July 1991 on the association of the overseas countries and territories with the European Economic Community (OJ 1991 L 263, p. 1, hereinafter 'Decision 91/482'). Those provisions, he submits, are contrary to the provisions of the general agreement on customs tariffs and trade — Marrakesh Protocol (WTO-GATT 1994) contained in Annex 1A to the WTO agreement (hereinafter '1994 WTO-GATT agreement').

Forms of order sought by the applicant

- 3 The applicant claims that the Court should:

— declare his claims admissible and well founded in their entirety;

- hold that Article 133(3) of the Treaty infringes the 1994 WTO-GATT Agreement and must be repealed;

- hold that, regard being had to the links existing by virtue of the 1994 WTO-GATT agreement on customs between French Polynesia, France and the EEC, the Community's customs tariff is applicable in the territory of French Polynesia;

- order, in light of the urgent situation, suspension of the contested articles pending judgment;

- adjudge which factors have contributed to the creation of the illegal situation in fiscal and customs matters in French Polynesia and determine the resultant liabilities;

- order the Council and the Commission to pay him the sum of FRF 20 000 for irrecoverable expenditure incurred by him in defending his interests.

Law

- 4 Under Article 111 of the Rules of Procedure of the Court of First Instance, as amended with effect from 1 June 1997 (OJ 1997 L 103, p. 6), where an action is manifestly inadmissible or manifestly lacking in any foundation in law, the Court of First Instance may by reasoned order and without taking further steps in the proceedings give a decision on the action.

5 In the present case the Court considers that the case-file provides sufficient elucidation and decides under that article to give a decision on the action without taking further steps in the proceedings.

6 First, it should be recalled that a Treaty provision is not an act of a Community institution within the meaning of Article 4 of the EC Treaty (now Article 7 EC) and Article 173 of the EC Treaty (now, after amendment, Article 230 EC); consequently, the Court has no jurisdiction to annul it (order of the Court of First Instance in Case T-584/93 *Roujansky v Council* [1994] ECR II-587, paragraph 15). It follows that the claim for annulment of Article 133(3) of the Treaty must be declared inadmissible.

7 Secondly, it is important to remember that, pursuant to Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state the subject-matter of the proceedings and a summary of the pleas in law on which it is based. That statement must be sufficiently clear and precise to enable the defendants to prepare their defence and the Court to adjudicate on the action, in a proper case without any other supporting information. In order to ensure legal certainty and the sound administration of justice, for an action to be admissible, the essential matters of fact and law on which it is based must be apparent, at least in summary form but coherently and comprehensibly, from the body of the application itself (order of the Court of First Instance in Case T-205/98 *Clauni and Others v Commission*, not published in the ECR, paragraph 14).

8 However, the application does not satisfy these minimum requirements. Although it states that it is based on Article 173 and Article 229 of the EC Treaty (now, after amendment, Article 302 EC), the specific subject-matter of the action is not discernible from the body of the application. The application criticises the conduct of both the French authorities and the French Polynesian authorities, the Council and the Commission, without its being possible to determine accurately what specific allegations are being made against any one or more of them. Accordingly, the claims in point must on that ground alone be declared inadmissible.

- 9 Moreover, even on the supposition that the arguments advanced in a haphazard manner by the applicant do in fact have the effect of bringing before the Court the issue of the legality of acts of the Council and the Commission, it must be held that those arguments are inadmissible.
- 10 First of all, it appears that, apart from the alleged non-conformity of Article 106(1) of Decision 91/482 with the rules of the 1994 WTO-GATT agreement, it is impossible to determine whether the applicant is accusing the Council and the Commission of any specific act or whether he is complaining of their failure to ensure the application of Community law in French Polynesia. The latter complaint would in any event be inadmissible in the context of an action under Article 173 of the Treaty since it falls within the ambit of Article 175 of the EC Treaty (now Article 232 EC), the application of which presupposes that the institutions concerned have first been called on to act. In the present case, the applicant has provided no evidence to show that this formal requirement has been complied with.
- 11 In any event, it is important to point out that, in so far as the action for annulment is directed against Article 106(1) of Decision 91/482, it is inadmissible since, first, it was brought outside the time-limits laid down in the fifth paragraph of Article 173 of the Treaty. Secondly, since the applicant has adduced no evidence to show that the provision at issue is of direct and individual concern to him, he does not satisfy the conditions laid down in the fourth paragraph of Article 173 of the Treaty.
- 12 Finally, the Court does not have jurisdiction under Article 173 of the Treaty to substitute itself for the Community institutions or national authorities entrusted with the implementation of Community law. It cannot therefore rule on the alleged illegality of the fiscal and customs situation prevailing in French Polynesia or determine the resultant liabilities.
- 13 Furthermore, apart from the fact that the application for interim relief does not fulfil the conditions laid down in Article 104(3) of the Rules of Procedure, that

application must in any event be dismissed as manifestly inadmissible, since the substantive claims are themselves inadmissible.

- 14 In light of foregoing, the action must be dismissed as manifestly inadmissible.

Costs

- 15 Under Article 87(1) of the Rules of Procedure the applicant is to bear his own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

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

2. The applicant shall bear his own costs.

Luxembourg, 1 June 1999.

H. Jung

Registrar

M. Jaeger

President