

Judgment of the Court of Justice, CIDA, Case 297/86 (30 June 1988)

Caption: In this judgment of 30 June 1988, the Court of Justice pronounced on the rules laid down in Article 195 (now Article 259) of the EC Treaty concerning the appointment of members of the Economic and Social Committee.

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Judgment of the Court of 30 June 1988**Confederazione italiana dirigenti di azienda (CIDA) and others v Council of the European Communities**

(Appointment of members of the Economic and Social Committee)

Case 297/86

Summary of the Judgment

1. Action for annulment - Natural or legal persons - Measures concerning them directly and individually - Council decision appointing members of the Economic and Social Committee - Application by a trade union not representing, at national level, the whole of a category of social and economic activity - Inadmissible - Application by a candidate put forward by a Member State - Admissible
(EEC Treaty, Art. 173, second paragraph, Art. 193 and Art. 195)

2. Economic and Social Committee - Composition - Council's discretion - Representation of all the constituent elements of each category of economic and social activity by nationals of each Member State - Impossible
(EEC Treaty, Art. 195 (1))

3. Economic and Social Committee - Procedure for the appointment of members - Council's obligation to consider the representative character of all candidates on national lists and to consult the Commission on the proposed appointments - Scope
(EEC Treaty, Arts 194 and 195)

1. Having regard to the rules laid down in Article 195 of the Treaty concerning the composition of the Economic and Social Committee, a trade union which, at national level, represents merely one of the constituent elements of one of the categories of economic and social activity referred to in Article 193 and not the whole of that category is not in a position requiring the Council to take account of it in adopting its decision on the composition of the Committee. It cannot therefore be considered to be individually concerned by that decision within the meaning of the second paragraph of Article 173 of the Treaty.

On the other hand, a candidate put forward by a Member State and not appointed by the Council is directly and individually concerned by the said decision.

2. Adequate representation in the Economic and Social Committee of the various categories of economic and social activity, as required by the second subparagraph of Article 195 (1) of the Treaty, must be ensured at Community level. The Council has a wide discretion in ensuring such representation on the basis of lists of candidates submitted to it by Member States particularly since, having regard to the limited number of seats, it is not possible for all the constituent elements of each category of economic and social activity to be represented by nationals of each of the Member States.

3. In the context of the procedure for appointing members of the Economic and Social Committee, governed by Articles 194 and 195 of the Treaty, the Council must assess the representative character of the candidates appearing on the national lists, without being bound by any distinction made by the Member States between candidates proposed as principal candidates and those proposed as alternative candidates, before appointing the members of the Economic and Social Committee in accordance with the criteria laid down in Article 195.

With regard to the mandatory consultations provided for in Article 195 (2), the Council must consult the Commission on the choices which it intends to make on the basis of the national proposals and not on those proposals themselves.

[...]

JUDGMENT OF THE COURT

30 June 1988 *

In Case 297/86

(1) Confederazione italiana dirigenti di azienda (CIDA),

(2) Fausto d'Elia,

(3) Pierluigi Marchesi,

represented by Andrea Giardina, of the Naples Bar, with an address for service in Luxembourg at the Chambers of Charles Turk, 4 rue Nicolas-Welter,

applicants,

v

Council of the European Communities, represented by Raffaello Fornasier, a director in the Council's Legal Department, assisted by Antonio Lucidi, a member of that department, with an address for service in Luxembourg at the office of J. Käser, European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

supported by

Kingdom of Spain, represented by Francisco Javier Conde de Saro, Director General for the Coordination of Legal and Institutional Relations with the Communities in the Secretariat of State for the European Communities, and Rafael García-Valdecasas y Fernández, Head of the Legal Department for matters before the Court of Justice of the European Communities, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 boulevard Emmanuel-Servais,

intervener,

APPLICATION pursuant to the second paragraph of Article 173 of the EEC Treaty for the annulment of the decision of the Council appointing the members of the Economic and Social Committee for the period from 21 September 1986 to 20 September 1990, as appears from the publication in the *Official Journal of the European Communities* (C 244, 30.9.1986) of the composition of the Economic and Social Committee,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling and Y. Galmot, Judges,

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 25 February 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 24 March 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 27 November 1986, the Confederazione italiana dirigenti di azienda (Italian Confederation of Company Directors and Managers, hereinafter referred to as 'CIDA'), its President, Mr d'Elia, and its Vice-President, Mr Marchesi, brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of the Council decision of 15 September 1986 appointing the members of the Economic and Social Committee for the period from 21 September 1986 to 20 September 1990 (Official Journal 1986, C 244, p. 2).

2 With a view to the appointment of new members of the Economic and Social Committee for that period in accordance with Article 195 of the Treaty, the Member States provided the Council in July and August 1986

with lists containing twice as many candidates there were seats allotted to their nationals. After receiving the lists, the Secretariat-General of the Council transmitted each national list to the Commission for the purposes of consultation. The Commission subsequently expressed a favourable opinion on the national candidatures.

3 The list submitted by the Italian Government contained the names of 48 candidates, divided into three groups of 16 representing employers, workers and other categories of economic and social activity, eight of whom were proposed as principal candidates and eight as alternative candidates. Mr d'Elia and Mr Marchesi were the first and eighth alternative candidates respectively in Group III (other categories of economic and social activity).

4 At a meeting on 5 September 1986, the Committee of Permanent Representatives of the Member States at the Council drew up a list containing the national candidates whose names had been submitted as principal candidates. By decision of 15 September 1986, the Council appointed the members of the Economic and Social Committee on the basis of that list and Mr d'Elia and Mr Marchesi were not among those appointed.

5 The applicants contest the Council's decision essentially on the ground that the composition of the Economic and Social Committee does not take account of the need to ensure adequate representation of the various categories of economic and social activity. They also submit that the decision constitutes a misuse of powers.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

Admissibility

7 The Council and the Kingdom of Spain claim that the application is inadmissible under the second paragraph of Article 173 of the Treaty. They claim that since the purpose of the contested decision is the appointment of members of the Economic and Social Committee, the members appointed are the only persons to whom it is addressed. The applicants cannot show that the Council's decision affects them directly and individually.

8 The applicants, on the other hand, consider that their application is admissible. CIDA is directly and individually concerned by the Council's decision since no member of that organization, which represents all senior managers in Italian undertakings, is now a member of the Economic and Social Committee. Mr d'Elia and Mr Marchesi were on the list of 48 eligible candidates put forward by the Italian Government and therefore sufficiently identifiable and distinguishable from any other person.

9 Under the second paragraph of Article 173 of the Treaty, an individual may institute proceedings for the annulment of a decision not addressed to him if that decision is of direct and individual concern to him. It must therefore be determined whether CIDA, Mr d'Elia and Mr Marchesi, who were not among the persons to whom the contested decision was addressed, are nevertheless directly and individually concerned by that decision.

10 As the Court has held on numerous occasions (see, most recently, the judgment of 2 February 1988 in Joined Cases 67, 68 and 70/85 *Van der Kooy and Others v Commission* ((1988)) ECR 219), persons other than those to whom a decision is addressed may claim to be individually concerned by that decision only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and if by virtue of those factors it distinguishes them individually just as in the case of the person addressed.

11 Unlike Article 18 of the ECSC Treaty, which gives representative organizations the right to submit candidates for appointment to the consultative committee, Article 195 of the EEC Treaty does not give them any such right. The latter provision lays down the rule that the composition of the Economic and Social Committee must take account of the need to ensure adequate representation of the various categories of

economic and social activity. The position of an organization such as CIDA, which, at national level, represents merely one of the constituent elements of the category of ‘workers’ referred to in Article 193 of the Treaty and not the whole of that category, is not such as to require the Council to take account of it in adopting its decision. CIDA cannot therefore be considered to be individually concerned within the meaning of the second paragraph of Article 173 of the Treaty.

12 Consequently, its application must be dismissed as inadmissible.

13 With regard to the other two applicants, namely Mr d'Elia and Mr Marchesi, their names appeared on the list of 48 candidates put forward by the Italian Government from which the Council chose the 24 Italian members of the Economic and Social Committee. Those applicants were therefore sufficiently identified and, since they were not appointed, directly concerned within the meaning of the second paragraph of Article 173 of the Treaty. The objection of inadmissibility raised against them by the Council must therefore be rejected.

Substance of the case

14 Mr d'Elia and Mr Marchesi put forward two submissions in support of their application, alleging infringement of the Treaty and misuse of powers.

Infringement of the Treaty

15 The applicants claim first of all that the contested decision did not comply with the obligation laid down in Article 195 of the Treaty to ensure adequate representation of the various categories of economic and social activity. Such representation must be ensured both at European level and national level. If representation at national level is inadequate then the general composition of the Economic and Social Committee will necessarily also be inadequate, as is the case here.

16 The Council and the Government of the Kingdom of Spain contend that the applicants have not been able to prove that the members of the Economic and Social Committee are not sufficiently representative of the categories to which they belong or that the composition of the Economic and Social Committee is not such as to ensure an appropriate balance in the representation of the various categories. The fact that no representative of a national organization is a member of the Economic and Social Committee in no way implies an infringement of Article 195 of the Treaty.

17 It must be pointed out that under Article 4 (2) of the Treaty, the Council and the Commission are to be assisted by an Economic and Social Committee acting in an advisory capacity. The purpose of the Economic and Social Committee is thus to facilitate the task of the two institutions at Community level. It follows that adequate representation in the Economic and Social Committee of the various categories of economic and social activity referred to in the second subparagraph of Article 195 (1) of the Treaty must be ensured at Community level.

18 In determining whether those requirements have been fulfilled in this case it must be observed that that provision gives the Council a wide discretion. There is nothing in the documents before the Court to indicate that the Council used its power in a manifestly erroneous manner. It need merely be pointed out in that regard that senior business managers do not constitute a category within the meaning of Article 195 of the Treaty representation of which in the Economic and Social Committee is mandatory. Furthermore, it should be noted that managers are already represented in the Economic and Social Committee by a member of the French confédération générale des cadres (General Confederation of Company Directors and Managers).

19 The applicants' argument to the effect that the Council must also ensure that the national lists take account of the need to ensure adequate representation of the various categories of economic and social activity at national level cannot be upheld. Having regard to the limited number of seats, it is not possible for all the components of each category of economic and social activity to be represented by nationals of each of

the Member States.

20 The first submission must therefore be rejected.

Misuse of powers

21 In this submission, the applicants claim that the contested decision was adopted by the Council with the sole intention of following the national proposals in every respect by appointing only candidates proposed as principal candidates, without seeking to ensure proper representation of the various categories of economic and social activity. In support of those allegations, the applicants put forward a number of factors which indicate, in their view, that the contested decision is vitiated by a misuse of powers. They argue in particular that there was no discussion in the Council regarding the new composition of the Economic and Social Committee and that the Council's method of consulting the Commission was incompatible with Article 195 (2) of the EEC Treaty.

22 The Council and the Government of the Kingdom of Spain, on the other hand, consider that the applicants have not proved that the appointments were not made in the general interest of the Community or that acceptance of the Italian proposal did not meet the objective of ensuring adequate representation of the various categories of economic and social activity.

23 It must be pointed out first of all that the procedure for appointing members of the Economic and Social Committee is governed by Articles 194 and 195 of the Treaty. Those provisions provide that each Member State is to provide the Council with a list containing twice as many candidates as there are seats allotted to its nationals. After consulting the Commission and, if it wishes, obtaining the opinion of European bodies which are representative of the various economic and social sectors to which the activities of the Community are of concern, the Council makes the appointments by a unanimous decision.

24 With regard to the Council's obligation to appoint members on the basis of a list which contains twice as many candidates as there are seats to be filled, it should be noted that the Council is not bound by any distinction made by the Member States between candidates proposed as principal candidates and those proposed as alternative candidates. It is for the Council, and not for the national governments, to assess the representative character of the candidates submitted to it. It follows that the Council must consider the representative character of all the candidates appearing on the national lists before appointing the members of the Economic and Social Committee in accordance with the criteria laid down in Article 195.

25 In this case, it is common ground that the Council Decision of 15 September 1986, the contested decision, was adopted under the procedure for items in Part A laid down in the Rules of Procedure of the Council of 24 July 1979 (Official Journal 1979, L 268, p. 1), for which approval is possible without discussion. It can be seen from the minutes of the Council meeting of 15 September 1986 that no such discussion took place.

26 However, it appears from what was said in argument before the Court that the proposed candidates were considered by the Permanent Representatives Committee when the final list was drawn up for submission to the Council. There is nothing from which it can be concluded that on that occasion the representative character of the candidates was not taken into consideration. This complaint cannot therefore be upheld.

27 The applicants also complain that the Council did not consult the Commission as to the composition of the Economic and Social Committee. The Commission was consulted in each case on the proposals submitted by the various Member States and not on the composition of the Economic and Social Committee as a whole.

28 It is clear from the context of the first sentence of Article 195 (2) of the Treaty that in providing for consultation of the Commission that provision is intended to enable the latter to aid the Council in its task of ensuring adequate representation in the Economic and Social Committee of the various categories of

economic and social activity. The Council must therefore consult the Commission on the choices which it intends to make on the basis of the national proposals and not on those proposals themselves.

29 In this case the Council sent the national lists one by one to the Secretariat-General of the Commission, which gave a favourable opinion, one by one, on the candidatures submitted. In those circumstances the Commission could not, at that stage, consider whether the overall composition of the Economic and Social Committee fulfilled the conditions laid down in the second subparagraph of Article 195 (1) of the Treaty.

30 However, the Commission took part in the meeting of the Permanent Representatives Committee on 5 September 1986 and had the opportunity, on that occasion, of stating its position on the overall composition of the Economic and Social Committee as it stood at the time when the final list was drawn up for submission to the Council. The applicants' complaint in that regard must therefore be rejected.

31 Finally, the applicants claim that the Council's intention not to dispute the national proposals is shown by the fact that it did not obtain the opinion of representative European bodies.

32 In that regard it is sufficient to point out that the second sentence of Article 195 (2) of the Treaty does not require the Council to consult representative European bodies. That provision merely entitles the Council to obtain the opinion of such bodies in so far as it deems it necessary.

33 Consequently, the submission alleging a misuse of powers cannot be upheld either.

34 Since none of the applicants' submissions have been upheld, the application must be dismissed.

Costs

35 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleading. Since the applicants have failed in their submissions, they must be ordered jointly and severally to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application of the Confederazione italiana dirigenti di azienda as inadmissible;

(2) Dismisses the applications of Mr d'Elia and Mr Marchesi as unfounded;

(3) Orders the applicants jointly and severally to pay the costs.

Mackenzie Stuart
Bosco
Moitinho de Almeida
Rodríguez Iglesias
Koopmans
Everling
Galmot

Delivered in open court in Luxembourg on 30 June 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President

* Language of the case: Italian