JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
7 February 2001 *

In Cases T-38/99 to T-50/99,

Sociedade Agrícola dos Arinhos, Ld.ª, established in Lisbon (Portugal),

Sociedade Agrícola do Monte da Aldeia, Ld.ª, established in Lisbon,

António José da Veiga Teixeira, residing in Coruche (Portugal),

Sociedade Agrícola Monte da Senhora do Carmo SA, established in Almeirim (Portugal),

Sociedade Agrícola de Perescuma SA, established in Almeirim,

Sociedade Agrícola Couto de Fornilhos SA, established in Moura (Portugal),

Casa Agrícola da Raposeira, Ld.ª, established in Coruche,

José de Barahona Núncio, residing in Évora (Portugal),

Prestase — Prestação de Serviços e Contabilidade, Ld.ª, established in Lisbon,

Sociedade Agro-Pecuária da Herdade do Zambujal, Ld.ª, established in Palmela (Portugal),

Francisco Luís Pinheiro Caldeira, residing in Campo Maior (Portugal),

Sociedade Agrícola Cabral de Ascensão, Ld.ª, established in Horta dos Arcos, Serpa (Portugal),

* Language of the case: Portuguese.

Joaquim Inácio Passanha Braancamp Sobral, residing in Lisbon,

represented by C. Botelho Moniz and J. Rôla Roque, lawyers, with an address for service in Luxembourg,

applicants,

supported by

Portuguese Republic, represented by L. Fernandes, A.C. de Seiça Neves and A.M. Gonçalves Monteiro, acting as Agents, with an address for service in Luxembourg,

intervener,

v

Commission of the European Communities, represented by A.M. Alves Vieira and G. Berscheid, acting as Agents, assisted by V. Airão, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Article 2(a) of Commission Decision 98/653/EC of 18 November 1998 concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal (OJ 1998 L 311,

p. 23), inasmuch as it prohibits the dispatch from Portugal to Spain and France of fighting bulls intended for cultural and sporting events,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: V. Tiili, President, R.M. Moura Ramos and P. Mengozzi, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 20 September 2000,

gives the following

Judgment

Facts and relevant provisions

1 The 13 applicants are Portuguese breeders of fighting bulls. Those bulls are intended for cultural and sporting events which, in the countries of the European

Union, are organised only in Portugal, Spain and France. That breed of bulls is bred only in those three Member States.

2 On 10 November 1998, after having learned of the imminent adoption of a Community decision on the export of Portuguese bovine animals, the Portuguese association of breeders of fighting bulls sent a fax to the President of the Commission containing a statement intended to draw his attention to the particular situation of Portuguese fighting bulls.

3 On 18 November 1998, the Commission adopted Decision 98/653/EC concerning emergency measures made necessary by the occurrence of bovine spongiform encephalopathy in Portugal (OJ 1998 L 311, p. 23; 'the contested decision'). That decision is based on the EC Treaty, Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market (OJ 1990 L 224, p. 29), as last amended by Directive 92/118/EEC (OJ 1993 L 62, p. 49), and in particular on Article 10(4) thereof, and on Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market (OJ 1989 L 395, p. 13), as last amended by Directive 92/118, and in particular on Article 9(4) thereof.

4 In recital 3 in the preamble to the contested decision, the Commission states that missions on issues related to bovine spongiform encephalopathy ('BSE') were carried out in Portugal in 1996, from which it was apparent that not all risk factors were adequately managed. In addition, a follow-up mission, conducted by the Food and Veterinary Office of the Commission from 28 September to

2 October 1998, had confirmed certain continued shortcomings in the enforcement of the measures to control the risk factors.

5 Article 2 of the contested decision states:

'Portugal shall ensure that the following are not dispatched from its territory to other Member States or to third countries:

(a) live bovine animals and bovine embryos;

...'.

6 Under Article 4 of that decision, Portugal is to ensure that until 1 August 1999 meat, products and material derived from bovine animals slaughtered in Portugal are not dispatched from its territory to other Member States or to non-member States.

7 Article 16(1) of the contested decision provided:

'This decision shall be reviewed within 18 months after its adoption at the latest, pending an overall examination of the situation, in particular in view of the

development of the incidence of the disease and the effective enforcement of the relevant measures, and in the light of new scientific information.'

8 Under Article 18 of that decision, it is addressed to the Member States.

9 The prohibition on dispatch outside Portugal laid down in the contested decision was later extended until 1 February 2000 by Commission Decision 1999/517/EC of 28 July 1999 (OJ 1999 L 197, p. 45), which also made a number of amendments to the contested decision.

10 The contested decision was also amended by Commission Decision 1999/713/EC of 21 October 1999 (OJ 1999 L 281, p. 90). That decision, which introduces a number of exceptions to the prohibition on dispatch laid down by the contested decision, allows, in particular, for the possibility of dispatching fighting bulls from Portugal to other Member States, subject to certain conditions.

11 The contested decision was again amended by Commission Decision 2000/104/EC of 31 January 2000 (OJ 2000 L 29, p. 36). The temporal restriction on the prohibition on dispatch provided for in Article 4 of the contested decision was lifted. In addition, Article 16 thereof was amended in order to provide for the review of the contested decision, as amended, 'by 18 May 2000 at the latest, pending an overall examination of the situation'.

12 By Decisions 2000/371/EC and 2000/372/EC of 6 June 2000 (OJ 2000 L 134, pp. 34 and 35), the Commission took up the option provided for in Article 3(7)

of the contested decision, as inserted by Decision 1999/713, and set at 7 June 2000 the date on which the dispatch of fighting bulls from Portugal to France and Spain may commence.

Procedure and forms of order sought by the parties

13 By applications lodged at the Registry of the Court of First Instance on 12 February 1999, the applicants brought actions for annulment of Article 2(a) of the contested decision, inasmuch as it prohibits the dispatch from Portugal of fighting bulls. Those actions were joined when they were registered and thus form a single case.

14 By separate document lodged at the Registry of the Court of First Instance on 19 April 1999, seven of the applicants in the main proceedings brought, pursuant to Articles 185 and 186 of the EC Treaty (now Articles 242 EC and 243 EC) and Article 104 et seq. of the Rules of Procedure, an application for interim measures. They claimed that the judge hearing the application should suspend the operation of Article 2(a) of the contested decision, inasmuch as it prohibits the dispatch from Portugal of fighting bulls, and adopt any other interim measure which he deemed appropriate.

15 By order of 9 August 1999, the President of the Court of First Instance dismissed the application for interim measures.

16 By order of 14 October 1999, the President of the Fourth Chamber of the Court of First Instance granted the Portuguese Government's application to intervene in support of the form of order sought by the applicants.

17 The parties to the present applications were expressly requested by the Court to take a view on the amendment of the contested decision made by Decision 1999/713 and on the effect of that amendment on the present case. The applicants maintained their applications unchanged.

18 On hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure.

19 The parties presented oral argument and answered the questions put to them by the Court at the hearing on 20 September 2000.

20 The applicants claim that the Court should:

— annul Article 2(a) of the contested decision, inasmuch as it prohibits the dispatch from Portugal to Spain and France of fighting bulls intended for cultural and sporting events held in those two Member States;

— order the Commission to pay the costs in their entirety.

21 The intervener claims that the Court should:

— declare the applications well founded and, consequently, annul the contested decision in accordance with the form of order sought by the applicants;

— order the Commission to pay the costs.

22 The Commission contends that the Court should:

— dismiss the applications as inadmissible or, in the alternative, unfounded;

— order the applicants to pay the costs.

Law

23 The applicants put forward essentially two pleas in law. The first alleges an error in the premisses of the contested decision and failure to provide a statement of

reasons; the second alleges breach of Articles 30, 34 and 36 of the EC Treaty (now, after amendment, Articles 28 EC, 29 EC and 30 EC) and the principle of proportionality. The Commission contests those pleas and itself raises the plea that the applications are inadmissible.

Admissibility

Arguments of the parties

24 The Commission contends that the contested decision is not of individual concern to any of the applicants, since their factual situation does not have particular characteristics which distinguish them individually in the same way as the addressee of the decision.

25 In that regard, the Commission submits that the applicants' situation must not be distinguished from that of the Portuguese breeders of other bovine animals. It contends, in particular, that the fact that fighting bulls are bred only to take part in sporting and bull-fighting events does not prevent the animal, once it has been killed in the ring, from being able to enter the food chain, its meat being able, in particular, to be eaten in specialised restaurants.

26 At the hearing, the defendant again stated that the fax sent by the applicants to the President of the Commission which contained a statement of their position was sent only 10 days before the contested decision was formally adopted. At that

time, the draft decision had already been drawn up on the basis of an opinion of the Standing Veterinary Committee adopted in October 1998 in accordance with the relevant legislation.

27 The applicants submit that they satisfy the conditions as to standing laid down in the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), since the contested decision is of direct and individual concern to them.

28 They claim that there are factual circumstances which distinguish them from the other breeders and traders of live bovine animals to which, in theory, the prohibition at issue applies.

29 First, the applicants breed a unique breed of bovine animals intended for fighting in cultural and sporting events which take place only in Portugal, Spain and France. Those fighting bulls are different from all other bovine animals; it is logical to export them even if, because of the protection of public health, they must be destroyed after the fight.

30 Second, they are entered in the Portuguese herd book of fighting bulls and in the Spanish herd book of the breed of fighting bulls. The second entry is independent of the first, since it is subject to the particular requirements of Spanish legislation.

31 Third, in order to dispatch or transport their bulls to Spain or France, the applicants are subject to the rules which are specifically applicable to fighting

bulls (which are not applicable to other bovine animals) and which ensure strict control of all the animals transported. Those rules are a fundamental part of the body of safeguards relating to the traceability of animals.

32 Fourth, before the contested decision was even adopted, through the association of which they are members (the Portuguese association of breeders of fighting bulls), the applicants drew the Commission's attention to the particular characteristics of fighting bulls and of the rules which are applicable to them and requested it to take account of those characteristics. That association has neither an economic or business activity of its own nor an activity which is independent of that of its members.

33 In that regard, the applicants point out that, on 20 July 1998, together with the other members of the Portuguese association of breeders of fighting bulls, they submitted a complaint to the Commission requesting it to intervene in connection with the problems caused by the Spanish authorities concerning the export of fighting bulls entered in the Portuguese herd book. In that complaint, they communicated to the Commission information enabling it to understand the particular nature of the legislation applicable to fighting bulls as compared with that applicable to other bovine animals.

34 In addition, on 10 November 1998, in response to information concerning the imminent adoption of a decision completely prohibiting the export of bovine animals, the applicants sent to the President of the Commission by fax a statement intended to draw his attention to the particular situation of Portuguese fighting bulls. In that statement, the applicants insist on the fact that it would be possible to adopt other measures (such as the obligation to burn bulls after the show) which, whilst being equally protective of public health, would have less restrictive effects on intra-Community trade.

35 Finally, the applicants add that most of them had concluded contracts with Spanish and French operators for the sale of fighting bulls intended for Spanish and/or French rings during the 1999 bull-fighting season. The performance of those contracts was made impossible by the contested decision.

Findings of the Court

36 Under the fourth paragraph of Article 173 of the Treaty, any natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

37 It is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned within the meaning of the fourth paragraph of Article 173 of the Treaty if that decision affects their legal position by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons and distinguishes them individually in the same way as the addressee (Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, 107; Case C-309/89 *Codorniu* v *Council* [1994] ECR I-1853, paragraph 20; and Case T-435/93 *ASPEC and Others* v *Commission* [1995] ECR II-1281, paragraph 62). The purpose of the fourth paragraph of Article 173 of the Treaty is to ensure that legal protection is also available to a person who, whilst not the person to whom the contested measure is addressed, is in fact affected by it in the same way as is the addressee (Case 222/83 *Municipality of Differdange and Others* v *Commission* [1984] ECR 2889, paragraph 9).

38 Accordingly, in the light of that case-law, it is necessary to determine whether the contested decision affects the applicants by reason of certain attributes peculiar to

them or there is a factual situation which differentiates them, in respect of that decision, from all other operators to which it may potentially apply.

39 In the present case, the contested decision adopts emergency measures made necessary by the occurrence of BSE in Portugal. It lays down a prohibition on dispatching live bovine animals, meat and other products derived from bovine animals slaughtered in Portugal. The grounds for that prohibition are the protection of public health. From the outset, that prohibition was supposed to be temporary, and the decision was to be reviewed within 18 months after its adoption at the latest, pending an examination of the situation as a whole.

40 The applicants claim, first of all, that the bulls which they breed are intended to fight at cultural and sporting events and that, accordingly, there is still a reason to export them even if, after the fight, they must be destroyed. Furthermore, they assert that the bulls in question are entered in the Portuguese and Spanish herd books of fighting bulls and that the export and transportation of those animals to Spain and France are subject to specific rules which ensure strict control of all the animals exported.

41 The Court finds that those factors do not constitute a particular situation differentiating the applicants, in respect of the contested decision, from any other breeder or exporter of bovine animals affected by the prohibition on dispatch laid down by that decision.

42 The fact that the bulls exported by the applicants have different characteristics and are subject to breeding conditions and a set of specific controls unlike those for other bovine animals does not concern the way in which the decision in question affects the applicants.

43 That decision, inasmuch as it prohibits the dispatch of bovine animals, does not affect the applicants by reason of certain attributes peculiar to them or a factual situation which differentiates them from all other operators. It concerns them only by reason of their objective status as exporters of bovine animals, by the same token as all other operators exercising the same activity of dispatching from Portugal. Thus the contested decision is addressed in general and abstract terms to indeterminate classes of persons and applies to objectively determined situations.

44 The applicants' arguments must therefore be rejected.

45 The applicants also assert that, before the contested decision was adopted and, in particular, through the Portuguese association of breeders of fighting bulls, of which they are members, they drew the Commission's attention to the particular characteristics of fighting bulls and of the legislation which is applicable to them and that they requested it to take account of those characteristics.

46 It must be borne in mind that, even if all the letters and all the contacts referred to by the applicants may have been relevant to the subject-matter of the contested decision, it is clear from the case-law that the fact that a person intervenes, in one way or another, in the procedure leading to the adoption of a Community measure is not such as to differentiate that person from any other in respect of the measure in question except where the Community legislation applicable grants him certain procedural safeguards (order in Case T-585/93 *Greenpeace and Others* v *Commission* [1995] ECR II-2205, paragraphs 56 and 63; and judgment in Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraphs 55 and 59).

47 In the present case, the applicants' argument must be analysed in the context of the Community legislation applicable in this case and, in particular, in the light of Directives 89/662 and 90/425, in that they concern the taking of emergency measures which are necessary in order to avert any danger where it is found that there is an outbreak of an epizootic disease, any new serious and contagious disease or another cause likely to constitute a serious hazard to animals or to human health.

48 None of the provisions of that legislation requires the Commission, in order to take such emergency measures, to follow a procedure during which the applicants, whether themselves or through their representatives, would have the right to be heard. Accordingly, the interventions referred to by the applicants cannot confer on them standing to bring proceedings under the fourth paragraph of Article 173 of the Treaty.

49 Finally, the applicants claim that they have concluded contracts for the sale of fighting bulls intended to fight in Spain and France during the 1999 bull-fighting season, the performance of which was made impossible by the decision.

50 Admittedly, the Court of Justice and the Court of First Instance have already held actions for annulment of measures of a legislative nature to be admissible where an overriding provision of law required the bodies responsible for them to take into account the applicants' particular situation (see Joined Cases T-480/93 and T-483/93 *Antillean Rice Mills and Others* v *Commission* [1995] ECR II-2305, paragraphs 67 to 78; and Case T-135/96 *UEAPME* v *Council* [1998] ECR II-2335, paragraph 90), and the existence of contracts entered into by an applicant which are affected by the contested measure may, in certain cases, distinguish such a particular situation (Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraphs 28 to 31; and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraphs 11 to 13).

51 However, the present case is different from those which gave rise to the judgments cited, in that such an obligation does not exist in this case. Accordingly, that argument cannot be accepted.

52 In those circumstances, the condition of admissibility requiring that the applicants be individually concerned by the contested measure has not been satisfied in this case.

53 Consequently, their applications must be dismissed as inadmissible.

Costs

54 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, including those relating to the interlocutory proceedings, as applied for by the defendant.

55 In accordance with Article 87(4) of the Rules of Procedure, the Portuguese Republic, which has intervened in the proceedings, must bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the applications as inadmissible;**

2. **Orders the applicants to pay the costs, including those relating to the interlocutory proceedings;**

3. **Orders the intervener to bear its own costs.**

Tiili Moura Ramos Mengozzi

Delivered in open court in Luxembourg on 7 February 2001.

H. Jung P. Mengozzi

Registrar President