JUDGMENT OF THE COURT
10 MAY 1960[1]

Acciaieria Ferriera di Roma v High Authority of the European Coal and Steel Community

Case 1/60

Summary

1. *Procedure — Rules on languages — Legal status*
   (Rules of Procedure, Articles 29 and 30)

2. *Procedure — Rules on languages — Official Languages — Documents brought to the notice of the Court*
   (Protocol on the Statute of the Court annexed to the ECSC Treaty, Article 38; Rules of Procedure, Article 29)

3. *Application for revision of a judgment — Requirements as to admissibility*
   (Protocol on the Statute of the Court annexed to the ECSC Treaty, Article 38; Rules of Procedure, Article 100)

1. The provisions governing the language of the case are not provisions appertaining to public policy.

2. The Court is cognizant of four languages as are all the institutions of the three Communities. Therefore, by virtue of an irrebuttable presumption of law, the Court is deemed to have knowledge of the contents of documents produced which are drawn up in the official languages of the Community. Such a document may not be regarded as a fact unknown to the Court within the meaning of the first paragraph of Article 38 of the Statue of the Court annexed to the ECSC Treaty.

3 An application for revision of a judgment is admissible only on discovery of a fact which, on the one hand, was unknown both to the Court and to the party applying for the revision when the judgment was given and, on the other hand, is of such a nature as to be a decisive factor relating to the judgment the revision of which is claimed.

In Case 1/60

ACCIAIERIA FERRIERA DI ROMA (FERAM), an Italian company limited by shares, appearing by the Chairman of its Board of Directors, Mr Alliata, represented and defended by Arturo Cottrau, of the Turin Bar, Advocate at the Corte di Cassazione, Rome, with an address for service in Luxembourg at the Chambers of Georges Margue, 6 rue Alphonse-Munchen,

applicant,

1 — Language of the Case: Italian.

v

HIGH AUTHORITY OF THE EUROPEAN COAL AND STEEL COMMUNITY, represented by its Legal Adviser, Professor Giulio Pasetti and assisted by Professor Alberto Trabucchi of the University of Padua, with an address for service in Luxembourg at its offices, 2 place de Metz,

defendant,

APPLICATION for the revision of the judgment delivered by the Court of Justice of the European Communities on 17 December 1959 in Case 23/59.

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Rossi, Presidents of Chambers, O. Riese and N. Catalano (Rapporteur), Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts

The facts may be summarized as follows:

By order of 1 October 1959, made in Case 23/59, the Court invited the defendant to answer certain questions and to produce certain documents.

The answers to the questions were drawn up in the language of the case, whereas the documents, which were lodged at the Registry on 21 October 1959, were drawn up partly in French and partly in Dutch. They were sent to the applicant in those languages on the following 26 October.

During the hearing on 6 November 1959 the applicant's advocate said incidentally: 'Mr Trabucchi's oral arguments are based on documents which I (Mr Cottrau, Advocate for FERAM) have not been able to examine because they are all drawn up in the Dutch language, which I do not know and which is not the language of the case . . .'

The President of the Court immediately made the following observation: 'I draw the attention of the applicant's advocate to the fact that, if I have correctly understood Professor Trabucchi, the documents on which he has relied are all translated in the text of the Dutch judgments and you have had an opportunity of consulting these. They have been translated into French in their entirety and you have, I believe, the French text of those judgments and of those Dutch decisions. The documents are reproduced word for word in the judgment.'

The advocate for the applicant did not make any comment on the clarification given by the President, and he did not submit any request, nor, during the hearing, did he

raise any formal objection concerning the regularity of the procedure and concerning in particular his right to take note of the documents produced by the High Authority in an official Italian translation.

By letter of 16 November 1959 addressed to the President of the Court of Justice, the advocate for the applicant, referring to the operative part of the order of 1 October 1959 said: 'These documents were produced by the defendant partly in French and partly in Dutch. Since the language of the case in Case 23/59 is Italian and since the advocate for the applicant represents and defends several other Community undertakings in similar cases, we claim that the Court should, in accordance with Articles 29 and 30 of the Rules of Procedure, order production and exchange of these documents with the translations of the same into Italian, which is the language of the case . . .'

By letter of 25 November 1959, signed by the Deputy Registrar of the Court, he was given the following answer: 'With reference to your letter of 16th instant, I have to inform you that the documents produced by the defendant in Case 23/59, partly in French and partly in Dutch, will be translated into Italian, the official language of the case. The High Authority has promised to produce this translation before Christmas'.

Meanwhile, on 17 December 1959, judgment was given in Case 23/59 and the application was rejected on the following grounds:

(a) The High Authority had never entered into a commitment to the undertakings comprising a guarantee giving rise to contractual or legal responsibility in the absence of improper conduct:

(b) The wrongful act committed by an official of the Netherlands was not attributable to the High Authority. The Netherlands regulations made provision for detailed checks. The High Authority cannot be blamed for having placed reliance on this system, for any claim to a further check could be considered as extravagant so long as no sign of abuse justified suspicion of the truth of the declarations.

On 12 February 1960 the 'Acciaieria Ferriera di Roma' (FERAM) undertaking lodged an application for revision *based on infringement of Articles 29 and 30 of the Rules of Procedure of the Court.*

The defendant delivered its observations on the application for revision in a written statement lodged on 2 March 1960, within the timelimit set by the President in his letter of 12 February 1960.

II — Conclusions of the parties

The applicant claims that the Court should, upon declaring the application for revision admissible:

'1. Before re-examining the substance of Case 23/59, order the High Authority to regularize the procedure by lodging the Italian translation of its documents;

2. Allow the applicant a reasonable time to examine the documents produced in due and proper form;

3. Accept that in the documents produced in due and proper form the applicant may discover other facts of such a nature as to be decisive in setting up the defendant's liability, of which facts it could have had no knowledge and could not previously put forward because of the failure to follow the correct procedure, and, having done so, restore the parties and the case in fact and in law to the position as it was on 21 October 1959, the date of the lodging of the documents which were irregular as regards the language used, and allow the applicant, should it so choose. to produce other material in its favour and further arguments;

4. Set down, in any event, a new hearing for the oral discussion of Case 23/59;

5. Order the High Authority to bear the costs.'

The defendant claims that the Court should:

'1. Declare that the application for a revision

of judgment lodged by the applicant is inadmissible with the consequences which follow from the improper nature of the application;

2. Order the applicant to bear the costs.'

III — Submissions and arguments of the parties

The submissions and arguments put forward by the parties may be summarized as follows:

1. The *applicant* pleads infringement of Articles 29 and 30 of the Rules of Procedure.

It argues that in Case 23/59 the defendant, in lodging with the Registry documents not translated into Italian, improperly acted 'in disregard of the Community rules concerning languages'.

The applicant attributes an improper motive to the defendant, namely that it wanted to prevent the contents of those documents coming to the knowledge of the applicant. As a result, since the defendant achieved its purpose, 'the proceedings took place in infringement of the law, and the applicant's means of defence were markedly diminished'.

The applicant argues that Articles 29 and 30 of the Rules of Procedure contain rules appertaining to public policy, because their purpose is to ensure the proper functioning of Community justice and, as such, are mandatory. To disregard them, therefore, constitutes a failure to follow the correct procedure and this cannot be condoned.

The applicant argues that in the different national legal systems, revision is always allowed in the following cases:

(a) Where wilful misrepresentation by one party to the detriment of the other exists, and wilful misrepresentation is taken to exist *inter alia* where there is an intention to commit an act contrary to the law and thereby disregard the legal obligations of one party to the detriment of the other;

(b) (in French in the text) Where the procedure to be followed on pain of nullity has been infringed either prior to or upon judgment.

The applicant takes the view that in the present case the two conditions are fulfilled.

Moreover, it states that 'the Advocate-General and the Court proceeded to examine the substance of the case without being able to understand the contents of the documents, production of which had been ordered, and which, as has been said, were produced partly in French and partly in Dutch (the Court neither could nor should have taken note objectively of documents produced in disregard of the procedural law of the Community). It further states that the Court delivered an unjust judgment as to substance because quite apart from any other consideration as to substance, the improper conduct of the defendant, the lessening of the applicant's means of defence, and the fact that both the Advocate-General and the Court, as well as the applicant had no knowledge of the contents of the documents produced by the defendant could not fail to influence, and influence in the wrong way, the formulation of the judgment of 17 December 1959 in Case 23/59.'

However the applicant declares that it is not possible for it to proceed to an examination of the substance of the contested judgment in an attempt to discover the effect of the procedural irregularity of which it complains on the content of the judgment until such time as it shall be placed in a position to understand the contents of the documents at issue.

2. After having protested against the offensive expressions contained in the application, the *defendant* confines itself to contesting the admissibility of the case without going into the substance.

Referring to the provisions of Article 38 of the Protocol on the Statute of the Court of Justice annexed to the ECSC Treaty, it stressed that, for an application for revision of a judgment to be admissible, it is necessary for there to be a fact having the following two characteristics:

1. It must have exercised a decisive influence;
2. It must have remained unknown to the Court and to the party applying for revision until the judgment has been delivered.

The defendant argues:

(a) That the second requirement mentioned above is not met as regards the Court because it had itself ordered production of the documents in question of its own motion. Nor is the said requirement met as regards the applicant, for its advocate quoted a document in French and had received the French translation of the Dutch judgment in which practically all the documents at issue were reproduced. Furthermore, the provisions concerning languages are not a matter of public policy.

(b) That the first requirement is not met either, because the documents in question had no influence on the contested judgment.

Finally, the defendant sees a contradiction between the insistence that the facts on the basis of which the revision is claimed are of a decisive nature and the applicant's assertion that it is not yet in a position to have knowledge of them.

Grounds of judgment

Under the provisions of the second paragraph of Article 38 of the Statute of the Court annexed to the ECSC Treaty and of Article 100 (1) of the Rules of Procedure, the Court sitting in the Deliberation Room is required as a preliminary matter to give in the form of a judgment its decision on the admissibility of the application.

The application was made in due time and in proper form.

The applicant pleads infringement of Articles 29 and 30 of the Rules of Procedure. Its argument is based on the fact that in Case 23/59 the defendant, upon being called upon to do so by the Court, lodged with the Registry certain documents drawn up in languages other than the language of the case and which were not translated into that language for the purpose of communicating them to the applicant. It is argued that therefore the applicant was not able to refer to documents which could have supplied it with arguments in support of its case.

The first paragraph of Article 38 of the Statute of the Court provides that 'An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was given, was unknown to the Court and to the party claiming the revision'.

The documents in question were lodged at the Registry before the oral procedure had ended and therefore they were known to the Court before judgment was given. The fact that a document drawn up in one of the official languages of the Community is produced means that the Court has knowledge not merely of its

existence but also of its contents. For, like all the institutions of the three Communities, the Court is cognizant of four languages by virtue of an irrebuttable presumption of law. The provisions concerning the languages of the case cannot be considered as a matter of public policy:

(a) Because the language of the case is the language of the defendant unless the latter is one of the institutions of the three Communities;

(b) Because both at the joint request of the parties and at the request of one of the parties without the consent of the other party being necessary the Court may authorize the use of an official language other than the language of the case.

Therefore, the first fundamental requirement laid down by Article 38 (*discovery of a fact unknown* not only to the party applying for the revision, *but also to the Court*) is not met in the present case.

Moreover the judgment of which revision is claimed is not based on the documents in question except for the letter from Mr Spierenburg, Vice-President of the High Authority, of 24 February 1958. None the less, the judgment referred to that document in order to reject an argument which the applicant had deduced from that letter, thus showing that the applicant had a perfect understanding of it.

Therefore tje second requirement laid down by Article 38 (discovery of a fact *of such a nature as to be a decisive factor*) is not met either.

The result of the foregoing is, therefore, that the application for revision made by the FERAM undertaking is not admissible.

In any event there can be no question of an infringement of the rights of the defence because after having raised the question and having heard the clarification of the President, the advocate of the applicant did not ask the Court for the oral arguments to be postponed and for the Italian translations to be produced, which he certainly could have done during the course of the hearing.

Finally, the Court expresses its disapproval of the offensive wording used in the application against the defendant, and in paricular of the accusation, for which there is no evidence whatsoever, that there was an improper motive based on a desire to prevent the applicant from understanding the contents of the documents in question.

Costs

Under Article 69 (2) of the Rules of Procedure of the Court of Justice of the

European Communities, the unsuccessful party shall be ordered to pay the costs. In the present case the applicant has failed on the issue of admissibility and must therefore bear the costs of the proceedings.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the opinion of the Advocate-General;
Having regard to Article 38 on the Protocol of the Statute of the Court annexed to the ECSC Treaty and to Articles 29, 30 and 98 to 100 of the Rules of Procedure;

THE COURT

hereby:

1. **Declares that the application is inadmissible;**

2. **Orders the applicant to bear the costs.**

Donner Delvaux Rossi
Riese Catalano

Delivered in open court in Luxembourg on 10 May 1960.

A. van Houtte
Registrar

A. M. Donner
President