

Case T-264/03

Jürgen Schmoldt and Others

v

Commission of the European Communities

(Application for annulment — Procedural time-limit — Natural or legal persons — Acts of individual concern to them — Decision — Thermal insulation standards — Inadmissible)

Order of the Court of First Instance (Third Chamber), 25 May 2004 II - 1521

Summary of the Order

- 1. Actions for annulment — Jurisdiction of the Community judicature — Claims seeking the issue of directions to an institution — Inadmissible
(Arts 230 EC and 233 EC)*

2. *Procedure — Application initiating proceedings — Formal requirements — Summary statement of pleas*
(Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))
3. *Actions for annulment — Time-limits — Starting point — Day on which a measure came to the knowledge of the applicant — Subsidiary nature — Publication constituting a consistent practice of the institution — Not an essential condition for regarding the date of publication as the starting point*
(Art. 230, fifth para., EC)
4. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision on the publication of the reference of thermal insulation standards — Action brought by the chairman of a committee — Inadmissible*
(Art. 230, fourth para., EC; Council Directive 89/106, Art. 5(1); Commission Decision 2003/312)
5. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Decision on the publication of the reference of thermal insulation standards — Obligation under an overriding provision of law to take account of the particular situation of the applicant — None — Inadmissible*
(Art. 230, fourth para., EC; Council Directive 89/106, Art. 5(1))
6. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Action brought by an association — Alleged role as negotiator of the association or one of its members — Inadmissible*
(Art. 230, fourth para., EC; Council Directive 89/106, Art. 5(1))
7. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Manifest unlawfulness of the contested act — No effect on the assessment of individual concern — Inadmissible*
(Arts 220 EC and 230, second and fourth paras, EC)

8. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Interpretation contra legem of the condition requiring individual concern — Inadmissible*

(Art. 230, fourth para., EC)

1. The Community judicature may not issue directions to the Community institutions in the context of judicial review of the lawfulness of measures. In accordance with Article 233 EC, it is for the institution that issued the annulled act to adopt the necessary measures to comply with the judgment annulling the act.
3. It follows from the wording of the fifth paragraph of Article 230 EC that the criterion of the day on which the contested measure came to the knowledge of an applicant, as the starting point for the period prescribed for instituting proceedings, is subsidiary to the criteria of publication or notification of the measure.

(see para. 42)

2. An abstract formulation alleging that the disputed communication 'has no legal basis and lacks a statement of reasons' does not specify the nature of the plea on which the application is based, and thus does not satisfy the requirement, laid down in the first paragraph of Article 21 of the Statute of the Court of Justice, which applies to the procedure before the Court of First Instance under the first paragraph of Article 53 of that Statute, and in Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, that the application must contain a summary of the pleas in law.

While the Court of Justice and the Court of First Instance have taken account of the fact that it was consistent practice for the institution concerned to publish the measure, even though publication was not a precondition for its applicability, and on that basis ruled that the period for bringing actions began at the time of publication, it does not follow, however, that such a practice is an essential precondition for the date of publication of a measure to mark the commencement of the period for bringing actions. On the contrary, publication of the contested measure is a sufficient condition, and a consistent practice in this regard merely reinforces that finding.

(see para. 43)

(see paras 52, 58, 59)

4. The fact that Decision 2003/312 on the publication of the reference of standards relating to thermal insulation products, geotextiles, fixed fire-fighting equipment and gypsum blocks in accordance with Directive 89/106 by virtue of its nature and scope is of general character does not as such preclude an individual from being able to bring an action for annulment against it. A measure of general application can be of individual concern to natural and legal persons only if it affects them by reason of certain attributes peculiar to them, or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee.

not, as such, distinguish him individually within the meaning of the fourth paragraph of Article 230 EC. The guarantees under Article 5(1) of Directive 89/106 are not designed to protect the reputation of the members of the committees mentioned in that provision, be they chairman or not, but provide only for an opinion to be delivered if the Commission or a Member State requests the withdrawal of a harmonised standard.

(see paras 95, 96, 100, 101, 103)

However, the fact that a person participates, in one way or another, in the process leading to the adoption of a Community act does not distinguish him individually in relation to the act in question unless the relevant Community legislation has laid down specific procedural guarantees for such a person. Article 5(1) of Directive 89/106 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended, lays down guarantees for the benefit of the European Committee for Standardisation and the Standing Committee on Construction, not personally for specific members or the chairmen of those bodies. Even if the applicant could rely in a personal capacity on such procedural guarantees, the alleged damage to his reputation by infringement of those guarantees can-

5. It is true that the Court of Justice and the Court of First Instance have declared actions for annulment of a measure of general application to be admissible where an overriding provision of law required the author of the measure to take account of the particular situation of the applicant, as the existence of contracts entered into by an applicant and affected by the disputed measure may in certain circumstances distinguish such a particular situation. However, Article 5(1) of Directive 89/106 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended, does not oblige the Com-

mission to take account of the particular situation of the applicants or of the Member State that has objected to a harmonised standard, but merely lays down the procedure to be followed if such an objection is raised.

(see paras 116-117)

ber of the applicant association, as negotiator or interlocutor. Such a circumstance, even if proven, cannot in any way demonstrate that the applicant, in its capacity as an association, has an autonomous interest in bringing an application for annulment under the fourth paragraph of Article 230 EC. The applications of the associations concerned are admissible on the basis of the associations' status as negotiators and not by reason of the individual role of one of their members.

6. The existence of special circumstances, such as the part taken by an association in the procedure leading up to the adoption of an act within the meaning of Article 230 EC, may be grounds for the admissibility of an action brought by an association whose members are not directly and individually concerned by that act, especially where the association's negotiating position is affected by that measure.

(see paras 131, 134, 140, 141)

Directive 89/106 on the approximation of laws, regulations and administrative provisions of the Member States relating to construction products, as amended, does not prescribe that, before adopting a decision under Article 5(1) of that directive, the Commission must follow a procedure in which national associations such as the applicant association could exercise any rights or even be entitled to be heard. Nor is that conclusion affected by the alleged role played in the procedure by another applicant, a mem-

7. The examination of the substance of an application has no effect on the assessment of the individual concern of the applicants, as the admissibility of an application for annulment brought by a natural or legal person and the review by the Court of the lawfulness of the act contested by such an application necessitate separate examinations under the fourth and second paragraphs of Article 230 EC respectively.

Furthermore, any manifest unlawfulness of the contested act, even if it were

proven, could not warrant modifying by way of judicial interpretation the system of legal remedies and procedures laid down in the EC Treaty on the grounds that under Article 220 EC the Court is to ensure that the law is observed in the interpretation and application of the Treaty. In no event can such a circumstance enable an action for annulment brought by a natural or legal person to be declared admissible where it does not satisfy the conditions laid down in the fourth paragraph of Article 230 EC.

(see paras 148, 149)

graph of Article 230 EC must be interpreted in the light of the principle of effective judicial protection by taking account of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside the condition in question, expressly laid down in the Treaty, without going beyond the jurisdiction conferred by the Treaty on the Community judicature. The possible absence of a remedy, even assuming it to be established, cannot therefore constitute authority for changing, by way of judicial interpretation, the system of remedies and procedures established by the Treaty. It cannot in any event allow an action for annulment brought by a natural or legal person who does not satisfy the conditions laid down by the fourth paragraph of Article 230 EC to be declared admissible.

8. Although the condition of individual concern required by the fourth para-

(see paras 156, 157)