

## Case T-521/93

**Atlanta AG and Others**

**v**

**European Community**

(Common organization of the markets — Bananas —  
Import arrangements — Actions for damages)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 11 December 1996 ..... II - 1710

### Summary of the Judgment

- 1. Procedure — Introduction of new pleas in law in the course of the proceedings — Plea based on matters coming to light during the proceedings — Judgment of the Court of Justice confirming the validity of an act of the Community institutions — Not a new fact (Rules of Procedure of the Court of Justice, Art. 42(1); Rules of Procedure of the Court of First Instance, Art. 48(2))*
- 2. Agriculture — Common organization of the markets — Bananas — Import arrangements — Tariff quota — Introduction and allocation — Principles of non-discrimination, protection of legitimate expectations, freedom to pursue a trade or business and the rights of the defence — Breach — None — Misuse of powers — None — Incurring of non-contractual liability by the Community — None incurred (EC Treaty, Art. 215, second para.; Council Regulation No 404/93)*

1. Both Article 42(2) of the Rules of Procedure of the Court of Justice and Article 48(2) of the Rules of Procedure of the Court of First Instance provide that no new plea in law may be introduced in the course of the proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure. In this regard, a judgment of the Court of Justice confirming the validity of an act of the Community institutions cannot be regarded as a matter allowing a new plea in law to be introduced, since such acts are presumed to be valid in any event and a judgment to that effect merely confirms the law as known to the applicant at the time when he brought his action.

2. The arrangements for trade with third countries under the common organization of the market in bananas established by Regulation No 404/93, and in particular the tariff quota laid down for imports and its allocation, do not constitute either a breach of the general principles of Community law or a misuse of powers and are not therefore vitiated by any illegality such as to cause the Community to incur non-contractual liability towards traders engaged in importing third-country bananas into the Community.

As far as the principle of non-discrimination is concerned, whilst the regulation did not provide for identical treatment of the various categories of traders

amongst whom the tariff quota was divided, the different treatment of them appeared to be inherent in the objective of integrating previously compartmentalized markets and of providing a guarantee of disposal of Community production and traditional ACP production.

As far as the principle of protection of legitimate expectations is concerned, traders cannot have an acquired right in, or even a legitimate expectation of maintenance of, an existing situation which is capable of being altered by decisions taken by the Community institutions in the exercise of their discretionary powers. Moreover, in the absence of specific assurances given by the administration, no one may claim a breach of this principle.

As regards the fundamental right to pursue an economic activity, the effect on traditional importers of third-country bananas meets objectives of general interest pursued by the Community and do not affect the substance of this right.

As regards the rights of defence in a procedure for the adoption of a Community act based on an article of the Treaty, the only obligations of consultation incumbent on the Community legislature are those prescribed by the article in question

and the right to be heard in an administrative procedure concerning a specific person cannot be transposed to a legislative procedure culminating in the enactment of general measures.

Finally, as far as any misuse of powers is concerned, it does not appear that the regulation was intended to achieve pur-

poses other than those which it purports to achieve, since a development policy in favour of the ACP States, such as that pursued by the regulation, is quite in conformity with the objectives of the common agricultural policy and, furthermore, in the implementation of internal policies, in particular in agricultural matters, the Community institutions cannot ignore international commitments undertaken by the Community under the Lomé Convention.