JUDGMENT OF THE COURT

13 January 2004 *

In Case C-453/00,

REFERENCE to the Court under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands) for a preliminary ruling in the proceedings pending before that court between

Kühne & Heitz NV

and

Productschap voor Pluimvee en Eieren,

on the interpretation of Community law and, in particular, the principle of cooperation arising from Article 10 EC,

* Language of the case: Dutch.

THE COURT,

composed of: V. Skouris, President, P. Jann, C.W.A. Timmermans, C. Gulmann and J.N. Cunha Rodrigues, Presidents of Chambers, A. La Pergola, J.-P. Puissochet, R. Schintgen, F. Macken, N. Colneric (Rapporteur) and S. von Bahr, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

— Kühne & Heitz NV, by A.J. Braakman, advocaat,

— Productschap voor Pluimvee en Eieren, by C.M. den Hoed, Assistant Secretary General,

— the Netherlands Government, by H.G. Sevenster, acting as Agent,

— the French Government, by G. de Bergues and C. Vasak, acting as Agents,

— the Commission of the European Communities, by T. van Rijn, acting as Agent,

— the EFTA Surveillance Authority, by B. Eiríksdóttir, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Kühne & Heitz NV, represented by A.J. Braakman, of the Netherlands Government, represented by H.G. Sevenster and J.G.M. van Bakel, acting as Agent, of the French Government, represented by R. Abraham and C. Isidoro, acting as Agents, of the Commission, represented by T. van Rijn, and of the EFTA Surveillance Authority, represented by B. Eiríksdóttir, at the hearing on 9 October 2002,

after hearing the Opinion of the Advocate General at the sitting on 17 June 2003,

gives the following

Judgment

1 By order of 1 November 2000, received at the Court on 11 December 2000, the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Community law and, in particular, the principle of cooperation arising from Article 10 EC.

2 That question was raised in proceedings between Kühne & Heitz NV ('Kühne & Heitz') and the Productschap voor Pluimvee en Eieren ('the Productschap') concerning the payment of export refunds.

Legal background

3 Article 10 EC provides:

'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.

They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.'

4 As regards Netherlands law, Articles 4:6 and 8:88 of the Algemene wet bestuursrecht (General law on administrative law) of 4 June 1992 (Stbl. 1992, p. 315), as last amended on 12 December 2001 (Stbl. 2001, p. 664), provide:

'Article 4:6

1. Where an application has, whether entirely or partly, been the subject of a decision of refusal, a further application may be made only on condition that the applicant shows new facts or a change of circumstances.

2. If no new fact or change of circumstances is relied on, the administrative body may refuse the application by referring to its earlier decision of refusal, without applying Article 4:5.

...

Article 8:88

1. The court may, on application by one party, review a final judgment taking account of facts or circumstances which:

(a) occurred before the judgment;

(b) were not known, and could not reasonably have been known, by the applicant before the judgment was delivered and,

(c) if the court had been aware of them, could have led it to deliver a different judgment.

2. Where necessary, Chapter 6 and Sections 8.2 and 8.3 shall apply *mutatis mutandis*.'

The main proceedings

5 From December 1986 to December 1987, Kühne & Heitz exported quantities of poultrymeat parts to non-member countries. In the declarations lodged with the Netherlands customs authorities, Kühne & Heitz designated those goods as falling under subheading 02.02 B II e) 3 ('legs and cuts of legs of other poultry') of the common customs tariff. On the basis of those declarations, the Productschap granted export refunds under that subheading and paid the various relevant amounts.

6 Having carried out checks, the Productschap reclassified the goods under subheading 02.02 B II ex g ('other'). Following that reclassification, it demanded reimbursement of NLG 970 950.98.

7 Its objection to that claim for reimbursement having been rejected, Kühne & Heitz lodged an appeal against that decision to reject with the College van Beroep voor het bedrijfsleven. By judgment of 22 November 1991 ('the judgment of 22 November 1991'), that court dismissed the appeal on the ground that the goods in question were not covered by the term 'legs' within the meaning of subheading 02.02 B II e) 3. During those proceedings, Kühne & Heitz did not request that a question be referred to the Court for a preliminary ruling.

8 Subsequently, the Court, in its judgment in Case C-151/93 *Voogd Vleesimport en -export* [1994] ECR I-4915, ruled:

'20 A leg to which a piece of back remains attached must therefore be described as a leg, within the meaning of tariff subheadings 02.02 B II e) 3 of the old nomenclature and 0207 41 51 000 of the new, if that piece of back is not sufficiently large to give the product its essential character.

21 To determine whether that is so, in the absence of Community rules at the material time, it is for the national court to take into account national commercial practices and traditional cutting methods.'

9 Following the judgment in *Voogd Vleesimport en -export*, cited above, Kühne & Heitz requested from the Productschap payment of the refunds which the latter had, in its view, wrongly required it to reimburse and sought payment of a sum equivalent to the greater amount which it would have received by way of refunds if the chicken legs exported after December 1987 had been classified in accordance with that judgment.

10 The Productschap rejected those requests and, ruling on the complaint submitted to it, upheld its earlier decision to reject, by decision of 21 July 1997. Kühne & Heitz then brought an action against that latter decision, which is the subject of the main proceedings.

The order for reference and the question referred for a preliminary ruling

11 In its order for reference, the College van Beroep voor het bedrijfsleven rejected the second head of claim submitted to it by Kühne & Heitz for payment of a sum equivalent to the greater amount to which, in its view, it is entitled in respect of its exports after December 1987.

12 With respect to the first head of claim submitted by Kühne & Heitz for payment of the refunds which, in its view, it had been wrongly required to reimburse, the College van Beroep voor het bedrijfsleven stated that under Netherlands law, administrative bodies, in principle, always have the power to reopen a final decision. The existence of such a power may, in certain circumstances, imply an obligation to withdraw such a decision.

13 The College van Beroep voor het bedrijfsleven takes the view that the Productschap failed to take account of those factors when it claimed that Kühne & Heitz could bring only one action for revision of the judgment of 22 November 1991 before that court. The Productschap therefore relied on a misinterpretation of the law.

14 However, the College van Beroep voor het bedrijfsleven considered that, although it was, in principle, possible to annul the decision of 21 July 1997 on that ground, such annulment would serve a purpose only if it were certain that the Productschap not only had the power to reopen its previous decision but also an obligation to review whether there is, in the case of each of the exported goods, a right to a refund and, if so, to determine the amount of that refund.

15 The College van Beroep voor het bedrijfsleven observes that the assessment of whether there is an obligation to review must be based on the principle that judicial decisions given subsequent to a final administrative decision cannot, in themselves, affect the finality of that decision. That applies equally in the case of preliminary rulings given by the Court of Justice to the effect that the law ought to have been applied in accordance with the interpretation given by the Court from the entry into force of the rule interpreted, unless the Court has expressly held otherwise. The national court states that the argument seeking to establish a rule that final decisions must be amended in order to make them consistent with subsequent case-law — in the present case, Community case-law — would give rise to administrative chaos, seriously impair legal certainty and therefore cannot be accepted.

16 However, the College van Beroep voor het bedrijfsleven points out that, under Netherlands law, subsequent case-law may, in certain circumstances, have an effect in cases in which the legal remedies have been exhausted. It refers to the case-law of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) on the effects in criminal-law cases of judgments given by the European Court of Human Rights. The Hoge Raad der Nederlanden thus held, in a judgment of 1 February 1991 (Nederlandse Jurisprudentie — NJ — 1991, p. 413), that the subsequent discovery of an infringement of a fundamental right laid down in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is one determining factor which may preclude enforcement of a decision given in a criminal law case which cannot be the subject of an appeal.

17 The College van Beroep voor het bedrijfsleven is uncertain whether the finality of an administrative decision must be disregarded in a case such as that which has been brought before it in which, first, Kühne & Heitz has exhausted the legal remedies available to it, second, its interpretation of Community law has proved to be contrary to a judgment given subsequently by the Court and, third, the person concerned complained to the administrative body immediately after becoming aware of that judgment of the Court.

18 That question is justified in the light of, in particular, Article 234 EC, according to which a national court against whose decision there is no judicial remedy is obliged to refer the question to the Court for a preliminary ruling. In 1991, the College van Beroep voor het bedrijfsleven mistakenly took the view that it was released from that obligation because, in accordance with the judgment in Case 283/81 *CILFIT* [1982] ECR 3415, it considered that the interpretation of the customs tariff subheadings concerned left no room for doubt. The national court is therefore uncertain whether effective and full implementation of Community law requires that, in a case such as that which has been brought before it, the rule on the finality of administrative decisions be relaxed.

19 In the light of those factors, the College van Beroep voor het bedrijfsleven decided to stay proceedings and refer the following question to the Court for a preliminary ruling:

'Under Community law, in particular under the principle of Community solidarity contained in Article 10 EC, and in the circumstances described in the grounds of this decision, is an administrative body required to reopen a decision which has become final in order to ensure the full operation of Community law, as it is to be interpreted in the light of a subsequent preliminary ruling?'

The question referred for a preliminary ruling

20 As the Court has already held, it is for all the authorities of the Member States to ensure observance of the rules of Community law within the sphere of their competence (see Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 13).

21 The interpretation which, in the exercise of the jurisdiction conferred on it by Article 234 EC, the Court gives to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force (see, inter alia, Case 61/79 *Denkavit italiana* [1980] ECR 1205, paragraph 16, and Case C-50/96 *Deutsche Telekom* [2000] ECR I-743, paragraph 43).

22 It follows that a rule of Community law interpreted in this way must be applied by an administrative body within the sphere of its competence even to legal relationships which arose or were formed before the Court gave its ruling on the question on interpretation.

23 The main proceedings raise the question whether that obligation must be complied with notwithstanding that a decision has become final before the application for review of that decision in order to take account of a preliminary ruling by the Court on a question of interpretation has been lodged.

24 Legal certainty is one of a number of general principles recognised by Community law. Finality of an administrative decision, which is acquired upon expiry of the reasonable time-limits for legal remedies or by exhaustion of those remedies, contributes to such legal certainty and it follows that Community law does not require that administrative bodies be placed under an obligation, in principle, to reopen an administrative decision which has become final in that way.

25 However, the national court stated that, under Netherlands law, administrative bodies always have the power to reopen a final administrative decision, provided that the interests of third parties are not adversely affected, and that, in certain circumstances, the existence of such a power may imply an obligation to withdraw such a decision even if Netherlands law does not require that the competent body reopen final decisions as a matter of course in order to comply with judicial decisions given subsequent to those final decisions. The aim of the national court's question is to ascertain whether, in circumstances such as those of the main case, there is an obligation to reopen a final administrative decision under Community law.

26 As is clear from the case-file, the circumstances of the main case are the following. First, national law confers on the administrative body competence to reopen the decision in question in the main proceedings, which has become final. Second, that decision became final only as a result of a judgment of a national court against whose decisions there is no judicial remedy. Third, that judgment was based on an interpretation of Community law which, in the light of a subsequent judgment of the Court, was incorrect and which was adopted without a question being referred to the Court for a preliminary ruling in accordance with the conditions provided for in the third paragraph of Article 234 EC. Fourth, the person concerned complained to the administrative body immediately after becoming aware of that judgment of the Court.

27 In such circumstances, the administrative body concerned is, in accordance with the principle of cooperation arising from Article 10 EC, under an obligation to review that decision in order to take account of the interpretation of the relevant provision of Community law given in the meantime by the Court. The administrative body will have to determine on the basis of the outcome of that review to what extent it is under an obligation to reopen, without adversely affecting the interests of third parties, the decision in question.

28 In light of the above considerations, the answer to the question referred must be that the principle of cooperation arising from Article 10 EC imposes on an administrative body an obligation to review a final administrative decision, where an application for such review is made to it, in order to take account of the interpretation of the relevant provision given in the meantime by the Court where

— under national law, it has the power to reopen that decision;

— the administrative decision in question has become final as a result of a judgment of a national court ruling at final instance;

— that judgment is, in the light of a decision given by the Court subsequent to it, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling under the third paragraph of Article 234 EC; and

— the person concerned complained to the administrative body immediately after becoming aware of that decision of the Court.

Costs

29 The costs incurred by the Netherlands and French Governments, the Commission and the EFTA Surveillance Authority, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the College van Beroep voor het bedrijfsleven by order of 1 November 2000, hereby rules:

The principle of cooperation arising from Article 10 EC imposes on an administrative body an obligation to review a final administrative decision,

where an application for such review is made to it, in order to take account of the interpretation of the relevant provision given in the meantime by the Court where

— under national law, it has the power to reopen that decision;

— the administrative decision in question has become final as a result of a judgment of a national court ruling at final instance;

— that judgment is, in the light of a decision given by the Court subsequent to it, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling under the third paragraph of Article 234 EC; and

— the person concerned complained to the administrative body immediately after becoming aware of that decision of the Court.

Skouris Jann Timmermans

Gulmann Cunha Rodrigues La Pergola

Puissochet Schintgen Macken

Colneric von Bahr

Delivered in open court in Luxembourg on 13 January 2004.

R. Grass V. Skouris

Registrar President