

ORDER OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

26 October 2005 *

In Case T-124/04,

Jamal Ouariachi, residing in Rabat (Morocco), represented by F. Blanmailland and C. Verbrouck, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by F. Dintilhac and G. Boudot, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for damages for the loss allegedly suffered by the applicant, following the alleged illegal conduct of a member of staff of the Commission's Delegation in Khartoum (Sudan),

* Language of the case: French.

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

composed of: M. Vilaras, President, F. Dehousse and D. Šváby, Judges,

Registrar: E. Coulon,

makes the following

Order

Facts

- ¹ The applicant, of dual Moroccan and Spanish nationality, and Mrs R., a French national, residing at the material time in Rabat (Morocco) with their two children, also French nationals, were divorced on 31 January 2000. Under the terms of the divorce judgment, custody of the children was awarded to Mrs R. However, the applicant was awarded visiting rights.
- ² Mr C. is a Community official who works for the Commission. From 8 August 2000 to 16 May 2004, he was Head of Administration at the Commission's Delegation in Khartoum (Sudan) ('the Delegation'). The Head of Delegation, and Mr C.'s superior, was Mr M. At the material time, Messrs M. and C. were the only officials posted to the said Delegation. Mr C. was authorised to deputise for Mr M., notably in respect of administrative functions, when Mr M. was unavailable.

- 3 While he was in post at the Delegation, Mr C. wished to bring over Mrs R., his new companion, to join him. At this time, the Delegation sent a standard 'Verbal Note', dated 28 May 2002, and signed by Mr M., to the Sudanese Ministry of Foreign Affairs, to support the application for a short-term tourist visa made by Mrs R. on behalf of herself and her children.
- 4 The competent Sudanese authorities decided to issue a tourist visa to Mrs R. and her two children, who proceeded to leave Moroccan territory on 20 June 2002, and to go to Khartoum.
- 5 As the tourist visa was due to expire, Mrs R. began the process of obtaining a Sudanese residence permit. This application was also the subject of a 'Verbal Note' from the Delegation, for the attention of the Sudanese Ministry of Foreign Affairs. In the absence of the Head of Delegation, this 'Verbal Note' was signed by Mr C.
- 6 The competent Sudanese authorities decided to issue a residence permit to Mrs R. and her two children.
- 7 During the school year 2002/03, the two children of the applicant and Mrs R. attended the French School in Khartoum.
- 8 By judgment of 3 November 2003 of the Court of Appeal in Rabat, Mrs R. forfeited the custody of her two children. Custody was awarded to the applicant.

- 9 In the meantime, Mrs R. and her two children had left Sudanese territory to go to Belgium. During the school year 2003/04, the children continued their schooling at the School in Ethe (Belgium).
- 10 By application lodged at the Registry of the Court of First Instance on 25 February 2004, the applicant filed an action for damages for the loss allegedly suffered by him following the allegedly illegal conduct of Mr C. in the performance of his duties at the Delegation (Case T-82/04 *Ouariachi v Commission*). Following the applicant's withdrawal, and by order of the President of the Second Chamber of the Court of First Instance of 1 April 2004, Case T-82/04 was removed from the Court's Register.
- 11 In the course of his efforts to re-establish contact with his children, and to secure enforcement of the judgment of the Court of Appeal in Rabat, the applicant brought several actions before the competent Belgian authorities. As a result, by two judgments of 6 May 2004, the Court of Appeal in Liège (Belgium) provisionally ordered the return of the children to Morocco to join the applicant.

Procedure and arguments of the parties

- 12 These are the circumstances in which, by application lodged at the Registry of the Court of First Instance on 1 April 2004, the applicant brought this action.
- 13 By separate document lodged at the Registry on 18 June 2004, the Commission raised a plea of inadmissibility pursuant to Article 114 of the Rules of Procedure of the Court of First Instance. The applicant lodged his observations on that plea on 25 August 2004.

¹⁴ In his application and in his observations on the plea of inadmissibility, the applicant claims that the Court should:

- at the outset, order all measures of inquiry necessary to establish that Mr C. used a 'forgery' to enable the children to be 'kidnapped' and, in particular, order:
 - the personal appearance of Mr C.;
 - the making of enquiries to the Delegation;
 - production of the file submitted by Mrs R. to the Consulate of the Republic of Sudan in Rabat to obtain a visa for herself and for her children;
- declare the action admissible and well founded;
- order the Commission to pay damages, fixed at a total sum of EUR 150 000, by way of compensation for the material and non-material loss suffered;
- order the Commission to pay the costs.

¹⁵ In its plea of inadmissibility, the Commission contends that the Court should:

- dismiss the action as manifestly unfounded and inadmissible, or declare that the Court of First Instance does not have jurisdiction, in the circumstances of this case;
- order the applicant to pay the costs.

Law

¹⁶ Under Article 111 of the Rules of Procedure, when an action manifestly lacks any foundation in law, the Court of First Instance can, without taking further steps in the proceedings, give a ruling by reasoned order. In the present case, the Court of First Instance considers that it has sufficient information from the documents on the case-file and decides, pursuant to that article, not to take any further steps in the proceedings.

¹⁷ Under the second paragraph of Article 288 EC, in the case of non-contractual liability, the Community is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.

¹⁸ It must be observed that as regards non-contractual liability, the Treaty subjects the Community to rules forming part of the Community legal system and which impose on it a uniform system in compensating for damage caused by its institutions and by its servants in the performance of their duties. The Treaty ensures the uniform application of this system and the independence of the institutions of the

Community by giving the Court of Justice jurisdiction in disputes in this matter. By referring at one and the same time to damage caused by the institutions and to that caused by the servants of the Community, Article 288 EC indicates that the Community is only liable for those acts of its servants which, by virtue of an internal and direct relationship, are the necessary extension of the tasks entrusted to the institutions. In the light of the special nature of this legal system, it would not therefore be lawful to extend it to categories of acts other than those referred to above (Case 9/69 *Sayag v Leduc* [1969] ECR 329, paragraphs 5 to 8).

- 19 In the present case, to support his claim for damages, the applicant raises in his application a first plea alleging that Mr C. drew up, and sent to the Sudanese Ministry of Foreign Affairs, the 'Verbal Note' of 28 May 2002 (see paragraph 3 above), prior to the grant, by the competent Sudanese authorities, of a tourist visa to Mrs R. and her two children.
- 20 In his submissions on the plea of inadmissibility, however, the applicant makes clear that he is not calling into question the said 'Verbal Note' (which was signed, in any event, by the Head of Delegation, Mr M.); rather, he is challenging the second 'Verbal Note' addressed by the Delegation to the Sudanese Ministry of Foreign Affairs, before the Sudanese authorities decided to issue (on Mrs R.'s application) a residence permit to herself and her two children (see paragraphs 5 and 6 above). The Note in question which, in the absence of the Head of Delegation, was signed by Mr C., constituted, the applicant claims, a forgery, and allowed Mrs R. and her two children to set up home in Sudan without the applicant's permission. In so doing, the applicant claims, Mr C. became party to the children's 'international kidnapping' and committed an unlawful act for which the Community is liable.
- 21 That plea cannot be upheld.

- 22 In this regard, it must be observed (as indeed the Commission has contended) that the 'Verbal Note' in question merely constitutes a practice, followed *inter alia* in developing countries where administrative delays are common and used when a member of staff in the Commission's Delegation in one such country seeks to bring over close relations to join him. Given this evidence (which indeed the applicant does not contradict), the drawing up of the 'Verbal Note' in question can only be considered an act which is the necessary extension of tasks entrusted to the institutions — in this case, tasks entrusted to the Delegation — within the meaning of the case-law cited at paragraph 18 above.
- 23 It follows that it must be held that, in signing the said 'Verbal Note', Mr C. acted in the performance of his duties, within the meaning of the second paragraph of Article 288 EC.
- 24 In any event, even if a direct link of cause and effect between the conduct at issue, and the alleged loss were possible, such a link is manifestly lacking here.
- 25 Moreover, the causal link required by the second paragraph of Article 288 EC requires the existence of a direct link of cause and effect between the unlawfulness of the conduct of the Community and the damage alleged; in other words, the damage must be a direct consequence of the conduct complained of (see the judgment of 4 October 1979 in Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier frères and Others v Council* [1979] ECR 3091, paragraph 21; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 51; Case T-175/94 *International Procurement Services v Commission* [1996] ECR II-729, paragraph 55; and Case T-146/01 *DLD Trading v Council* [2003] ECR II-6005, paragraph 72). The applicant has the burden of proving a direct link of this kind (Case T-168/94 *Blackspur and Others v Council and Commission* [1995] ECR II-2627, paragraph 40).

- 26 In the present case, it was clearly the decision of the competent Sudanese authorities (upon Mrs R.'s application) to issue a residence permit to Mrs R. and her children, which permitted them to set up home in Sudan. The Note sent, at that time, by the Delegation to the Sudanese Ministry of Foreign Affairs simply sought to support the interested party's application and to expedite the handling of her file, in accordance with the abovementioned practice. It cannot be compared to an order issued to the Sudanese authorities, which retained their sovereign right to decide whether or not to issue a residence permit on the basis of the relevant domestic law.
- 27 In any event, the applicant has adduced no evidence of the existence of a direct causal link between the conduct complained of and the loss pleaded.
- 28 In support of his action the applicant also raises a second plea, alleging that Mr C. usurped his identity in placing his own signature, next to that of Mrs R., in the space in school reports reserved for parents, as drawn up by the French School in Khartoum and by the Belgian school in Ethe attended by the two children in question. Mr C. had no parental link to the children, and had not obtained the applicant's consent to sign the said documents in his place; the applicant therefore claims that he was denied his parental rights as a father by these acts, which Mr C. committed purposely in order to cause him injury.
- 29 In this regard, it is worth noting that these acts of which Mr C. is thus accused manifestly lack any link with the performance of Mr C.'s duties. The Community cannot, therefore, be responsible for such conduct, within the meaning of the second paragraph of Article 288 EC.

³⁰ The mere assertion by the applicant that the Court of First Instance must hold the Community liable in this case because of the alleged difficulty of bringing an action against Mr C., who enjoys immunity, is not sufficient to cast doubt on the conclusion in the preceding paragraph. It is for the applicant, if at all, to seek to have Mr C.'s immunity waived.

³¹ It follows that the second plea must therefore be dismissed as manifestly unfounded.

³² Taking into account all of the above factors, the action must be dismissed in its entirety as being manifestly unfounded, without it being necessary to give a ruling on the plea of inadmissibility raised by the Commission, or to order the measures of inquiry, or to take the measures of organisation of procedure, sought by the applicant.

Costs

³³ 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 applicant has been unsuccessful, and the Commission has applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby orders:

- 1. The action is dismissed as manifestly unfounded.**
- 2. The applicant shall pay the costs.**

Luxembourg, 26 October 2005.

E. Coulon

Registrar

M. Vilaras

President