

JUDGMENT OF THE COURT

(Third Chamber)

of 10 February 1988

in Case 324/86: (Reference for a preliminary ruling made by the Højesteret): Foreningen af Arbejdsledere i Danmark v. Daddy's Dance Hall A/S ⁽¹⁾

(Safeguarding of employees' rights in the event of transfers of undertakings)

(88/C 60/09)

(Language of the case: Danish)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 324/86: reference to the Court under Article 177 of the EEC Treaty by the Højesteret [Supreme Court] for a preliminary ruling in the proceedings pending before that court between Foreningen af Arbejdsledere i Danmark [Association of Supervisory Staff, Denmark], acting on behalf of Kim Erik Tellerup, and Daddy's Dance Hall A/S — on the interpretation of Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (Official Journal 1977 No L 61, p. 26) — the Court (Third Chamber), composed of J. C. Moitinho de Almeida, President of the Chamber, U. Everling and Y. Galmot, Judges, M. Darmon, Advocate General; Registrar: H. A. Rühl, Principal Administrator, gave a judgment on 10 February 1988, the operative part of which is as follows:

1. *Article 1 (1) of Council Directive 77/187/EEC of 14 February 1977 must be interpreted as meaning that the directive applies where, upon the termination of a non-transferable lease, the owner of the business leases it to a new lessee who continues to run the business without any interruption with the same staff, who had previously been given notice on the expiry of the initial lease.*
2. *An employee cannot waive the rights conferred upon him by the mandatory provisions of Directive 77/187/EEC even if the disadvantages for him of such a course of action are offset by advantages so that, overall, he is not left in a worse position. Nevertheless, the directive does not preclude the possibility of an alteration in the contract of employment agreed with the new employer in so far as such an alteration is permitted by the applicable national law in cases other than transfers of undertakings.*

⁽¹⁾ OJ No C 22, 29. 1. 1987.

JUDGMENT OF THE COURT

(Third Chamber)

of 9 February 1988

in Case 1/87: Santo Picciolo v. Commission of the European Communities ⁽¹⁾

(Official — Periodic report)

(88/C 60/10)

(Language of the case: French)

(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)

In Case 1/87: Santio Picciolo, an official of the Commission of the European Communities, represented by Jean-Noël Louis, of the Brussels Bar, having an address for service in Luxembourg at the Chambers of Yvette Hamilius, Avocat at the Cour d'Appel, 11 Boulevard Royal, against the Commission of the European Communities (Agent: Peter Kalbe, assisted by Aloyse May, Avocat-avoué, Luxembourg) — application for a declaration that the decision adopted by Mr Mosar, a member of the Commission, on 5 March 1986 establishing the applicant's final periodic report for the period from 1 July 1981 to 30 June 1983 is void, and for damages of one franc — the Court (Third Chamber) composed of J. C. Moitinho de Almeida, President of the Chamber, U. Everling and Y. Galmot, Judges; J. L. da Cruz Vilaça, Advocate General; Registrar: J. A. Pompe, Deputy Registrar, gave a judgment on 9 February 1988, the operative part of which is as follows:

1. *The application is dismissed.*
2. *Each of the parties shall bear its own costs.*

⁽¹⁾ OJ No C 32, 10. 2. 1987.

Action brought on 27 January 1988 by the Hellenic Republic against the Commission of the European Communities

(Case 30/88)

(88/C 60/11)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 27 January 1988 by the Hellenic Republic, represented by Giannos Kranidiotis, Special Secretary in the Ministry of Foreign Affairs, assisted by Stelios Perrakis, university professor, Spiros Zisimopoulos, an expert in the European Communities Department of the Ministry of Foreign Affairs, and Katerina Simona, a member of the European

Communities legal department at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Greek Embassy, 117 Val-Sainte-Croix.

1. Declare void the three decisions of the Commission adopted on 17 November and 10 December 1987 approving financing projects in the context of special aid for Turkey;
2. Order the Commission of the European Communities to pay the costs.

Contentions and main arguments adduced in support:

(a) Infringement of Community law

In order for expenditure to be effected in the context of the Commission's powers under Article 205 of the Treaty, there must be an underlying measure concerning that specific expenditure and constituting its legal basis. Such an underlying measure is completely absent in regard to Item 9632 of the 1986 Budget.

(b) Infringement of essential procedural requirements

The Commission's decisions were adopted on the basis of an application by analogy of Articles 6 and 8 of Council Regulation (EEC) No 3973/86, even though that regulation does not concern Turkey and the application by analogy of the procedure laid down in that regulation to countries other than those expressly mentioned and in regard to financing different in content and purpose from the relevant protocols on financial and technical co-operation is not permitted.

(c) Abuse of procedure

The Commission misused its powers because, despite the fact that there is a special procedure for approval of financing projects in the context of special aid for Turkey, which has already been used for the allocation of the greater part of the aid, it used a procedure laid down solely for the implementation of the financial protocols with Mediterranean countries, of which Turkey is not one. By using that procedure, the Commission was seeking to avoid the problem which would arise if it followed the lawful procedure, which has been followed until now, under which the agreement of all the Member States without exception is required and consequently the opposition of a single Member State would be sufficient to prevent the adoption of the decision. However, by choosing to adopt an unlawful procedure, the Commission gave itself the power to adopt the decision in question, in spite of the possible opposition to it of certain Member States.

(d) The Commission's lack of powers

The contested decisions constitute an intervention by the Commission in a sector in regard to which the Council is competent to act, without the latter's authorization.

Action brought on 29 January 1988 by Coopérative agricole de l'Anjou et du Poitou (CEVAP), Spanghero SA, société Coopérative agricole des producteurs de viande (CAVEB), société Loirelvo, société Sovimaine, société Coopérative des éleveurs de veaux d'Armorique (COOP EVA), Coopérative des producteurs de bovins de la Creuse SA, Bridel SA, Joseph Flourez, Michel Leblond, Gérard Couteau, Jean-Pierre Bayssette and Gilbert Lhaumond against the Council of the European Communities

(Case 34/88)

(88/C 60/12)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 29 January 1988 by Coopérative agricole de l'Anjou et du Poitou (CEVAP), Spanghero SA, société Coopérative agricole des producteurs de viande (CAVEB), société Loirelvo, société Sovimaine, société Coopérative des éleveurs de veaux d'Armorique (COOP EVA), Coopérative des producteurs de bovins de la Creuse SA, Bridel SA, Joseph Flourez, Michel Leblond, Gérard Couteau, Jean-Pierre Bayssette and Gilbert Lhaumond, represented by Messrs Dubos-Pelissié-Prunier and by Marie-Christine Herve-Porchy, of the Rouen Bar, with an address for service in Luxembourg at the Chambers of Marc Baden, 24, rue Marie-Adélaïde.

The applicant claims that the Court should:

1. Declare void Council Decision 87/561/EEC of 18 November 1987⁽¹⁾ on transitional measures concerning the prohibition on administration to farm animals of certain substances having a hormonal action;
2. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

1. Infringement of Article 190 of the EEC Treaty: the contested decision is based on a reason other than the objective actually pursued, which is that of favouring third countries exporting to the Community. Animals treated before 31 December 1987 must be marketed

⁽¹⁾ OJ No C 339, 1. 12. 1987, p. 70.