JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
4 February 1998 *

In Case T-94/95,

Jean-Pierre Landuyt, residing at Grisolles (France), represented by Jean-François Le Petit, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

French Republic, represented initially by Catherine de Salins, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Frédéric Pascal, Chargé de Mission in the same directorate, and subsequently by Kareen Rispail-Bellanger, Assistant Director in the same Directorate, and Mr Pascal, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8b Boulevard Joseph II,

intervener,

* Language of the case: French.

APPLICATION, first, for annulment of the decision of the Office National Interprofessionnel du Lait et des Produits Laitiers of 20 January 1995 finding the applicant ineligible for compensation under Council Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196, p. 6) and, second, for an order requiring the Commission to make good the loss suffered as a result of that decision,

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

composed of: A. Saggio, President, V. Tiili and R. M. Moura Ramos, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 21 October 1997,

gives the following

Judgment

Facts and legislation

1 The applicant, a milk producer, operates his holding within the framework of an agricultural cooperative formed with Mr Laga. Pursuant to Council Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the

non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1), he entered into a non-marketing undertaking which expired on 1 July 1985.

2 Meanwhile, on 31 March 1984, the Council had enacted Regulation (EEC) No 857/84 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13). That levy was payable by producers who exceeded a reference quantity fixed on the basis of milk production delivered during a reference year.

3 Since Regulation No 857/84 did not originally provide specifically for the allocation of a reference quantity to producers who, like the applicant, had entered into a non-marketing undertaking under Regulation No 1078/77 and had thus delivered no milk during the reference year, it was declared partially invalid by two judgments delivered by the Court of Justice on 28 April 1988 in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 and Case 170/86 *von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355.

4 Following those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 (OJ 1989 L 84, p. 2) and, subsequently, Regulation (EEC) No 1639/91 of 13 June 1991 (OJ 1991 L 150, p. 35), both of which amended Regulation No 857/84. Those amending regulations provided for the allocation of a 'special' reference quantity to producers who had delivered no milk during the reference year. That reference quantity was initially granted on a provisional basis and subsequently became definitive following verification of compliance with certain conditions.

5 By judgment of the Court of Justice of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder* v *Council and Commission* [1992] ECR I-3061, the Community was ordered to make good the damage suffered by the applicants as a result of the application of Regulation No 857/84.

6 Following that judgment, the Council adopted Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196, p. 6).

7 Article 1 of that regulation provides for the grant of compensation to those producers who have suffered loss as a result of being prevented by an undertaking given pursuant to Regulation No 1078/77 from delivering or selling milk during the reference year.

8 Article 2 of Regulation No 2187/93 provides that an application for compensation is to be deemed eligible if it is submitted by a producer who has been allocated a definitive special reference quantity pursuant to Regulation No 764/89 or Regulation No 1639/91.

9 According to Article 14 of that regulation, an offer of compensation is to be made to the producers concerned by the competent national authority in the name and on behalf of the Council and the Commission.

10 A provisional special reference quantity was allocated to the applicant by order of the Prefect of the Département of Aisne of 31 August 1989. By prefectorial order of 8 November 1991, that special reference quantity became definitive with effect from 30 March 1991.

11 On 10 and 11 March 1994 the Office National Interprofessionnel du Lait et des Produits Laitiers (National Joint-Trade Dairy Office, hereinafter 'Onilait') carried out a check on the applicant's holding. It reached the conclusion that the applicant had not personally resumed milk production, contrary to Article 3a(3) of Regulation No 857/84.

12 By letter of 20 January 1995 the Director of Onilait informed the applicant that the special reference quantity allocated to him could not be regarded as definitive and that, without prejudice to the cancellation of that reference quantity, of which he would be given formal notice at a later date, Onilait was therefore not in a position to pay the compensation provided for by Regulation No 2187/93.

13 On 6 March 1995 the Director of Onilait adopted a decision cancelling the definitive special reference quantity which had been allocated to the applicant.

Procedure and forms of order sought by the parties

14 By application lodged at the Court of First Instance on 17 March 1995 the applicant applied pursuant to Articles 173 and 178 and the second paragraph of Article 215 of the EC Treaty for annulment of the decision contained in the letter from the Director of Onilait of 20 January 1995 and for an order requiring Onilait to pay the compensation provided for by Regulation No 2187/93, together with interest at the rate of 8% from 19 May 1992, FF 50 000 in respect of non-recoverable expenses and all the costs. That application was directed against Onilait in its capacity as 'agent of the European institutions, in particular of the Commission'. In response to a letter from the Court Registry of the same date, the applicant sent to the Court an amended version of the application, naming the Commission as defendant, which was received on 30 March 1995.

15 By document lodged at the Court of First Instance on 9 June 1995 the Commission raised an objection of inadmissibility, to which the applicant replied on 28 August 1995.

16 On 10 October 1995 the French Republic applied for leave to intervene in support of the form of order sought by the Commission.

17 By order of 29 November 1995 the President of the First Chamber of the Court of First Instance granted that application.

18 By order of the same date the Court ruled that the decision on the objection of inadmissibility raised by the Commission be reserved for the final judgment.

19 The intervener submitted its observations on 9 April 1996.

20 The written procedure closed on 31 May 1996 with the lodging of the rejoinder.

21 The parties presented oral argument and answered questions put to them by the Court at the hearing on 21 October 1997.

22 The applicant claims in his application that the Court should:

— annul the decision contained in the letter from the Director of Onilait of 20 January 1995;

— order the Commission to pay the compensation provided for by Regulation No 2187/93 together with interest at 8% per annum from 19 May 1992;

— order the Commission to pay FF 50 000 in respect of non-recoverable expenses;

— order the Commission to pay the costs.

23 In his reply he maintains his claims and asks that, in consequence, Onilait be ordered to make him an offer of compensation pursuant to Articles 10 and 14 of Regulation No 2187/93. In the alternative, he claims that he should be paid compensation amounting to FF 1 220 634.30 pursuant to Article 215 of the Treaty.

24 The Commission, as defendant, contends that the Court should:

— declare the action for annulment inadmissible or, alternatively, unfounded;

— declare the action for damages inadmissible or, alternatively, unfounded;

— order the applicant to pay the costs.

25 The French Government, as intervener, contends that the Court should grant the form of order sought by the Commission to the extent of declaring the actions for annulment and compensation unfounded.

The claim for annulment

Admissibility

Arguments of the parties

26 In support of its plea of inadmissibility, the Commission first contends that the application does not fulfil the conditions 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, inasmuch as it does not reveal the pleas in law on which it is based. The Commission considers, therefore, that it is not in a position to defend itself.

27 Second, it maintains that, if the action is to be interpreted as seeking annulment of the check carried out by Onilait on the applicant's holding, or of the decision cancelling the special reference quantity allocated to the applicant, it is inadmissible, since it is directed against acts carried out by the national authorities in the exercise of their ordinary and customary activities, which involve the implementation of the Community rules applicable to milk producers.

28 Contrary to the applicant's assertion, the acts in question are not mere preparatory acts preceding the decision to refuse to make an offer. That argument fails to take account of the Member States' extensive competence under the ordinary law in the matters of implementation of and verification of compliance with the Community rules, which is confirmed in the present case by the circular from the French authorities setting out the arrangements for implementation of the rules relating to the milk quota regime. It follows that the national courts constitute the natural forum for determining the legality of such acts.

29 In response to the first plea of inadmissibility raised by the Commission in opposition to the claim for annulment, the applicant maintains that the application contains all the particulars required.

30 As regards the second plea of inadmissibility, he states that what he is contesting is an act done by Onilait in its capacity as agent for the Community. Contrary to the Commission's contention, the control operations undertaken by Onilait, albeit that they are carried out within the framework of national law, are acts preparatory to a decision taken by that administrative body in its capacity as agent for the Community. Consequently, the Court has jurisdiction to review such acts.

31 The applicant submits that the three criteria governing the grant of compensation under Regulation No 2187/93 are fulfilled in his case. It is not disputed that he supplied milk to the dairy, that the milk was collected from the holding and that the holding possessed all the equipment needed for such production. Consequently, following the check carried out by it on 10 and 11 March 1994, Onilait could not object that the applicant had not personally resumed production without thereby adding to Regulation No 2187/93 conditions which it does not contain.

32 Consequently, the check in question did not show that the applicant was in breach of his obligations, and the contested act is vitiated by a factual error.

Findings of the Court

33 It is settled law that, according to the rules governing the powers conferred respectively on the Community and on the Member States, it is for the Member States to ensure that Community regulations, particularly those concerning the common agricultural policy, are implemented within their territory (judgment of the Court of Justice in Joined Cases 89/86 and 91/86 *Étoile Commerciale and CNTA* v *Commission* [1987] ECR 3005, paragraph 11; order of the Court of First Instance in Cases T-492/93 and T-492/93 R *Nutral* v *Commission* [1993] ECR II-1023, paragraph 26). Acts adopted by the national authorities in the context of the implementation of that policy are normally subject, therefore, to review by the national courts.

34 In the present case, the compensation system established by Regulation No 2187/93 confers on the national authorities the power to make offers of compensation to producers in the name and on behalf of the Council and the Commission (see the tenth recital in the preamble to and Article 14 of the regulation).

35 According to Article 2 of Regulation No 2187/93, only producers who have been allocated a definitive special reference quantity are eligible to receive an offer of compensation. Under Regulation No 857/84, as amended by Regulation No 764/89 and Regulation No 1639/91, the allocation of definitive special reference quantities is conditional on actual resumption of milk production.

36 It follows, therefore, that the power conferred on the national authorities by Regulation No 2187/93 to make an offer of compensation to each producer in the name and on behalf of the Council and the Commission (see paragraph 9 above) is itself closely linked to actual resumption of milk production by the offeree.

37 In the absence of such resumption, the essential prerequisite laid down by Regulation No 2187/93 for the making of an offer of compensation is not fulfilled.

38 According to the applicable rules, it is for the national authority responsible for making the offers of compensation to verify that production has been resumed (see Article 3a(3) of Regulation No 857/84, as added by Regulation No 764/89 and amended by Regulation No 1639/91).

39 Accordingly, acts which establish that no such resumption has taken place and which consequently refuse the allocation of a definitive special reference quantity fall for review by the national courts (Case T-271/94 *Branco* v *Commission* [1996] ECR II-749, paragraph 53). Indeed, the applicant has in fact challenged before the national court the act withdrawing the definitive special reference quantity and the findings made during the on-the-spot check carried out on his holding.

40 The applicant merely asserts that the contested act, that is to say, the refusal by the national authorities to make an offer of compensation, results from an error committed in the inspection carried out on his holding by those authorities. Thus, the only plea advanced by him as a ground for annulment is that relating to the verification of resumption of production.

41 In those circumstances, the claim for annulment is in substance directed against the findings made during the on-the-spot inspection carried out by the national authorities. It therefore seeks to call in question the validity of a decision taken by the national bodies responsible for implementing certain measures within the framework of the common agricultural policy (see, to the same effect, as regards actions for damages, the judgment of the Court of Justice in Joined Cases 12/77, 18/77 and 21/77 *Debayser* v *Commission* [1978] ECR 553, paragraph 25).

42 It follows that this Court does not have jurisdiction to review the legality of the act against which the claim for annulment is in substance directed.

43 Consequently, that claim is inadmissible.

The claim for damages

Admissibility

Arguments of the parties

44 The Commission submits that the claim for damages contained in the application is inadmissible, since in reality it seeks to attain the same objective as that pursued by the claim for annulment (Case T-514/93 *Cobrecaf and Others* v *Commission* [1995] ECR II-621). It maintains that the claim for damages is also inadmissible because it is not supported by certain indispensable information. In particular, the application does not disclose the pleas in law relied on in support of that claim, with the result that the Commission is prevented from defending its interests. Even after indicating in the reply the amount of the damage alleged, the applicant does not formulate any complaint against the Commission.

45 The applicant states, first, that if the claim for annulment is inadmissible this does not mean that the claim for damages is also inadmissible. Second, he contends that the application contains all the information required and that the Commission cannot find fault with it in that respect, possessing as it does information of a more concrete nature, of which the applicant has no knowledge, particularly as to the amount of compensation to which he is entitled. In his reply, he sets out a calculation of the compensation to which he claims to be entitled under Regulation No 2187/93.

Findings of the Court

46 The Court finds, as a preliminary point, that through his claim for damages the applicant is applying for payment of the compensation which should, in his view, have formed the subject of the offer which Onilait refused to make. He seeks an order requiring that authority to make him an offer of compensation in accordance

with Articles 10 and 14 of Regulation No 2187/93; in the alternative, he quantifies his claim for reparation in terms of compensation calculated on the basis of Regulation No 2187/93.

47 As the Court has found above (paragraphs 37 to 40), the refusal to make the applicant an offer of compensation attributable to the defendant under the circumstances specified in Regulation No 2187/93 resulted from the outcome of the checks carried out by the national authorities. Since the claim for damages is based on an alleged error in the findings made in the course of those checks, the event giving rise to the loss for which the applicant claims reparation is an act adopted by the national authorities in the exercise of their own powers. It follows that the conditions which must be satisfied for the matter to be brought before the Court under Article 178 and the second paragraph of Article 215 of the Treaty are not fulfilled. Those provisions confer jurisdiction on the Community judicature to award compensation only for damage caused by the Community institutions or by their servants in the performance of their duties. Thus, damage caused by national authorities cannot give rise to liability on the part of the Community and falls solely within the jurisdiction of the national courts, which will order compensation for such damage where appropriate (see, in particular, the judgment of the Court of First Instance in Case T-571/93 *Lefebvre and Others* v *Commission* [1995] ECR II-2379, paragraph 65, together with the judgments of the Court of Justice in Case 12/79 *Wagner* v *Commission* [1979] ECR 3657, paragraph 10, and Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraph 18).

48 Furthermore, according to settled case-law, even though an application for annulment and a claim for damages constitute two independent forms of action, and although the inadmissibility of an application for annulment does not in principle render inadmissible a claim for damages for the injury allegedly caused by the contested act, the fact that a claim for annulment is held to be inadmissible renders the claim for damages inadmissible where the action for damages is in fact aimed at securing the withdrawal of an individual decision which has become definitive and would, if upheld, have the effect of nullifying the legal effects of that decision (see, in particular, *Cobrecaf and Others* v *Commission*, cited above, paragraphs 58 and 59).

49 In the present case the claim for damages is designed to obtain an order requiring the defendant to pay the compensation refused by the contested decision. In effect, therefore, it seeks to achieve the very result which is precluded by that decision and which the applicant has attempted to bring about by means of his claim for annulment.

50 In those circumstances, the claim for damages must be dismissed as inadmissible.

51 The application for an order requiring the defendant to pay FF 50 000 in respect of 'non-recoverable expenses' is not supported by any facts or legal argument, as required by Article 44(1) of the Rules of Procedure, which would enable the Court to give a decision on it. Consequently, it must also be declared inadmissible.

Costs

52 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's claims are inadmissible, he must be ordered to pay the costs, as applied for by the Commission.

53 Pursuant to Article 87(4) of the Rules of Procedure, the French Republic, as intervener, must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby:

1. Dismisses the application as inadmissible;

2. Orders the applicant to pay the costs;

3. Orders the intervener to bear its own costs.

Saggio Tiili Moura Ramos

Delivered in open court in Luxembourg on 4 February 1998.

H. Jung
Registrar

A. Saggio
President