

Judgment of the Court of Justice, Simmenthal IV, Case 92/78 (6 March 1979)

Caption: Excerpt from the Simmenthal IV judgment concerning the admissibility of the application for annulment and the plea of illegality. The Court interprets former Article 184 of the EC Treaty (new Article 241) on the plea of illegality in such a way as to allow it to be invoked not only in the case of a Regulation but also with respect to any act of general application which constitutes the legal basis of the decision challenged.

Source: Reports of Cases before the Court. 1979. [s.l.].

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Judgment of the Court of 6 March 1979 1
Simmenthal S.p.A. v Commission of the European Communities

"Common organization of the market in beef and veal"

Case 92/78

Summary

1. Application for annulment - Admissibility - Natural or legal persons - Act of direct and individual concern to them - Decision addressed to the Member States – Object
(EEC Treaty, Art. 173, second paragraph; Commission Decision No 78/258)

2. Acts of an institution - Notices of invitations to tender for frozen beef held by the intervention agencies - Legal nature

3. Procedure - Plea of illegality - Acts which may be challenged on the ground of their illegality
(EEC Treaty, Art. 184)

[...]

1. A decision taken by the Commission after the national intervention agencies had forwarded to it the tenders which the latter had received in the context of periodic invitations to tender for the sale of frozen beef held by the intervention agencies is of direct and individual concern, within the meaning of the second paragraph of Article 173 of the EEC Treaty, to all the tenderers. Although such a decision, the aim of which is to fix the minimum selling prices applicable in the different Member States, is in fact addressed to the Member States and through them to the intervention agencies it directly determines the fate, be it favourable or unfavourable, of each of the tenders submitted in the context of an invitation to tender.

2. Notices of periodic invitations to tender for the sale of frozen beef held by the intervention agencies are general acts which determine in advance and objectively the rights and obligations of the traders who wish to participate in the invitations to tender which these notices make public.

3. Article 184 of the EEC Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void. The field of application of the said article must therefore include acts of the institutions which, although they are not in the form of a regulation, nevertheless produce similar effects and on those grounds may not be challenged under Article 173 by natural or legal persons other than Community institutions and Member States.

[...]

In Case 92/78

SIMMENTHAL, S.P.A, having its registered office at Aprilia (Italy), represented by Emilio Cappelli and Paolo de Caterini of the Rome Bar, with an address for service in Luxembourg at the chambers of Charles Turk, 4 rue Nicholas Welter,

applicant,

supported by

THE GOVERNMENT OF THE ITALIAN REPUBLIC, represented by the Italian Ambassador in Luxembourg, Adolfo Maresca, acting as Agent, assisted by Ivo Maria Braguglia, Deputy State Advocate, with an address for service in Luxembourg at the Italian Embassy,

intervener,

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Peter Kalbe,

acting as Agent, assisted by Guido Berardis, a member of the Legal Department of the Commission, with an address for service in Luxembourg at the office of its Legal Adviser, Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69 of 11 March 1978, p. 36) ,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O’Keefe, G. Bosco and A. Touffait, Judges,

Advocate General: G. Reischl

Registrar: A. Van Houtte

gives the following

JUDGMENT

[...]

Decision

1 The applicant by an application lodged on 13 April 1978 pursuant to the second paragraph of Article 173 of the EEC Treaty requests the Court in its finally amended statement of claim to annul Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation (EEC) No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 (Official Journal L 69, p. 36) .

2 In support of its application the applicant has relied on Article 184 of the EEC Treaty and invoked the inapplicability of the following measures which constitute the legal basis of the decision which is challenged.

- Commission Regulation No 585/77 of 18 March 1977 on the system of import and export licences for beef and veal (Official Journal L 75, p. 5) ;

- Commission Regulation No 2900/77 of 22 December 1977 laying down detailed rules for the sale of beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing (Official Journal L 338, p. 6) ;

- Commission Regulation No 2901/77 of 22 December 1977 amending Regulations (EEC) No 585/77 and (EEC) No 597/77 especially as regards the total suspension of the levy in the framework of the special import system for frozen beef and veal (Official Journal L 338, p. 9) ;

- General notice of periodic invitations to tender for the sale of frozen beef held by the intervention agencies to enable the import with total suspension of the levy of frozen beef and veal intended for processing, published by the Commission on 13 January 1978 (Official Journal C 11, p. 16) , and also

- Notice of invitation to tender No It P 1 - Regulation (EEC) No 2900/77 - for the sale of certain frozen unboned (bone-in) beef held in stock by the Italian intervention agency, published by the Commission on 13

January 1978 (Official Journal C 11, p. 34) .

[...]

Admissibility of the application and the plea of illegality

18 The Commission admits that, although the contested decision was addressed to the Member States, it is of direct and individual concern to the applicant in that, by excluding all tenders tendering prices lower than the minimum price, it also provided that the tender submitted by the applicant would be rejected because the price tendered was below that price.

19 On the other hand the Commission denies that the application is admissible on the ground that the applicant does not have any interest in instituting proceedings.

20 In fact the Commission takes the view that the annulment of the decision cannot bestow upon the applicant the advantage which it is seeking now that the contracts in accordance with the invitation to tender have been concluded, the licences have been issued and the imports have been effected, while the tenders which have not been accepted are henceforth non-existent.

21 Since the applicant has elected to apply to this Court and directly challenge the Commission decision, and not to apply to the national courts and there challenge the decision of refusal addressed to it individually by the Italian intervention agency, any decision as to the admissibility of the application is concerned with the division of jurisdiction between this Court and the national courts.

22 Consequently it is necessary for the Court to consider of its own motion the question whether the application is admissible viewed as a whole and not just from the standpoint of the objection raised by the Commission.

23 The Commission adopted the decision at issue after the national intervention agencies had forwarded to it the tenders which the latter had received in answer to the invitations to tender issued by the notices of 13 January 1978.

24 The Commission therefore took into consideration the applicant's tender together with the other tenders submitted within the whole of the Community with a view to fixing a price which was to ensure that a predetermined quantity of meat held by the intervention agencies was disposed of at the most profitable prices for them.

25 Thus, although the Commission decision was adopted in the form of a decision addressed to the Member States and through them to the intervention agencies, it has directly determined the fate, be it favourable or unfavourable, of each of the tenders submitted in answer to the notices of invitations to tender of 13 January 1978.

26 Since the invitation to tender in question is in fact one which covers the whole of the Community and was decided upon by the Commission alone - the intervention agencies only acting as agents for the purpose of collecting the tenders and notifying the participants of the result - it cannot be denied that the Commission decision is of direct and individual concern to the applicant and that its application is therefore admissible.

27 It must however be stressed that the subject-matter of the application to the Court must be restricted to the effect which the contested decision may have been able to have on all those to whom it was addressed and who were directly and individually concerned by it.

28 It is in fact apparent from the relevant regulations and from the general notice of invitations to tender that it is the duty of the intervention agencies, in addition to accepting and rejecting tenders within the scope of the tendering procedure, to solve, by using their own discretion, a certain number of subsidiary questions, directly connected with the system of invitations to tender or with the conclusion and performance of the

contracts of sale.

29 In so far as disputes may arise as a result of the intervention agencies carrying out appropriate duties of this kind the national courts alone have jurisdiction as Section 12 “Final provisions” of the General notice of invitations to tender correctly states.

30 This jurisdiction is also conferred upon national courts should the intervention agencies disregard any Community legal provisions, since the responsibilities assumed by the institutions of the Community do not cover the disputes which might arise out of such actions.

31 Contrary to the Commission’s submissions it cannot be denied that the applicant has an interest in the application which it has brought.

32 Even though the contested decision has already been fully implemented for the benefit of the other tenderers participating in the same invitation to tender the applicant retains an interest in the annulment of this decision; such interest consists either in its being restored sufficiently by the Commission to its original position or in inducing the Commission to make suitable amendments in the future to the system of invitations to tender if the latter is found to be incompatible with certain legal requirements.

33 The plea of inadmissibility which the Commission has raised must therefore be rejected.

34 While the applicant formally challenges Commission Decision No 78/258 it has at the same time criticized, in reliance on Article 184 of the EEC Treaty, certain aspects of the “linking” system in the form in which it has been implemented pursuant to the new Article 14 of Regulation No 805/68, by Regulation No 2900/77 and No 2901/77 and also by the notices of invitations to tender of 13 January 1978.

35 Article 184 reads: “Notwithstanding the expiry of the period laid down in the third paragraph of Article 173, any party may, in proceedings in which a regulation of the Council or the Commission is in issue, plead the grounds specified in the first paragraph of Article 173, in order to invoke before the Court of Justice the inapplicability of that regulation”.

36 There is no doubt that this provision enables the applicant to challenge indirectly during the proceedings, with a view to obtaining the annulment of the contested decision, the validity of the measures laid down by regulation which form the legal basis of the latter.

37 On the other hand there are grounds for questioning whether Article 184 applies to the notices of invitations to tender of 13 January 1978 when according to its wording it only provides for the calling in question of “regulations”.

38 These notices are general acts which determine in advance and objectively the rights and obligations of the traders who wish to participate in the invitations to tender which these notices make public.

39 As the Court in its judgment of 12 June 1958 in Case 15/57, *Compagnie des Hauts Fourneaux de Chasse v High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 211, and in its judgment of 13 June 1956 in Case 9/56, *Meroni & Co., Industrie Metallurgische S.p.A. v High Authority of the European Coal and Steel Community* [1957 and 1958] ECR 133, has already held in connexion with Article 36 of the ECSC Treaty, Article 184 of the EEC Treaty gives expression to a general principle conferring upon any party to proceedings the right to challenge, for the purpose of obtaining the annulment of a decision of direct and individual concern to that party, the validity of previous acts of the institutions which form the legal basis of the decision which is being attacked, if that party was not entitled under Article 173 of the Treaty to bring a direct action challenging those acts by which it was thus affected without having been in a position to ask that they be declared void.

40 The field of application of the said article must therefore include acts of the institutions which, although they are not in the form of a regulation, nevertheless produce similar effects and on those grounds may not

be challenged under Article 173 by natural or legal persons other than Community institutions and Member States.

41 This wide interpretation of Article 184 derives from the need to provide those persons who are precluded by the second paragraph of Article 173 from instituting proceedings directly in respect of general acts with the benefit of a judicial review of them at the time when they are affected by implementing decisions which are of direct and individual concern to them.

42 The notices of invitations to tender of 13 January 1978 in respect of which the applicant was unable to initiate proceedings are a case in point, seeing that only the decision taken in consequence of the tender which it had submitted in answer to a specific invitation to tender could be of direct and individual concern to it.

43 There are therefore good grounds for declaring that the applicant's challenge during the proceedings under Article 184, which relates not only to the above-mentioned regulations but also to the notices of invitations to tender of 13 January 1978, is admissible, although the latter are not in the strict sense measures laid down by regulation.

[...]

On those grounds,

THE COURT

hereby:

1. Annuls Commission Decision No 78/258 of 15 February 1978 fixing the minimum selling prices for frozen beef put up for sale by the intervention agencies in accordance with Regulation No 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the first quarter of 1978 in so far as the decision affects the applicant;

2. Orders the Commission to pay the costs of the proceedings, including those of the intervener, except for the costs of the application for interim measures which are to be borne by the applicant.

Kutscher
Mertens de Wilmars
Mackenzie Stuart
Donner
Pescatore
Sørensen
O'Keeffe
Bosco
Touffait

Delivered in open court in Luxembourg on 6 March 1979.

A. Van Houtte
Registrar

H. Kutscher
President

1 - Language of the Case: Italian.