JUDGMENT OF THE COURT (Second Chamber)
7 April 1987 *

In Case 38/86

REFERENCE to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Frankfurt am Main for a preliminary ruling in the proceedings pending before that court between

Firma Karl-Heinz Neumann

and

Bundesanstalt für landwirtschaftliche Marktordnung

on the validity of Article 16 (2) of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69 (Official Journal 1979, L 251, p. 12),

THE COURT (Second Chamber),

composed of: T. F. O'Higgins, President of Chamber, O. Due and K. Bahlmann, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of

Firma Karl-Heinz Neumann, the plaintiff in the main proceedings, by Volker Schiller, Rechtsanwalt, Cologne,

the Commission of the European Communities, by Peter Karpenstein, Legal Adviser,

* Language of the Case: German.

having regard to the Report for the Hearing and further to the hearing on 5 February 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 March 1987,

gives the following

Judgment

1 By an order dated 15 January 1986, which was received at the Court on 12 February 1986, the Verwaltungsgericht (Administrative Court) Frankfurt am Main referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question concerning the validity of Article 16 (2) of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69 (Official Journal 1979, L 251, p. 12).

2 The question was raised in proceedings between Firma Karl-Heinz Neumann, Hamburg (hereinafter referred to as 'the plaintiff') and the Bundesanstalt für landwirtschaftliche Marktordnung (Federal Office for the Organization of Agricultural Markets, hereinafter referred to as 'the Bundesanstalt'), concerning the forfeiture of a security which the plaintiff had provided in connection with a purchase application made under Commission Regulation (EEC) No 713/81 of 19 March 1981 on the sale at a price fixed in advance of certain boned beef and veal held by certain intervention agencies (Official Journal 1981, L 74, p. 27) and which the Bundesanstalt declared to be forfeit pursuant to Article 16 (2) of the aforesaid Regulation No 2173/79.

3 The Verwaltungsgericht, before which the plaintiff brought an action with a view to recovering the security, referred the following question to the Court of Justice for a preliminary ruling:

'Is Article 16 (2) of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69 (Official Journal 1979, L 251, p. 12) invalid owing to incompatibility with the principle of proportionality in so far as it also applies where delivery is not taken of a quantity of

intervention goods purchased pursuant to a contract and no payment is made therefor but instead new contracts for the same quantity of goods are concluded, with the cooperation of the intervention agency, by the same purchaser or a sister firm, which are performed in full, and the purchaser's behaviour is due to the fact that performance of the original contract would have involved it in considerable economic losses owing to a change in the ECU conversion rate?'

4 Reference is made to the Report for the Hearing for the facts of the case, the Community legislation in question, the course of the procedure and the observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 It should be pointed out that in its judgment of 14 November 1985 (in Case 299/84 *Firma Karl-Heinz Neumann* v *Bundesanstalt für landwirtschaftliche Marktordnung* [1985] ECR 3663) the Court has already answered a number of questions referred by the Verwaltungsgericht in connection with the same dispute. Those questions related to the possibility of applying a principle known as the principle of objective unfairness ('sachliche Unbilligkeit').

6 Although it answered those questions in the negative, the Court observed that the Verwaltungsgericht had expressly described that principle as being a particular embodiment of the principle of proportionality. Consequently, in the grounds of its judgment the Court considered the possibility of applying the principle of proportionality and came to the conclusion that 'in circumstances such as those described in the order for reference the principle of proportionality recognized in Community law cannot provide any solution to the dispute pending before the Verwaltungsgericht'.

7 In order to answer the question referred to the Court in this case it is therefore sufficient to consider whether in the new order for reference the Verwaltungsgericht describes circumstances of such a kind as to alter the assessment made by the Court in its judgment of 14 November 1985. The only relevant circumstance in that connection not mentioned in the previous order for reference — which is stressed both in the new question referred for a preliminary ruling and in the grounds of the order for reference — is that the new contracts replacing the contract which was not carried out were concluded 'with the cooperation of the intervention agency' and were performed in full.

8 As the Court pointed out in its judgment of 14 November 1985, the aim of the relatively modest security laid down by the rules in question is not only to ensure that the intervention stocks are actually reduced by the quantity of products covered by the purchase application, but also to guarantee the performance by the buyer of the contractual obligations arising from his purchase application and observance of the conditions of sale laid down in the regulations in question. One of those conditions is the payment in national currency of the sale price fixed in advance in ECUs converted at the green rate in force on the day on which the security supporting the purchase application was received.

9 It is in pursuance of that aim that the relevant Community rules contain no provision for the release of the security in a case such as this. Where, owing to a change in the green rate after the security was furnished, the purchaser finds it advantageous not to perform the contract in accordance with the conditions which he accepted, the forfeiture of the security does not constitute a disproportionate consequence, *a fortiori* where, with the cooperation of the intervention agency, the purchaser obtained a new contract relating to the same quantity of goods but at the more favourable price resulting from the change in the green rate.

10 It follows that the circumstances set out in the new order for reference are not such as to change the outcome of the examination of the principle of proportionality carried out by the Court in its judgment of 14 November 1985.

11 The answer to the question referred to the Court for a preliminary ruling must therefore be that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 16 (2) of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69.

Costs

12 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Second Chamber),

in answer to the question submitted to it by the Verwaltungsgericht Frankfurt am Main by order of 15 January 1986, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Article 16 (2) of Commission Regulation (EEC) No 2173/79 of 4 October 1979 on detailed rules of application for the disposal of beef bought in by intervention agencies and repealing Regulation (EEC) No 216/69.

O'Higgins Due Bahlmann

Delivered in open court in Luxembourg on 7 April 1987.

P. Heim
Registrar

T. F. O'Higgins
President of the Second Chamber