ORDER OF THE COURT
4 February 2000 *

In Case C-17/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the President of the Arrondissementsrechtbank te 's-Gravenhage, Netherlands, for a preliminary ruling in the proceedings pending before that court between

Emesa Sugar (Free Zone) NV

and

Aruba

on the validity of Council Decision 97/803/EC of 24 November 1997 amending at mid-term Decision 91/482/EEC on the association of the overseas countries and territories with the European Economic Community (OJ 1997 L 329, p. 50),

* Language of the case: Dutch.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward (Presidents of Chambers), P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch, P. Jann, H. Ragnemalm and M. Wathelet (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By letter of 11 June 1999 sent to the Registry of the Court, Emesa Sugar (Free Zone) NV (hereinafter 'Emesa') sought leave to submit written observations after the Advocate General had delivered his Opinion at the hearing on 1 June 1999. By letter of the same date, the Government of Aruba applied to be joined as a party in support of that application.

2 The EC Statute of the Court of Justice and the Rules of Procedure of the Court make no provision for the parties to submit observations in response to the Advocate General's Opinion.

3 However, Emesa relies on the case-law of the European Court of Human Rights concerning the scope of Article 6(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter 'the Convention'), and in particular on the judgment of 20 February 1996 in *Vermeulen* v *Belgium* (Reports of Judgments and Decisions, 1996 I, p. 224).

4 Article 6(1) of the Convention provides as follows:

'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'.

5 In its judgment in *Vermeulen* v *Belgium*, cited above, the European Court of Human Rights found that the Procureur Général's department at the Cour de Cassation (Belgique) (Belgian Court of Cassation) had as 'its main duty, at the hearing as at the deliberations, ... to assist the Court of Cassation and to help ensure that its case-law is consistent' (paragraph 29) 'with the strictest objectivity' (paragraph 30); it also considered that 'great importance must be attached to the part actually played in the proceedings by the member of the Procureur Général's department, and more particularly to the content and effects of his submissions. These contain an opinion which derives its authority from that of the Procureur Général's department itself [in the French version, "ministère public"]. Although it is objective and reasoned in law, the opinion is nevertheless intended to advise and accordingly influence the Court of Cassation' (paragraph 31).

6 The Court of Human Rights went on to consider that 'the fact that it was impossible for Mr Vermeulen to reply to them [the submissions] before the end of the hearing infringed his right to adversarial proceedings. That right means in

principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service [in the French version, "magistrat indépendant"], with a view to influencing the court's decision'. Accordingly, the Court of Human Rights found that this fact in itself amounted to a breach of Article 6(1) (paragraph 33) (see also, to the same effect, the judgments of: 20 February 1996 in *Lobo Machado* v *Portugal*, Reports of Judgments and Decisions 1996-I, p. 195, paragraphs 28 to 31; 25 June 1997 in *Van Orshoven* v *Belgium*, Reports of Judgments and Decisions 1997-III, p. 1040, paragraphs 38 to 41; 27 March 1998 in *J.J.* v *Netherlands*, Reports of Judgments and Decisions 1998-II, p. 604, paragraphs 42 and 43, and 27 March 1998 in *K.D.B.* v *Netherlands*, Reports of Judgments and Decisions 1998-II, p. 621, paragraphs 43 and 44).

7 Emesa takes the view that this case-law applies to the Opinion delivered before the Court by the Advocate General and accordingly seeks leave to reply to it.

8 As the Court has consistently held, fundamental rights form an integral part of the general principles of law, the observance of which it ensures (see, in particular, Opinion 2/94 of 28 March 1996 [1996] ECR I-1759, paragraph 33). For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have cooperated or of which they are signatories. The Convention has special significance in that respect (see, in particular, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).

9 Moreover, those principles have been incorporated in Article 6(2) of the Treaty on European Union, according to which 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as

general principles of Community law'. According to Article 46(d) of the Treaty on European Union, the Court is to ensure that this provision is applied 'with regard to action of the institutions, in so far as [it] has jurisdiction under the Treaties establishing the European Communities and under [the] Treaty [on European Union]'.

10 It is also appropriate to recall the status and role of the Advocate General within the judicial system established by the EC Treaty and by the EC Statute of the Court of Justice, as set out in detail in the Court's Rules of Procedure.

11 In accordance with Articles 221 EC and 222 EC, the Court of Justice consists of Judges and is assisted by Advocates General. Article 223 lays down identical conditions and the same procedure for appointing both judges and Advocates General. In addition, it is clear from Title I of the EC Statute of the Court of Justice, which, in law, is equal in rank to the Treaty itself, that the Advocates General have the same status as the Judges, particularly so far as concerns immunity and the grounds on which they may be deprived of their office, which guarantees their full impartiality and total independence.

12 Moreover, the Advocates General, none of whom is subordinate to any other, are not public prosecutors nor are they subject to any authority, in contrast to the manner in which the administration of justice is organised in certain Member States. They are not entrusted with the defence of any particular interest in the exercise of their duties.

13 The role of the Advocate General must be viewed in that context. In accordance with Article 222 EC, his duty is to make, in open court, acting with complete impartiality and independence, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it, which is to ensure that in the interpretation and application of the Treaty, the law is observed.

14 Under Article 18 of the EC Statute of the Court of Justice and Article 59 of the Rules of Procedure of the Court, the Opinion of the Advocate General brings the oral procedure to an end. It does not form part of the proceedings between the parties, but rather opens the stage of deliberation by the Court. It is not therefore an opinion addressed to the judges or to the parties which stems from an authority outside the Court or which 'derives its authority from that of the Procureur Général's department [in the French version, "ministère public"]' (judgment in *Vermeulen* v *Belgium*, cited above, paragraph 31). Rather, it constitutes the individual reasoned opinion, expressed in open court, of a Member of the Court of Justice itself.

15 The Advocate General thus takes part, publicly and individually, in the process by which the Court reaches its judgment, and therefore in carrying out the judicial function entrusted to it. Furthermore, the Opinion is published together with the Court's judgment.

16 Having regard to both the organic and the functional link between the Advocate General and the Court, referred to in paragraphs 10 to 15 of this order, the aforesaid case-law of the European Court of Human Rights does not appear to be transposable to the Opinion of the Court's Advocates General.

17 Moreover, given the special constraints inherent in Community judicial procedure, connected in particular with its language regime, to confer on the parties the right to submit observations in response to the Opinion of the Advocate General, with a corresponding right for the other parties (and, in preliminary ruling proceedings, which constitute the majority of cases brought before the Court, all the Member States, the Commission and the other institutions concerned) to reply to those observations, would cause serious difficulties and considerably extend the length of the procedure.

18 Admittedly, constraints inherent in the manner in which the administration of justice is organised within the Community cannot justify infringing a fundamental right to adversarial procedure. However, no such situation arises in that, with a view to the very purpose of adversarial procedure, which is to prevent the Court from being influenced by arguments which the parties have been unable to discuss, the Court may of its own motion, on a proposal from the Advocate General or at the request of the parties, reopen the oral procedure, in accordance with Article 61 of its Rules of Procedure, if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, in particular, with regard to the reopening of the oral procedure, the order of 22 January 1992 in Case C-163/90 *Legros and Others*, not published in the ECR, and the judgment of 16 July 1992 in Case C-163/90 *Legros and Others* [1992] ECR I-4625; the order of 9 December 1992 in Case C-2/91 *Meng*, not published in the ECR, and the judgment of 17 November 1993 in Case C-2/91 *Meng* [1993] ECR I-5751; the order of 13 December 1994 in Case C-312/93 *Peterbroeck*, not published in the ECR, and the judgment of 14 December 1995 in Case C-312/93 *Peterbroeck* [1995] ECR I-4599; the order of 23 September 1998 in Case C-262/96 *Sürül*, not published in the ECR, and the judgment of 4 May 1999 in Case C-262/96 *Sürül* [1999] ECR I-2685; and the order of 17 September 1998 in Case C-35/98 *Verkooijen*, not published in the ECR).

19 In the instant case, however, Emesa's application does not relate to the reopening of the oral procedure, nor does it rely on any specific factor indicating that it would be either useful or necessary to do so.

20 Emesa's application for leave to submit written observations in response to the Advocate General's Opinion must therefore be dismissed.

On those grounds,

THE COURT

hereby orders:

1. **Emesa Sugar (Free Zone) NV's application for leave to submit written observations in response to the Opinion delivered by the Advocate General is dismissed.**

2. **Costs are reserved.**

Luxembourg, 4 February 2000.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President