

JUDGMENT OF THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

6 May 1997 *

In Case T-195/95,

Guérin Automobiles, a company incorporated under French law, in liquidation, with its registered office at Alençon (France), represented by Jean Claude Fourgoux, of the Paris Bar and of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Pierrot Schiltz, 4 Rue Béatrix de Bourbon,

applicant,

v

Commission of the European Communities, represented initially by Francisco Enrique González Díaz, of its Legal Service, and Guy Charrier, a national civil servant on secondment to the Commission, acting as Agents, and subsequently by Giuliano Marengo, Legal Adviser, and Guy Charrier, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: French.

ACTION for damages based on the alleged failure of the Commission to act, in so far as its failure to take a decision on a complaint submitted by the applicant has caused the latter damage,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Second Chamber, Extended Composition),

composed of: C. W. Bellamy, President, C. P. Briët and A. Kalogeropoulos, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 20 November 1996,

gives the following

Judgment

Facts

- 1 The applicant, a car-dealer which was put into judicial liquidation (*liquidation judiciaire*) by judgment of 22 May 1995 of the Tribunal de Commerce, Alençon, lodged a complaint with the Commission on 27 May 1994 (see paragraph 24, below), which was registered on 6 June 1994, against Nissan France SA, which imports Nissan vehicles and is a subsidiary of the Japanese manufacturer.

- 2 In the complaint the applicant stated that it had been a dealer for Nissan France, which early in 1991 had unilaterally terminated its dealership agreement with effect from the beginning of 1992. Thereafter, Nissan France 'continued to invoke its exclusive distribution system in order to refuse any compensation for Mr Guérin, to discriminate in favour of another dealer and to refuse to sell to him on several occasions'. The applicant then challenged the compatibility of the standard dealership agreement used by Nissan France with Commission Regulation (EEC) No 123/85 of 12 December 1984 on the application of Article 85(3) of the EEC Treaty to certain categories of motor vehicle distribution and servicing agreements (OJ 1985 L 15, p. 16). The applicant claimed that the effects of the contract precluded its exemption under Article 85(3) of the Treaty and stated that it 'left the matter to the Commission, which has the power to rule on Nissan's practices, since Article 10 of Regulation No 123/85 enables it to withdraw the exemption'. To that end, it criticized several clauses in the standard dealership agreement or practices of Nissan France following from it and declared that it based its complaint on infringement of Article 85(1) of the Treaty.
- 3 By letter of 30 June 1994 the Commission sent a copy of that complaint to Nissan France and requested it to comment on the matters alleged; on the same day, the Commission informed the applicant that it had done so. Two months later Nissan France sent its reply to the Commission, which communicated it to the applicant in September 1994.
- 4 By letter of 21 February 1995 the applicant informed the Commission of its observations on Nissan France's reply. It stated in particular that 'a comparison of the evidence ... in support of [its] complaint, an analysis of the two versions of the contract and Nissan's response were already sufficient to enable the Commission to issue a statement of objections'. After commenting in detail on Nissan France's replies, the applicant stated that it 'once again requests the Commission to issue Nissan with a statement of the objections which are clearly evident from a study of the file', and finished by stating that it 'continued to be at your disposal'.

5 The Commission did not reply to that letter.

Procedure

- 6 On 17 October 1995 the applicant brought the present action, which seeks a declaration under Article 175 of the EC Treaty that the Commission has failed to act and compensation from the Commission for the alleged damage resulting therefrom under Article 215.
- 7 By separate document lodged on 4 December 1995 at the Registry of the Court, the Commission raised a plea of inadmissibility based on Article 114(1) of the Rules of Procedure. The applicant lodged its observations regarding that plea on 8 January 1996.
- 8 By order of 11 March 1996 (Case T-195/95 *Guérin Automobiles v Commission* [1996] ECR II-171) the Court of First Instance dismissed the application as inadmissible in so far as it sought a declaration that the Commission had failed to act. It reserved for final judgment the decision on the Commission's plea that a claim for compensation was inadmissible. Costs were reserved.
- 9 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber, Extended Composition) decided to open the oral procedure. The hearing took place on 20 November 1996 before a chamber composed of C. W. Bellamy, President, and H. Kirschner, C. P. Briët, A. Kalogeropoulos and A. Potocki, Judges. At the hearing the parties were authorized to lodge a letter addressed by the Commission to the applicant on 25 July 1996 in accordance with Article 6 of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47), the applicant's reply of 29 August 1996,

and the judgment of 22 March 1996 delivered by the Tribunal de Commerce, Versailles in an action brought by the applicant against Nissan France on 22 October 1992.

- 10 Following the death of Judge Kirschner on 6 February 1997 this judgment was deliberated by three judges, whose signature it bears, in accordance with Article 32(1) of the Rules of Procedure.

Forms of order sought

- 11 The applicant claims that the Court of First Instance should:

- declare that the Commission must make good the damage caused to Guérin Automobiles which is assessed at FF 1 577 188.53;

- order the Commission to pay the costs.

- 12 The Commission contends that the Court of First Instance should:

- dismiss the application as inadmissible, or in the alternative as unfounded;

- order the applicant to pay the costs.

Admissibility

Arguments of the parties

- 13 In the application the applicant claims that the Commission's failure to act led to its being placed in liquidation with liabilities amounting to FF 1 289 128.10, a situation attributable to the delay in the procedure for obtaining compensation on the termination of its dealership contract, for which the Commission and Nissan France, from whom the Commission may always claim a contribution, are therefore jointly and severally liable. The applicant states that the compensation sought in those proceedings is FF 2 420 676. The delay in paying that compensation has given rise, between May 1994 and the date on which this action was lodged, to interest amounting to FF 288 060.43, for which the Commission is likewise liable.
- 14 The total damage to be made good by the Commission is therefore FF 1 289 128.10 plus FF 288 060.43, or FF 1 577 188.53.
- 15 The Commission points out, first, that to allow the action in so far as it seeks to establish its liability for an alleged failure to act when the Court of First Instance has rejected the action as inadmissible in so far as it seeks a declaration of such failure would amount to authorizing an applicant to circumvent the rules on admissibility. The independent nature of an action for damages, which has been recognized by the Court of Justice, in the context of damage attributable to a failure to act which has not been established, is restricted to cases in which the applicant did not have the capacity to bring an action for failure to act under Article 175 of the Treaty and where the claims for compensation are not closely linked to the action.
- 16 Secondly, it claims that particulars of the nature and extent of the alleged damage, sufficient for it to be able to assert its rights, have not been given. The applicant itself admitted in the application that 'it is very difficult for the complainant to

quantify the costs attributable to the delay in dealing with its case'. The application fails to meet the conditions regarding the alleged damage laid down by Article 19 of the EC Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, which require the application to state in particular, in addition to the subject-matter of the proceedings, a 'summary of the pleas in law on which the application is based'. For that purpose the applicant is required to include sufficient information to enable the defendant to submit argument on the substance of the case and the Community court to exercise its power of review (Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others v High Authority* [1961] ECR 218, at page 294, and Case 281/82 *Unifrex v Commission and Council* [1984] ECR 1969, paragraph 15).

- 17 The Commission points out that in order to meet those requirements it is not sufficient for the claims for compensation submitted in this case to be based on hypothetical situations, by referring to a liquidation and attributing, without any arguments whatsoever, the entire amount of the applicant's liabilities to the Commission, and then adding an amount calculated *pro rata tempore* which is supposed to correspond to the delay in the hypothetical compensation sought by the applicant in the context of proceedings before the national courts concerning the termination of its dealership contract.
- 18 The applicant argues in its reply that its action for non-contractual liability is independent of the action for failure to act and of the remedies available through the national courts. The claim that the Commission is liable will enable the Court of First Instance, by a legal analysis of the facts, to directly determine that they constitute misconduct sufficiently serious to make the defendant institution incur non-contractual liability therefor.
- 19 At the hearing Counsel for the applicant argued further that in the proceedings brought by the applicant before the Tribunal de Commerce, Versailles (see paragraph 9 above) Nissan France requested that the proceedings be stayed pending a decision from the Commission on the applicant's complaint. The Commission's failure to react with due care and diligence therefore prevented its action in the

national courts from progressing and contributed to its having to be placed in liquidation.

Findings of the Court

- 20 Under Article 19 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance all applications must indicate the subject-matter of the proceedings and include a brief statement of the grounds relied on. The information given must be sufficiently clear and precise to enable the defendant to prepare his defence and the Court of First Instance to decide the case, if appropriate without other information. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible the essential facts and law on which it is based must be apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible (see, for example, the order made by the Court of First Instance in Case T-56/92 *Koelman v Commission* [1993] ECR II-1267, paragraph 21).
- 21 In order to satisfy those requirements, an application seeking compensation for damage caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage it claims to have suffered, and the nature and extent of that damage (Case T-387/94 *Asia Motor France and Others v Commission* [1996] ECR II-961, paragraph 107).
- 22 It also appears from the case-law that an application which lacks the necessary precision must be declared inadmissible and that an infringement of Article 19 of the Statute of the Court of Justice and of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance is a bar to proceeding which the Court may raise of its own motion at any time in accordance with Article 113 of the Rules of Procedure (*Asia Motor France*, cited above, paragraph 108).

- 23 In this instance the part of the application concerning the claims for compensation reads as follows: 'The Commission's failure to act led to Guérin Automobiles being placed in liquidation with liabilities amounting to FF 1 289 128.10. That situation is attributable to the delay in paying compensation to Guérin Automobiles, for which the Commission and Nissan France, from whom the Commission may always claim a contribution, are therefore jointly and severally liable. Furthermore, the proceedings concerning the termination of the dealership contract seek compensation amounting to FF 2 420 676. Interest for late payment from May 1994 to this day (the date on which the application was lodged), calculated at the legal rate applicable in France, (makes the following sum):

$$\frac{2\,420\,676 \times 8.4\% \times 17 \text{ F}}{12} = 288\,060.43 \text{ F}$$

which sum the Commission must pay on that basis until such time as the failure is (terminated). The total damage to be made good by the Commission, for which it is liable as a result of its failure to act, amounts to FF 1 577 188.53'.

- 24 The Court considers that neither that reasoning nor the application considered as a whole enables a causal link between the Commission's alleged failure to act and the damage claimed by the applicant to be identified with the requisite clarity and precision. The applicant claims that the damage consists principally in its having been placed in liquidation on 22 May 1995 with liabilities of FF 1 289 128.10. However, even if it can be established that the Commission was guilty of failure to act between 27 May 1994 (the date on which the complaint was lodged) or 21 February 1995 (the date of the applicant's last letter to the Commission) and 22 May 1995 (the date on which the applicant went into liquidation), the applicant has failed to provide any indication in its application capable of explaining to what extent the Commission was liable for the damage thus quantified. Neither the defendant nor the Community court is able, therefore, to ascertain how a failure to

act might have contributed to increasing Guérin's liabilities and hence to its being placed in liquidation.

- 25 The same applies with regard to the damage amounting to FF 288 060.43 which the applicant claims to have suffered, corresponding to the delay since May 1994 in payment of compensation allegedly due to it from Nissan France as a result of the termination of its dealership contract. Again, the application supplies no indication of any causal link between the sum sought, FF 288 060.43, and an alleged failure of the Commission to act.
- 26 The explanations supplied for the first time at the hearing (see paragraph 19 above), after the closure of the written proceedings, cannot serve to remedy the lacunae in the application. Explanations supplied at this stage, in breach of Article 44(1)(c) of the Rules of Procedure, do not enable the defendant to exercise its rights of defence or the Court of First Instance to review the relevance or accuracy of such statements.
- 27 Accordingly, the action must be dismissed as inadmissible.

Costs

- 28 Article 87(2) of the Rules of Procedure provides that 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's claims regarding failure to act (see the order made in *Guérin Automobiles v Commission*, cited above) and for compensation have

been unsuccessful, it must be ordered to pay its own costs together with those of the Commission, which has applied for them.

On those grounds,

THE COURT OF FIRST INSTANCE
(Second Chamber, Extended Composition)

hereby:

- 1. Dismisses the claims for compensation as inadmissible;**
- 2. Orders the applicant to pay the costs, including those relating to the proceedings concerning the claim for a declaration of failure to act.**

Bellamy

Briët

Kalogeropoulos

Delivered in open court in Luxembourg on 6 May 1997.

H. Jung

Registrar

C. W. Bellamy

President