Press and Information Division

PRESS RELEASE No 52/03

17 June 2003

Opinion of Advocate General Philippe Léger in Case C-453/00

Kühne & Heitz NV v Produktschap voor Pluimvee en Eieren

A NATIONAL AUTHORITY MAY NOT REJECT A CLAIM FOR PAYMENT BASED ON COMMUNITY LAW, AS INTERPRETED IN A JUDGMENT OF THE COURT OF JUSTICE, ON THE SOLE GROUND THAT SUCH CLAIM CALLS INTO QUESTION A PRIOR ADMINISTRATIVE DECISION.

The Advocate General considers that, in accordance with the principles of direct applicability and primacy of Community law, as well as certain provisions of the EC Treaty, a national rule requiring observance of the finality of judgments (res judicata) cannot be applied as against an individual so as to defeat a claim under Community law which calls into question an administrative decision which has become definitive because it has not been found unlawful by the courts.

A Council regulation of 1975 [1] on the common organisation of the markets in the poultrymeat sector established a system of payments in favour of producers exporting to non-Member States, known as "refunds". Their amount varies depending on the customs tariff classification of the exported products and offsets the difference between the generally high price within the EC and the lower price on the world market.

Between December 1986 and December 1987 the company Kühne & Heitz, established in the Netherlands, lodged several declarations concerning exports of poultry cuts. The Produktschap voor Pluimvee en Eieren (Commodity Board for Poultry and Eggs) initially paid the refunds claimed but then sought recovery of those refunds on the ground that the poultry products exported had received an incorrect tariff classification.

In 1991 the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) dismissed the action brought by Kühne & Heitz against that decision challenging

1 Regulation No 2777/75 of 29 October 1975.

the reimbursement sought, on the basis of the same assessment as that reached by the Produktschap. In its *Voogd* judgment [2] of 5 October 1994 the Court of Justice of the European Communities gave an interpretation of the customs nomenclature in line with that advocated by Kühne & Heitz.

On the basis of that judgment by the Court, Kühne & Heitz in December 1994 lodged a complaint with the Produktschap which was dismissed on the ground that the doctrine of *res judicata* precluded the upholding of such a claim because it sought to call into question a prior decision which had become definitive (not set aside by the College). Kühne & Heitz then brought before the College an action annulling that dismissal decision in order to obtain reexamination of the tariff classification of the goods in question and consequently recovery of the refunds which it had repaid.

That court asked the Court of Justice whether Community law requires reexamination and possibly withdrawal of a national administrative decision which has become definitive where it appears to be contrary to a subsequent judgment by the Court of Justice.

Advocate General Philippe Léger has today delivered his Opinion in this case.

Opinions of the Advocates General are not binding on the Court. It is the function of the Advocates General, acting in complete independence, to propose a legal solution in cases before the Court.

In the Advocate General's view, the question raised by the referring court amounts to a determination as to whether Community law precludes a national administrative body from refusing a payment claim under Community law on the ground that that claim seeks to call in question a prior administrative decision which has become definitive even though that decision is founded on an interpretation of Community law invalidated by the Court in a subsequent preliminary ruling.

The Advocate General states, first of all, that, in accordance with settled case-law, preliminary rulings on questions of interpretation in principle have retroactive effect to the date of entry into force of the rule interpreted, which ensures uniform application of Community law by all the Member States and its full effectiveness. The Court alone may decide, exceptionally, whether to limit in time the interpretation provided by it. However, it deemed fit not to limit the effect of the *Voogd* judgment relied on in this case. Consequently, the Produktschap ought to have taken it into account when it was seized of the payment claim by Kühne and Heitz.

In accordance with the Court's case law, the Advocate General considers that the principles of direct applicability and primacy of Community law, as well as certain provisions of the EC Treaty, require the administrative authorities, as well as the national courts, to disapply any national rule, even of a constitutional nature, where it impedes the actual implementation of Community law. That applies to a national rule such as that concerning observance of the finality of judgments.

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2 Case C-151/93 *Voogd* [1994] ECR I-4915.

The Advocate General concludes that Community law precludes a national administration from declining to uphold a claim based on Community law, as interpreted by the Court in a preliminary ruling, on the sole ground that to uphold that claim would run counter to a national rule concerning observance of the finality of judgments. He emphasises that for the administrative authorities to uphold such a claim does not necessarily entail the withdrawal of the prior administrative decision or revision of the judicial decision at issue.

NB. The judges of the Court of Justice of the European Communities will now begin their deliberations in this case. Judgment will be given at a later date.

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