

Case T-174/00

Biret International SA

v

Council of the European Union

(Substances having a hormonal action — Directive 88/146/EEC —
Action for damages — Period of limitation)

Judgment of the Court of First Instance (First Chamber), 11 January 2002 II - 21

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Summary of the Judgment

1. *Procedure — Originating application — Formal requirements — Identification of the subject-matter of the dispute — Summary of the pleas raised — Action seeking compensation for damage caused by a Community institution*
(EC Statute of the Court of Justice, Arts 19 and 46; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))
2. *Actions for damages — Subject-matter — Application for compensation for damage attributable to the Community — Exclusive jurisdiction of the Community judicature*
(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC))

3. *Actions for damages — Limitation period — Starting point — Date to be taken into consideration*
(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC); EC Statute of the Court of Justice, Arts 43 and 46)
4. *Community law — Principles — Legitimate expectations — Directive prohibiting the use in livestock farming of certain substances having a hormonal action — Infringement — None*
(Council Directive 88/146)
5. *International agreements — Agreement establishing the World Trade Organisation — GATT 1994 — Direct effect — None — Not possible to rely on the WTO agreements in order to contest the lawfulness of a Community act or as the basis for an action for damages — Exceptions — Community measure intended to implement a WTO agreement or expressly and specifically referring thereto*
(General Agreement on Tariffs and Trade of 1994)

1. Under Article 19 of the EC Statute of the Court of Justice, applicable to the proceedings before the Court of First Instance under Article 46 of that Statute, and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which it is based. The information given must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to give a ruling, if necessary, without other supporting information. In order to ensure legal certainty and sound administration of justice, for an action to be admissible the facts and law on which it is based must be apparent from the text of the application itself, at least summarily, provided that the statement is coherent and comprehensible. 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 there to be a causal link between that conduct and the damage it claims to have suffered, and the nature and extent of that damage.

(see para. 31)

2. Where, in the context of an action for damages, the improper conduct originates not from a national body but from a Community institution, any damage ensuing from the implementation of the Community legislation by the national authorities, which had no discretion, is attributable to the Community. Since the Community judiciary has exclusive jurisdiction under Article 215 of the Treaty (now Article 288 EC) to hear actions seeking compensation for such damage,

remedies available under national law cannot automatically guarantee effective protection of the rights of individuals who consider themselves to have been adversely affected by measures of the Community institutions.

not affect rights which arose during subsequent periods.

(see paras 38, 41)

(see paras 33–34)

3. The limitation period for proceedings against the Community in matters arising from non-contractual liability, laid down in Article 43 of the EC Statute of the Court of Justice, which applies to the procedure before the Court of First Instance under Article 46 of that Statute, cannot begin before all the requirements governing the obligation to make good the damage are satisfied and, in particular, in cases where liability stems from a legislative measure, before the injurious effects of the measure have been produced.
4. Directive 88/146 prohibiting the use in livestock farming of certain substances having a hormonal action did not frustrate the legitimate expectations of the traders affected by the prohibition of the use of the hormones. In view of the differing appraisals which had emerged, traders were not entitled to expect that a prohibition on administering the substances in question to animals could be based on scientific data alone.

Where the damage was not caused immediately but recurred on a daily basis over a particular period as a result of an unlawful measure remaining in force, with respect to the date of the event which interrupted the limitation period, the time bar under Article 43 of the EC Statute of the Court of Justice applies to the period preceding that date by more than five years and does

The possibility that Directive 88/146 might not have been applied by Member States cannot be likened to conduct by the Council capable of having given rise to legitimate expectations on the part of traders. Moreover, failure to apply it would have been in manifest breach of the obligations on Member States under the Treaty and, more particularly, the obligations imposed on them by that directive. No-one may have a legitimate expectation that an unlawful situation will be maintained or, there-

fore, base such an expectation on the possible failure on the part of Member States to transpose and effectively implement a Council directive.

Lastly, traders cannot have a legitimate expectation that an existing situation which is capable of being altered by the Community institutions in the exercise of their discretionary power will be maintained. *A fortiori*, therefore, such traders are not justified in placing legitimate expectations in a future, hypothetical amendment of legislation, particularly in an area such as the common agricultural policy where, as a result of its potential effects on public health, any legislative amendment depends on unpredictable developments in scientific knowledge and complex assessments to be made by the legislature.

(see paras 50, 54–55)

5. In view of their nature and structure the WTO Agreement and its annexes, in the same way as GATT 1947, do not in principle form part of the rules by

which the Court of Justice and the Court of First Instance review the legality of acts adopted by Community institutions under the first paragraph of Article 173 of the Treaty (now, after amendment, the first paragraph of Article 230 EC); individuals cannot rely on them before the courts and any infringement of them will not give rise to non-contractual liability on the part of the Community. It is only where the Community intended to implement a particular obligation assumed in the context of the WTO, or where the Community measure refers expressly to the precise provisions of the WTO agreements, that it is for the Community judicature to review the legality of the Community measure in question in the light of the WTO rules. Since Directives 81/602 and 88/146, which prohibit the use in livestock farming of certain substances having a hormonal action, were adopted several years before the entry into force of the Agreement on the Application of Sanitary and Phytosanitary Measures, which is one of the WTO agreements, it is not logically possible for them either to give rise to a specific obligation entered into under that agreement or to refer expressly to some of its provisions.

(see paras 61, 63–64)