

and declares:

It is for the Finanzgericht, Munich, to make an order as to the costs of the present proceedings.

Lecourt

Donner

Strauß

Trabucchi

Mertens de Wilmars

Delivered in open court in Luxembourg on 4 April 1968.

A. Van Houtte

R. Lecourt

Registrar

President

OPINION OF MR ADVOCATE-GENERAL GAND
(See Case 28/67, p. 159)

ORDER OF THE COURT
16 MAY 1968¹

In Case 13/67

Reference to the Court under Article 177 of the EEC Treaty by the Finanzgericht (Finance Court), Munich, for a preliminary ruling (given by the Court on 4 April 1968) in the action pending before that court between

FIRMA KURT A. BECHER, Munich,

and

HAUPTZOLLAMT (Principal Customs Office) MÜNCHEN-LANDSBERGERSTRASSE,

on the interpretation of Articles 95 and 97 of the EEC Treaty,

Whereas by application made on 2 May 1968 the Becher undertaking requested the Court under Article 67 of the Rules of Procedure 'to supplement the judgment of the Court of 4 April 1968 so that Questions II and III put by the court making the reference might receive a complete answer';

Whereas, in the event of the Court's considering this request to be inadmissible, the Becher undertaking considers that at all events it is admissible under Article 40 of the Protocol on the Statute of the Court of Justice of the EEC;

¹ — Language of the Case: German.

Whereas Article 177 of the EEC Treaty establishes a direct form of cooperation between the Court of Justice and the national courts or tribunals by means of a non-contentious procedure, in which the parties to the main action cannot take any initiative and during the course of which they are only invited to submit their observations within the legal context outlined by the court making the reference;

Whereas, although within the limits fixed by Article 177 it is thus exclusively for the national courts or tribunals to decide whether to make a reference and what its subject-matter should be, it follows that it is also exclusively for those courts or tribunals to decide whether they have received adequate clarification by the preliminary ruling given upon their request, or whether they consider it necessary to make a further reference to the Court;

Whereas, therefore, the parties to the main action cannot rely on Article 67 of the Rules of Procedure in order to ask the Court to supplement judgments delivered by virtue of the said Article 177;

Whereas, whilst Article 40 of the Statute might be applicable to preliminary matters, nevertheless this provision cannot be relied on by the parties to the main action;

Whereas in these circumstances the present application must be dismissed as inadmissible;

Whereas there is no need to make any order as to costs as none have been increased;

On those grounds,

Having regard to the application of the Becher undertaking of 2 May 1968;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the opinion of the Advocate-General;

Having regard to Article 177 of the Treaty establishing the EEC;

Having regard to Article 40 of the Protocol on the Statute of the Court of Justice of the EEC;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 67 and 92;

THE COURT

composed of: R. Lecourt, President, A. M. Donner and W. Strauß (Rapporteur), Presidents of Chambers, A. Trabucchi, R. Monaco, J. Mertens de Wilmars and P. Pescatore, Judges,

Advocate-General: J. Gand

Registrar: A. Van Houtte

hereby orders:

The application of the Becher undertaking is inadmissible.

Luxembourg, 16 May 1968.

A. Van Houtte
Registrar

R. Lecourt
President