

# Case T-201/94

Erwin Kusterman

v

Council of the European Union  
and Commission of the European Communities

(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Regulation (EC) No 2187/93 — Compensation for producers — Interruption of the limitation period)

Judgment of the Court of First Instance (Fourth Chamber), 7 February 2002 II - 418

## Summary of the Judgment

- Actions for damages — Limitation period — Starting point — Liability on account of Regulation No 857/84 resulting in a reference quantity not being allocated to milk producers who entered into a non-marketing undertaking — Date to be taken into consideration*  
(EC Treaty, Arts 178 and 215 (now Arts 235 EC and 288 EC); EC Statute of the Court of Justice, Art. 43; Council Regulations Nos 1078/77 and 857/84)

2. *Actions for damages — Limitation period — Interruption — Conditions — Bringing of proceedings before the Community judicature or lodging of a preliminary application with the relevant institution*

(EC Treaty, Art. 173 (now, after amendment, Art. 230 EC) and Art. 175 (now Art. 232 EC); EC Statute of the Court of Justice, Art. 43; Council Regulations Nos 1078/77, 857/84 and 2187/93; Communication of the Council and Commission 92/C 198/04)

1. The limitation period for actions against the Community on grounds of non-contractual liability, such as those seeking compensation for damage suffered by producers of milk or milk products who, on account of non-marketing or conversion undertakings entered into under Regulation No 1078/77, could not, in the light of Regulation No 857/84, be allocated a reference quantity, and were consequently unable to market any quantity of milk exempt from the additional levy, started to run the day after the non-marketing undertaking expired and the date on which Regulation No 857/84 began to have injurious effects on the applicant by preventing him from resuming marketing milk. Since, moreover, that damage was not caused instantaneously but recurred on a daily basis, the time bar under Article 43 of the Statute of the Court of Justice applies to the period preceding by more than five years the date of the event which interrupted the limitation period and does not affect rights which arose during subsequent periods.
2. Under Article 43 of the Statute of the Court of Justice the limitation period is interrupted only if proceedings are instituted before the Community judicature or if, prior to such proceedings, an application is made to the relevant Community institution, provided always that, in the latter case, interruption only occurs if the application is followed by proceedings brought within the time-limits determined by reference to Article 173 of the Treaty (now, after amendment, Article 230 EC) or Article 175 of the Treaty (now Article 232 EC), depending on the case.

With respect to damage suffered by producers of milk or milk products who, on account of non-marketing or conversion undertakings entered into under Regulation No 1078/77, could not, in the light of Regulation No 857/84, be allocated a reference quantity, and were consequently unable to market any quantity of milk exempt from the additional levy, the waiver of the right to plead limitation contained in the Communication of the Council and the Commission relating to the subsequent adoption of Regu-

(see paras 62-64)

lation No 2187/93 providing for an offer of compensation to the producers concerned is a unilateral act which was intended to limit the number of actions brought by encouraging producers to await the introduction of the flat-rate compensation scheme provided for by that regulation. Under that regulation, producers could apply for a compensation offer to be made to them, the time-limit for acceptance of which was two months. Consequently, under Article 14 of Regulation No 2187/93, as from expiry of that time-limit the institutions were no longer bound by that offer and could again plead limitation.

However, where the offer of compensation for damage falls within a context in which producers were asked not to make a preliminary application or institute proceedings for compensation, because the institutions were introducing a system of flat-rate compensation by way of settlement, refusal of the compensation offer, whether express or resulting from expiry of the period for acceptance laid down in that context, may not have stricter consequences as regards the calculation of the limitation period than those which would ensue from a decision by the administration rejecting an application for compensation made by an individual. Such a refusal embodies, in the same way as a decision rejecting such an application, the disagreement between the administration and the person applying for compensation.

It follows that, in such a case, the event which causes the period of two months laid down in Article 43 of the Statute of the Court of Justice by reference to Article 173 of the Treaty to start to run is the date of expiry of the period for accepting the offer or, as the case may be, the date of express refusal of the offer. Only that interpretation allows due regard to be had to the purpose of the period for acceptance, which is to afford the individual a certain time for reflection before making a decision on the compensation offered to him by way of settlement, a decision which, depending on its nature, will avoid recourse to legal action. Thus, producers who waited, on the basis of the undertaking given by the institutions to make them an offer of compensation, before instituting proceedings for compensation before the Court of First Instance, then instituted such proceedings within a period of two months following the expiry of the period for accepting the offer made to them, must be entitled to rely on the undertaking given by the institutions to waive the right to plead limitation, and to have the period of limitation of their action interrupted, in accordance with Article 43 of the Statute of the Court of Justice, on the date of the Communication of the Council and Commission.

(see paras 67-69, 73-76)