

JUDGMENT OF THE COURT
18 NOVEMBER 1970¹

Amedeo Chevalley
v Commission of the European Communities

Case 15/70

In Case 15/70

AMEDEO CHEVALLEY, residing in Turin, assisted by G. G. Stendardi of the Milan Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 rue Philippe-II,

applicant

v

COMMISSION OF THE EUROPEAN COMMUNITIES, Brussels, represented by its Legal Adviser, Armando Toledano-Laredo, acting as Agent, with an address for service in Luxembourg, at the Chambers of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Application under Article 175, or alternatively under Article 173, of the EEC Treaty for a ruling that the defendant has contravened the Treaty by failing to take a decision in respect of the applicant which he had sought,

THE COURT

composed of: R. Lecourt, President, A. M. Donner and A. Trabucchi, Presidents of Chambers, J. Mertens de Wilmars and P. Pescatore (Rapporteur), Judges,

Advocate-General: A. Dutheillet de Lamothe

Registrar: A. Van Houtte

gives the following

¹ — Language of the Case: Italian.

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts may be summarized as follows:

1. In December 1969 the Senate of the Italian Republic approved a draft law providing in particular that the amount of rents for agricultural land should be calculated by multiplying the basic land tax by co-efficients to be laid down by a technical commission.

2. By letter of 9 December 1969 the applicant requested the defendant, under Article 175 of the EEC Treaty,

- to take action under Article 155 of the Treaty to organize the consultations provided for by Articles 101 and 102 between the Italian State, the Commission and the other Member States;
- to submit to the Council a draft directive in application of Articles 155, 145 and 100 of the Treaty with a view to harmonizing agricultural leases in the Member States of the Community;
- to take a decision in respect of the applicant fixing the terms and detailed rules to be followed in practice on concluding leases of his agricultural property in the event of the said draft law becoming an effective law of the Italian Republic.

By letter of 16 February 1970 the President of the Commission informed the applicant's lawyer that the Commission 'is not obliged in this case to adopt any measure whatever with regard to your client' and that by virtue of the third paragraph of Article 175 of the Treaty 'it will not be possible for your client to bring an action for failure to act based on the requests submitted by you'.

3. On 13 April 1970 the applicant introduced this application.

II — Conclusions of the parties

The *applicant* in his application claims that the Court should:

- after finding that Italy has infringed the Community rules contained in Articles 101 and 102 of the EEC Treaty and in the decision of the Council of the EEC of 4 December 1962, as regards the procedure followed in drawing up the national laws, and Article 3 (d), the first paragraph of Article 31 and Articles 40 (2), 44, 46 and 92 of the EEC Treaty in respect of the content of the said law, and after finding that the refusal to adopt a decision with regard to the applicant is illegal, declare that by failing to take the decision sought the defendant Commission has infringed Article 175 of the EEC Treaty;

- order the defendant to pay the costs.

The *defendant*, in a statement in connexion with a procedural issue lodged on 15 May 1970, contends that the Court should:

- give a preliminary ruling, without discussing the substance of the case, on the admissibility of the application under Article 91 of the Rules of Procedure;
- declare the application to be inadmissible and consequently dismiss it;
- order the applicant to pay the costs.

In a document lodged at the Registry on 22 June 1970 under Article 91 (2) of the Rules of Procedure the applicant states that:

If the Court were to consider the conclusions advanced by Mr Chevalley in the application of 13 April 1970 capable of leading to a finding that it is inadmissible, the applicant amends his conclusions as follows:

that the Court should:

- declare that by failing to take the decision requested, the defendant Commission has infringed the third indent of Article 155 of the EEC Treaty; alternatively, declare that the defendant Commission has adopted an illegal measure in that it contravenes Article 173 of the EEC Treaty.

III — Procedure

The procedure followed the normal course. After hearing the report of the Judge-Rapporteur and the views of the Advocate-General, the Court decided not to make any preparatory inquiry but to open the oral procedure in connexion with the preliminary objection of inadmissibility raised by the defendant.

The parties presented oral argument at the hearing on 21 October 1970.

The Advocate-General delivered his opinion at the same hearing.

IV — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:

In his application the applicant makes the following points in particular:

He is the owner of agricultural land situated in the province of Cuneo, which is leased.

This application is 'for a declaration that the measure adopted by the Commission ... on 16 February 1970 is illegal and for its annulment'.

The application is admissible. In fact, by his letter of 9 December 1969 the applicant requested the Commission to take a concrete decision in respect of him, which was met with an express refusal from the Commission, certainly without a statement of reasons 'but unequivocal in substance'. The application is also well founded, for the following reasons in particular:

— If the draft law adopted by the Italian Senate were to attain the force of law, the applicant would be obliged to enter into contracts with his farmers in terms taking into account not the productivity of the agricultural land leased or the actual income arising from it but 'values agreed for taxation purposes, reassessed on the basis of a fixed coefficient'. Contrary to what the position is in the other Member States, the rules envisaged ignore the necessity for re-numerating landed capital on the basis of its real nature in a free market system. Because of this, the price of agricultural products obtained from the said properties is distorted, in defiance — as the applicant points out in detail — of a whole series of Community provisions.

— The defendant is therefore obliged either to call upon the Italian State to adopt rules conforming to the EEC Treaty or to take a decision indicating to the applicant what course of conduct he must follow in order to observe both the national legislation and the Community rules.

— Moreover, the measure criticized, namely the refusal to adopt the measure sought, is illegal as it lacks any statement of reasons capable of justifying it.

The *defendant*, in its statement in connexion with the procedural issue, puts forward the following considerations in particular:

A declaration of the non-observance by a Member State of its Community obligations may only be made at the request of the Commission or of another Member State. Individuals do not have the capacity to seek such a declaration, even by means of an action for failure to act. The only remedy open to them for opposing the illegal measures of States is to raise such illegality before the national court, on condition of course that the Community provisions alleged to have been infringed are directly applicable within the meaning attributed to those words in the case-law of the Court. The applicant himself recognizes that the defendant effectively stated its position in its letter of 16 February 1970. He has stated

that his application is directed against the measures contained in that letter and requests that it be annulled. Such an application is not envisaged in the context of Article 175, which is a provision presupposing the institution's failure to act. Moreover, it is obviously contradictory to claim simultaneously that a measure exists which must be annulled and that that measure does not exist.

There is no Community provision obliging the defendant to take the individual decision sought in respect of the applicant. Finally, it is impossible at present to be aware of all the amendments which might be made to the draft law or to know how and when it will be promulgated.

In his statement lodged on 22 June 1970, the *applicant* replies in particular as follows: He had supposed that in order to be able to assess the defendant's conduct in refusing to adopt the individual measure sought the Court would logically be led to examine first of all whether or not the disputed draft law conformed to the Treaty. 'However, if the Court were not to consider that such a preventive and preliminary finding was necessary to its decision and, on the contrary, were to think that this request was capable of leading to a decision that the application is inadmissible, the applicant amends his conclusions: he withdraws his request for a preventive and preliminary finding that the Italian State has failed to fulfil its obligations under the

Treaty and restricts his request to asking the Court to find that the Commission has infringed the third indent of Article 155 of the EEC Treaty ... by reason of the fact that it has refused to adopt the decision requested or, alternatively, that the Court find that Article 173 of the EEC Treaty has been contravened by reason of the adoption of an illegal measure in that it infringes essential procedural requirements.'

There is no contradiction as alleged by the defendant. Within the context of an action for failure to act, as provided for by Article 175, the express refusal to adopt the measure sought is equivalent in law — as also in fact — to silence pure and simple.

If the Court were not to accept this reasoning, the fact would remain that by virtue of Article 173 an individual may institute proceedings against an individual measure. The terms of and detailed rules for such proceedings are identical to those laid down for an action for failure to act, so that the Court may perfectly well examine the present request from the viewpoint of Article 173.

The defendant's duty to adopt the individual decision sought arises from Article 155 of the Treaty, which charges the Commission with the task of watching over the conduct of all those subject to Community law, both States and individuals, and, where appropriate, of informing them how they must conduct themselves in order to avoid contravening Community rules.

Grounds of judgment

- 1 By application lodged on 13 April 1970, the applicant, who is the proprietor of agricultural land situated in Italy, instituted an action based on Article 175 of the EEC Treaty for a declaration that the defendant has infringed the Treaty by failing to address to him a decision which he had called upon it to take.
- 2 This decision would have involved fixing the detailed rules to be followed by the applicant for the wording of leases of his agricultural land when a draft law on the method of fixing the rents for agricultural land which had been adopted by the Senate of the Italian Republic had become law.

- 3 The defendant has requested the Court, under Article 91 of the Rules of Procedure, to decide on the admissibility of the application without discussing the substance of the case.
- 4 As a result of this preliminary objection, the applicant has, in the alternative, invited the Court to examine the admissibility of his application from the viewpoint of Article 173 of the Treaty, by reason of the fact that the Commission informed him in response to his request to it 'that in this case no measure must be taken' in respect of the applicant.

The designation of the application

- 5 The preliminary objection of inadmissibility is based essentially on the ground that no measure exists capable of forming the subject-matter of an action under Article 175.
- 6 The concept of a measure capable of giving rise to an action is identical in Articles 173 and 175, as both provisions merely prescribe one and the same method of recourse.
- 7 It appears unnecessary therefore, for the purposes of a decision on the preliminary objection of inadmissibility, to designate the application in relation to the two provisions cited by the applicant.

The admissibility of the application

- 8 The applicant requested the Commission to give a ruling on the conduct to be followed by him in the face of possible conflict between the national legislation and certain provisions of Community law when the draft law referred to by him became an effective law of the Italian Republic.
- 9 During the proceedings the applicant stated that he sought from the Commission not merely an opinion but an 'order' which would be mandatory for him, so that the measure which the Commission refused to adopt in respect of him would have constituted a decision within the meaning of Article 189.

- 10 The nature of the disputed measure depends solely on its content and scope. By requesting the Commission to adopt a decision fixing the terms and detailed rules to be followed in practice on concluding leases, the applicant was actually seeking from the Commission not a decision within the meaning of Article 189 but advice on the course of conduct to be adopted in the face of possible conflict between his national legislation and certain provisions of Community law.
- 11 Such a measure would be equivalent not to a decision but to an opinion with the meaning of the last paragraph of Article 189 of the Treaty.
- 12 Moreover, by adopting the measure sought the defendant would have been required first to assess whether the draft law in question conformed with the Treaty. This would therefore still have resulted in a measure other than those referred to in the third paragraph of Article 175.
- 13 Such a definition of position cannot be considered as a measure capable of forming the subject-matter of an action under the third paragraph of Article 175.
- 14 Consequently, the express refusal by the Commission to define its position as requested cannot form the subject-matter of proceedings under Article 173 either.
- 15 The application must therefore be dismissed as inadmissible.
- 16 Under the terms of Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. The applicant has failed in his submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Economic Community, especially Articles 173 and 175;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 69 and 91,

THE COURT

hereby:

1. Dismisses the application as inadmissible;
2. Orders the applicant to pay the costs.

Lecourt

Donner

Trabucchi

Pescatore

Mertens de Wilmars

Delivered in open court in Luxembourg on 18 November 1970.

A. Van Houtte

R. Lecourt

Registrar

President

OPINION OF MR ADVOCATE-GENERAL DUTHEILLET DE LAMOTHE
DELIVERED ON 21 OCTOBER 1970¹

*Mr President,
Members of the Court,*

As the Court knows, Mr Chevalley's application shows, with some slight differences which I shall emphasize in a moment, great similarity with that made to the Court by the Borromeos and upon which the Court gave judgment on 15 July last.

Like the Borromeos Mr Chevalley is an Italian proprietor of agricultural land which he leases. Again like the Borromeos, Mr Chevalley felt himself affected by the adoption by the Italian Senate on 19 December 1969 of a draft law put forward by Senators De Marzi and Cipolla, certain provisions of which related to the fixing of a new method of determining agricultural rents.

In essence, those provisions laid down that the amount of such rents, which had to be paid in money, would be determined,

to a certain extent on a flat-rate basis, by multiplying, in respect of each piece of land, the basic land tax by a co-efficient laid down by regional commissions.

It seems that the legislative provision envisaged did not favour the financial interests of the Borromeos and Mr Chevalley. Thus, in order to attempt to block it, they decided to 'appeal' for a ruling from the European institutions.

To this end, they sent letters to the Commission requesting it in exactly the same terms:

- (1) to take action under Article 155 of the Treaty to organize the consultations provided for by Articles 101 and 102 between the Italian State, the Commission and the other Member States;
- (2) to submit to the Council a draft directive in application of Articles 155,

1 — Translated from the French.