

Judgment of the Court of Justice, Lord Bethell, Case 246/81

Caption: Extract from the Lord Bethell judgment relating to the admissibility of an action for failure to act. The action is inadmissible since the private individual who fails to act cannot complain to the Commission that it 'has failed to address to [him] any act other than a recommendation or an opinion', within the meaning of the third paragraph of Article 175 of the EC Treaty (new Article 232). By establishing the similar nature of the action for annulment and the action for failure to act, the Court lays down that the natural or legal person who brings the action has to be either the actual addressee of a decision which may be declared void or the potential addressee of a decision which a Community institution has a duty to adopt in his regard.

Source: Reports of Cases before the Court. 1973. [s.l.].

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Judgment of the Court (Second Chamber) of 10 June 1982 1
Nicholas William, Lord Bethell v Commission of the European Communities

(Competition - Air transport)

Case 246/81

Application for a declaration that a measure is void - Natural or legal persons - Conditions for admissibility

Action for failure to act - Natural or legal persons - Conditions for admissibility (EEC Treaty, Art. 173, second paragraph, and Art. 175, third paragraph)

It may be seen from the second paragraph of Article 173 and the third paragraph of Article 175 of the Treaty that the applicant, for his application for a declaration that a measure is void or his action for failure to act to be admissible, must be in a position to establish either that he is the addressee of a measure of an institution having specific legal effects with regard to him, which is, as such, capable of being declared void, or that the institution, having been duly called upon to act in pursuance of the second paragraph of Article 175, has failed to adopt in relation to him a measure which he was legally entitled to claim by virtue of the rules of Community law.

A natural or legal person who is asking an institution, not to take a decision in respect of him, but to open an inquiry with regard to third parties and to take decisions in respect of them, may have an indirect interest, as other private persons may have, in such proceedings and their possible outcome, but he is nevertheless not in the precise legal position of the actual addressee of a decision which may be declared void under the second paragraph of Article 173 or in that of the potential addressee of a legal measure which the institution in question has a duty to adopt with regard to him, as is the position under the third paragraph of Article 175.

In Case 246/81

NICHOLAS WILLIAM, LORD BETHELL, Member of the European Parliament, Member of the House of Lords, represented by Ian S. Forrester of the Scots Bar and Mario Siragusa of the Rome Bar, instructed by Gloria Hooper of Messrs Taylor & Humbert, Solicitors, with an address for service in Luxembourg at the Chambers of Jean-Claude Wolter, 2, Rue Goethe,

applicant,

supported by

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, represented by W. H. Godwin, Principal Assistant Treasury Solicitor, acting as Agent, with an address for service in Luxembourg at the British Embassy,

intervener,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Bastiaan van der Esch, acting as Agent, assisted by Pieter Jan Kuyper, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department, Jean Monnet Building, Kirchberg,

defendant,

supported by the following airline operators:

AER LINGUS LIMITED (AER LINGUS), Dublin,
COMPAGNIE NATIONALE AIR FRANCE (AIR FRANCE), Paris,

LINEE AEREE ITALIANE SPA (ALITALIA), Rome,
BRITISH AIRWAYS LIMITED (BRITISH AIRWAYS), Hounslow,
BRITISH CALEDONIAN AIRWAYS LIMITED (BRITISH CALEDONIAN), Crawley,
KONINKLIJKE LUCHTVAART MAATSCHAPPIJ NV (KLM), Amstelveen,
DEUTSCHE LUFTHANSA AG (LUFTHANSA), Cologne,
OLYMPIC AIRWAYS, Athens,
SOCIÉTÉ ANONYME BELGE D'EXPLOITATION DE LA NAVIGATION AÉRIENNE, (SABENA),
Brussels, and
SCANDINAVIAN AIRWAYS SYSTEM (SAS), Stockholm,

represented by Eduard Marissens of the Brussels Bar, with an address for service in Luxembourg at the
Chambers of Lambert H. Dupong, 14a, Rue des Bains,

interveners,

OBJECTION, at the preliminary stage of the proceedings, that the action brought by Lord Bethell against
the Commission for failure to act with regard to the fixing by airline operators of passenger fares for
transport by air for scheduled flights within the Community is inadmissible,

THE COURT (Second Chamber)

composed of: O. Due, President of Chamber, P. Pescatore and A. Chloros, Judges,

Advocate General: Sir Gordon Slynn
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

[...]

Decision

[...]

The question of admissibility

11 In the words of the second paragraph of Article 173, any natural or legal person may, under the conditions laid down in that Article, 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”.

12 According to the third paragraph of Article 175, any natural or legal person may, under the conditions laid down in that Article, complain to the Court that an institution of the Community “has failed to address to that person any act other than a recommendation or an opinion”.

13 It appears from the provisions quoted that the applicant, for his application to be admissible, must be in a position to establish either that he is the addressee of a measure of the Commission having specific legal effects with regard to him, which is, as such, capable of being declared void, or that the Commission, having been duly called upon to act in pursuance of the second paragraph of Article 175, has failed to adopt in relation to him a measure which he was legally entitled to claim by virtue of the rules of Community law.

14 In reply to a question from the Court the applicant stated that the measure to which he believed himself to be entitled was “a response, an adequate answer to his complaint saying either that the Commission was

going to act upon it or saying that it was not and, if not, giving reasons". Alternatively the applicant took the view that the letter addressed to him on 17 July 1981 by the Director-General for Competition was to be described as an act against which proceedings may be instituted under the second paragraph of Article 173.

15 The principal question to be resolved in this case is whether the Commission had, under the rules of Community law, the right and the duty to adopt in respect of the applicant a decision in the sense of the request made by the applicant to the Commission in his letter of 13 May 1981. It is apparent from the content of that letter and from the explanations given during the proceedings that the applicant is asking the Commission to undertake an investigation with regard to the airlines in the matter of the fixing of air fares with a view to a possible application to them of the provisions of the Treaty with regard to competition.

16 It is clear therefore that the applicant is asking the Commission, not to take a decision in respect of him, but to open an inquiry with regard to third parties and to take decisions in respect of them. No doubt the applicant, in his double capacity as a user of the airlines and a leading member of an organization of users of air passenger services, has an indirect interest, as other users may have, in such proceedings and their possible outcome, but he is nevertheless not in the precise legal position of the actual addressee of a decision which may be declared void under the second paragraph of Article 173 or in that of the potential addressee of a legal measure which the Commission has a duty to adopt with regard to him, as is position under the third paragraph of Article 175.

17 It follows that the application is inadmissible from the point of view of both Article 175 and Article 173.

[...]

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicant to pay the costs incurred by the Commission and orders the interveners to bear their own costs.

Due
Pescatore
Chloros

Delivered in open court in Luxembourg on 10 June 1982.

For the Registrar
H. A. Rühl
Principal Administrator

O. Due
President of the Second Chamber

1 - Language of the Case: English