

**JUDGMENT OF THE COURT****(First Chamber)****of 15 March 1984**

**in Case 313/82 (reference for a preliminary ruling made by the Burgerlijke Rechtbank van Eerste Aanleg, Hasselt): Tiel Utrecht Schadeverzekering NV, Utrecht, v. The Gemeenschappelijk Motorwaarborgfonds, Brussels (1)**

**(Road accident — Medical expenses — Recovery by the insurance institution)**

(84/C 108/07)

*(Language of the case: Dutch)*

*(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)*

In Case 313/82: reference to the Court under Article 177 of the EEC Treaty by the Burgerlijke Rechtbank van Eerste Aanleg [Civil Court of First Instance], Hasselt, for a preliminary ruling in the proceedings pending before that court between Tiel Utrecht Schadeverzekering NV and the Gemeenschappelijk Motorwaarborgfonds [Joint Motor Guarantee Fund] — on the interpretation of Article 93 of Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal, English Special Edition 1971 (II), p. 416) — the Court (First Chamber), composed of T. Koopmans, President, A. O'Keefe and G. Bosco, Judges; P. VerLoren van Themaat, Advocate-General; P. Heim, Registrar, gave a judgment on 15 March 1984, the operative part of which is as follows:

*The term 'institution', referred to in particular in Article 4 (1) of Regulation (EEC) No 1408/71, means, in respect of each Member State, the body or authority responsible for administering all or part of a Member State's legislation relating to the branches or schemes of social security mentioned by that Regulation.*

(1) OJ No C 9, 13. 1. 1983.

**Action brought on 14 March 1984 by Robert Surcouf against the Council and Commission of the European Communities**

**(Case 71/84)****(84/C 108/08)**

An action against the Council and Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 March 1984 by Robert Surcouf, of 35510 Miniac-Morvan,

France, represented by Bertrand Favreau, of the Bordeaux Bar, with an address for service in Luxembourg at the Chambers of Guy Harles, Advocate, 34 Rue Philippe II.

The applicant claims that the Court should:

- declare and adjudge that the European Economic Community must pay to the applicant through its representative bodies the sum of FF 70 541,
- order the Community to pay the costs.

*Contentions and main arguments adduced in support:*

This action, based on the second paragraph of Article 215 of the EEC Treaty, is for compensation of the damage which the applicant suffers in carrying on his business of pig farming as a result of fluctuations in exchange rates due to the effect of monetary compensatory amounts. The Community institutions manifestly and seriously failed to take account of the limits on the exercise of their duties by continuing to apply monetary compensatory amounts which, created to guarantee the unity of the market by maintaining price unity threatened by monetary fluctuations (see Regulation (EEC) No 974/71 (1)), have in recent years unbalanced trade to the detriment of French producers. The Community institutions clearly exceeded their powers under Regulations (EEC) No 974/71 and (EEC) No 2759/75 (2) by maintaining monetary compensatory amounts for pork calculated in the absence of an intervention price on a theoretical price based on the basic price.

(1) Official Journal English Special Edition 1971 (I), p. 257.

(2) OJ No L 282, 1. 11. 1975.

**Action brought on 14 March 1984 by Jean Vidou against the Council of the European Communities and Commission of the European Communities**

**(Case 72/84)****(84/C 108/09)**

An action against the Council of the European Communities and the Commission of the European Communities was brought before the Court of Justice of the European Communities on 14 March 1984 by

Jean Vidou, 35510 Castlenau-Magnoac (France), represented by Bertrand Favreau, of the Bordeaux Bar, with an address for service in Luxembourg at the Chambers of Guy Harles, advocate, 34 Rue Philippe II.

The applicant claims that the Court should:

- declare and adjudge that the European Economic Community must, through its representative authorities, pay to the applicant the sum of FF 74 136 (seventy-four thousand one hundred and thirty-six French francs),
- order the Community to pay the costs.

*The contentions and main arguments adduced in support* are the same as those in Case 71/84.

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**Action brought on 19 March 1984 by Hoesch Werke Aktiengesellschaft against the Commission of the European Communities**

(Case 74/84)

(84/C 108/10)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 19 March 1984 by Hoesch Werke Aktiengesellschaft, represented by Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, 14 Heumarkt, D-5000 Cologne 1, with an address for service in Luxembourg at the Chambers of Jacques Loesch, avocat, 2 Rue Goethe.

The applicant claims that the Court should:

- declare that Commission Decision K(84) 177 of 7 February 1984 addressed to it and notified to it on 13 February 1984 concerning the carrying out of checks on the applicant and various associated undertakings with regard to prohibited pricing practices for steel products within the meaning of Annex I to the ECSC Treaty is void,
- order the defendant to pay the costs.

*Contentions and main arguments adduced in support:*

- Production of the auditor's report would be contrary to the principle of the protection of professional secrecy for auditors ('auditors' privilege') since, by its nature and function, that report is a strictly confidential consultative document from the auditor to the management of the under-

taking. In addition, the production of such a report is not 'required' within the meaning of Article 47 of the ECSC Treaty in view of the Commission's access to the undertaking's primary business papers and is also contrary to the principle of proportionality.

- In the applicant's view it is, in general, not admissible for private persons to take part in the investigation procedure where such persons are entrusted with the exercise of sovereign powers. The confidentiality of the applicant's business and operations is insufficiently protected in such a situation, particularly since in this case the private persons are employees of a trust company established in a non-member country, which does not work exclusively for the Commission but also serves and advises competitors of the applicant.

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**Action brought on 21 March 1984 by Thyssen Stahl Aktiengesellschaft against the Commission of the European Communities**

(Case 77/84)

(84/C 108/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 21 March 1984 by Thyssen Stahl Aktiengesellschaft, represented by Deringer, Tessin, Herrmann and Sedemund, Rechtsanwälte, 14 Heumarkt, D-5000 Cologne 1, with an address for service in Luxembourg at the Chambers of Jaques Loesch, avocat, 2 Rue Goethe.

The applicant claims that the Court should:

- declare that Article 14 B of Commission Decision No 234/84/ECSC of 31 January 1984 on the extension of the system of monitoring and production quotas for certain products of undertakings in the steel industry (Official Journal 1984 No L 29, p. 1) is void in so far as the allocation of additional quotas is dependent on conditions which exclude the taking into account of reductions in capacity effected before 1 January 1980,
- order the defendant to pay the costs.

*Contentions and main arguments adduced in support:*

Infringement of Article 58 (2) of the ECSC Treaty and of the Commission's duty to observe the principles contained in Articles 2, 3 and 4 of the ECSC Treaty, especially the prohibition of discrimination; misuse of the Commission's discretion.