JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 February 2003 *

In Case T-333/01,

Karl L. Meyer, residing at Uturoa (French Polynesia), represented by J.-D. des Arcis, lawyer, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by M.-J. Jonczy and B. Martenczuk, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for compensation for damage allegedly suffered by the applicant because of alleged maladministration by the Commission in the application of decisions on the association of the overseas countries and territories,

* Language of the case: French.

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

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: B. Pastor, Deputy Registrar,

having regard to the written procedure and further to the hearing on 23 October 2002,

gives the following

Judgment

Association of the OCTs with the Community

1 Under Article 3(1)(r) of the EC Treaty (now, after amendment, Article 3(1)(s) EC), the activities of the Community include the association of the overseas countries and territories (hereinafter 'the OCTs'), 'in order to increase trade and promote jointly economic and social development'.

2 French Polynesia is one of the OCTs.

3 On the basis of Article 136 of the EC Treaty (now, after amendment, Article 187 EC), the Council adopted, on 30 June 1986, Decision 86/283/EEC on the association of the OCTs with the European Economic Community (OJ 1986 L 175, p. 1; hereinafter 'the OCT Decision of 1986').

4 Subsequently, several decisions relating to the association of the OCTs with the Community were adopted by the Council. On 25 July 1991, the Council adopted Decision 91/482/EEC (OJ 1991 L 263, p. 1) and, on 27 November 2001, Decision 2001/822/EC (OJ 2001 L 314, p. 1) (hereinafter, together with the OCT Decision of 1986, 'the OCT Decisions').

Facts and procedure

5 The applicant farms a tropical fruit plantation on the island of Raiatea in French Polynesia. Between 1985 and 1989 he took out several loans from a local bank, Banque Socredo, to finance his activities. The bank charged interest on the applicant's loans at rates varying between 7% and 12%.

6 The provision of those loans gave rise to certain disputes which were settled by two judgments of 12 May 1999 of the Cour d'appel (Court of Appeal), Papeete (Tahiti, France). In the first case (Judgment No 303), the Cour d'appel ordered

the applicant to pay the Banque Socredo a sum equivalent to EUR 537 191 in respect of the disputed loans. In the second case (Judgment No 302), the Cour d'appel found that the Banque Socredo was guilty of professional negligence and ordered it to pay the applicant a sum equivalent to EUR 15 093. Subsequently, the applicant filed his own bankruptcy petition and, on 5 May 2000, was granted the protection of simplified judicial administration.

7 Since he considered that he should have had the benefit, for his loans, of a privileged interest rate of 3% subsidised by the European Investment Bank (the EIB) and that the judgment for EUR 537 191 could thus have been avoided, the applicant, by application lodged at the Registry of the Court of First Instance on 28 December 2001, brought this action against the Commission and the Council.

8 By order of 5 July 2002, the Court of First Instance dismissed the action as inadmissible in so far as it was directed against the Council.

9 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Third Chamber) decided to open the oral procedure. It put to the applicant a written question, to which he replied on 29 July 2002.

10 The parties presented oral argument and replied to the questions put by the Court at the hearing on 23 October 2002.

Forms of order sought and application for production of documents

11 The applicant claims that the Court should:

— declare the action to be admissible and well founded;

— declare that the Commission was guilty of maladministration by serious failure to fulfil its obligations and by an unlawful failure to fulfil its obligations to implement and monitor the proper application of the OCT Decisions in French Polynesia;

— declare that the Commission has also infringed the principles of good administration and good faith;

— declare that the Commission was guilty of maladministration by providing false information to the European Parliament regarding the origin of the funds borrowed from the Banque Socredo and the applicant's rights under the OCT Decisions, which have direct effect;

— declare that such failures have caused damage to the applicant which the Commission must make good;

— allow the applicant a period of 12 months to quantify his claims;

— order the Commission to pay the costs.

12 The Commission contends that the Court should:

— since the action is manifestly inadmissible or unfounded, give a decision, under Article 111 of the Rules of Procedure, by reasoned order;

— in any event dismiss the action as inadmissible, or, alternatively, as unfounded;

— order the applicant to pay the costs.

13 In his reply, the applicant refers to the response which the Commission gave, on 7 July 2000, to Petition No 811/99, which he presented to the European Parliament, to the effect that, '[a]ccording to the information available to the Commission (confirmed by the EIB) the loans advanced by the Banque Socredo to the applicant were not financed by the EDF and were not found from the EIB's own resources'. The applicant seeks an order that the documents containing such information be submitted to the Court.

14 The Commission requests the Court to reject the application for production of documents.

Admissibility

15 Without formally raising a plea of inadmissibility, the Commission submits that the action is inadmissible in several respects. It maintains, first, that the application does not satisfy the minimum requirements of clarity and precision under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance. The application does not disclose the acts or omissions alleged against the Commission or what is the actual damage the applicant has suffered as a result of such acts or omissions.

16 The Court considers that the application, even though confused, none the less discloses two instances of alleged misconduct by the Commission which, according to the applicant, have caused him loss, namely the alleged failure to inform economic operators of the content of the OCT Decisions and the alleged lack of control and monitoring of the application of the OCT Decisions, on the one hand, and the alleged provision of false information to the European Parliament, on the other hand.

17 It must also be said that the Commission has filed a defence to those two complaints.

18 The application also discloses the nature of the damage allegedly caused by the Commission's alleged misconduct: the applicant claims that such conduct denied him the benefit of a privileged interest rate of 3% subsidised by the EIB for his loans from the Banque Socredo.

19 It follows that the application satisfies the minimum requirements of clarity and precision under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance.

20 Secondly, the Commission argues that, by the forms of order sought, the applicant is really asking the Court of First Instance to give consultative opinions on the legality of the Commission's actions. Yet the Court of First Instance does not have jurisdiction to give such opinions (Case T-361/99 *Meyer* v *Commission* [2000] ECR II-2031, paragraph 9).

21 That argument must be rejected. Indeed, it is clear from the application that the applicant is asking the Court of First Instance to declare illegal the misconduct alleged against the Commission and to order the Commission to compensate him for the damage caused by such misconduct.

22 Thirdly, the Commission submits that, to the extent that the application sheds any light on the cause of action, it seems to involve exactly the same complaints as those already pleaded by the applicant in Case T-361/99, which gave rise to the order in *Meyer* v *Commission*, cited above. That order constitutes *res judicata*.

23 In that regard, the Court recalls that the status of *res judicata* ensuing from the dismissal of an action by the Community judicature is such as to bar the admissibility of a second action where both actions are between the same parties, have the same purpose and are based on the same submissions (see Case T-162/94 *NMB France and Others* v *Commission* [1996] ECR II-427, paragraph 37 and the case-law cited).

24 This case and Case T-361/99 have the same parties and the same purpose. In both cases the same applicant seeks to obtain compensation from the Commission. In addition, both cases are based, at least in part, on the same submissions, namely the applicant's loans from the Banque Socredo and the lack of control by the Commission over the application of the OCT Decisions.

25 However, in Case T-361/99, the Court did not deal with the substance of the case. It was held to be manifestly inadmissible.

26 The principle of *res judicata* extends only to matters of fact and law actually or necessarily settled by the judicial decision in question (Case C-281/89 *Italy* v *Commission* [1991] ECR I-347, paragraph 14, and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 44; see also the orders in Joined Cases 159/84, 267/84, 12/85 and 264/85 *Ainsworth and Others* v *Commission* [1987] ECR 1579, paragraph 2, and in Case C-277/95 P *Lenz* v *Commission* [1996] ECR I-6109, paragraph 50).

27 Since, in Case T-361/99, the Court of First Instance decided no point of fact or law by which it could be bound in this case, the argument based on the principle of *res judicata* must be rejected.

28 Fourthly, the Commission points out that the applicant's original complaint appears to lie in the loans which the Banque Socredo advanced to him in the 1980s. Since the applicant accuses the Commission of a lack of control or monitoring of Community law during that period, the action is time-barred under Article 43 of the Statute of the Court of Justice.

29 In that regard, the Court of First Instance notes that the applicant states that it was only in 1997 that he discovered the cause of the damage relating to the loans he contracted between 1985 and 1989. In addition, the applicant accuses the Commission not only of a lack of control or monitoring of Community law at the time when he contracted the loans from the Banque Socredo, but also of having provided false information to the European Parliament in response to a petition he presented. That communication to the European Parliament took place on 7 July 2000.

30 In view of the time-limit of 5 years for bringing an action for damages prescribed by Article 43 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of Article 46 of that Statute, that argument must, as a result, also be rejected.

31 It follows from all the foregoing that the action is admissible.

Substance

32 The Court of First Instance recalls that, in an action based on Article 178 of the EC Treaty (now Article 235 EC) in conjunction with the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC), the

applicant has to prove not only the illegality of the conduct of which the institution concerned is accused and the fact of the damage but also the existence of a causal link between that conduct and the damage pleaded (see Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18; Case C-257/90 *Italsolar* v *Commission* [1993] ECR I-9, paragraph 33; Case T-175/94 *International Procurement Services* v *Commission* [1996] ECR II-729, paragraph 44, and Case T-72/99 *Meyer* v *Commission* [2000] ECR II-2521, paragraph 49). As for the latter condition, it is settled case-law that the damage must be a sufficiently direct consequence of the conduct complained of (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; and *International Procurement Services* v *Commission*, cited above, paragraph 55, and *Meyer* v *Commission*, cited above, paragraph 49).

33 The applicant accuses the Commission of two instances of misconduct. First, the Commission failed in its duty of informing economic operators and in its duty of control and monitoring of the application of the OCT Decisions in French Polynesia. Secondly, the Commission provided false information to the European Parliament by stating, in response to Petition No 811/99 presented by the applicant, that the Banque Socredo's own funds were the source of the loans which the applicant had agreed with that bank. Yet the bank had received certain funds from the EIB in order to finance the applicant's project.

34 With regard to the damage suffered and the causal link between the misconduct complained of and that damage, the applicant explains that, had it not been for such misconduct, he would have received the benefit, for his loans from the Banque Socredo, of a privileged interest rate of 3% subsidised by the EIB instead of the rate he was charged which varied between 7% and 12%.

35 The Court must first examine whether the damage pleaded by the applicant results sufficiently directly from the misconduct alleged against the Commission. In view of the applicant's arguments, the existence of such a causal link could be

established only if the applicant demonstrated that the Commission's conduct effectively prevented him from benefiting, for his loans from the Banque Socredo, from an interest rate of 3% subsidised by Community funds.

36 As for the first instance of misconduct alleged against the Commission, the applicant maintains that, if the Commission had properly informed the economic operators of the content of the OCT Decisions and if the Commission had properly monitored the local authorities and the Banque Socredo, he could have benefited from an interest rate of 3% subsidised by the EIB.

37 The Court observes, however, that, in order to establish the existence of a causal link between the misconduct complained of and the damage pleaded, that argument can succeed only if the applicant demonstrates that he was entitled, at the time that he contracted his loans, to a Community subsidy in relation thereto.

38 In that regard, the applicant refers, in his application, to Article 125 of the OCT Decision of 1986.

39 It is, however, necessary to point out that the applicant concluded the loan contracts with the Banque Socredo in order to finance his business of farming a tropical fruit plantation. Yet Article 125 of the OCT Decision of 1986, to which the applicant refers, does not mention agricultural projects among the projects eligible for financing by Community funds. The Cour d'appel, Papeete, also held in its Judgment No 303 of 12 May 1999, in a case between the applicant and Banque Socredo, that, according to the terms of contracts which the Banque Socredo made with the EIB under the OCT Decision of 1986, activities connected with the agricultural sector were not 'eligible' or, in other words, they could not benefit from a loan from the Banque Socredo financed by funds allocated, at a reduced rate, by the EIB.

40 In reply to a question on that point at the hearing, the applicant expressly admitted that there was no provision of Community law entitling him, when he contracted the loans in question, to a Community subsidy.

41 In those circumstances, the applicant cannot assert that the damage he suffered was caused by lack of information or lack of monitoring attributable to the Commission in the context of the application of the OCT Decisions. Indeed, he has not demonstrated that, had it not been for the misconduct alleged against the Commission, he would have benefited, for the loans which he contracted from the Banque Socredo between 1985 and 1989, from an interest rate of 3% subsidised by Community funds.

42 It follows therefore that the applicant has not established a causal link between the first instance of alleged misconduct by the Commission and the damage pleaded.

43 As for the second instance of alleged misconduct, the applicant explains that the Commission provided false information to the European Parliament by stating, in response to Petition No 811/99 presented by the applicant, that the Banque Socredo's own resources had been the source of the loans which the applicant agreed with that bank. The provision by the Community authorities of erroneous information constitutes maladministration (Joined Cases 19/69, 20/69, 25/69 and 30/69 *Richez-Parise and Others* v *Commission* [1970] ECR 325, and Case 169/73 *Compagnie Continentale France* v *Council* [1975] ECR 117).

44 However, it is clear that the applicant has failed to establish a causal link between that conduct and the damage he allegedly suffered. Even if the Commission had provided false information to the European Parliament on 7 July 2000, the

applicant has not explained how that conduct could have caused him damage in connection with the loans contracted between 1985 and 1989. In those circumstances, it is not appropriate to grant the application for production of documents (see paragraph 13 above), the sole purpose of which is to have the alleged misconduct declared illegal.

45 It follows from all the foregoing that the damage of which the applicant complains in his application — namely the fact that he was bound by loan contracts at rates varying between 7% and 12%, instead of 3% — is not attributable to any misconduct by the Commission. The damage suffered results directly and exclusively from the applicant's voluntary acceptance of the rates proposed by the Banque Socredo for the loans which he contracted with that bank between 1985 and 1989 (see, to that effect, *International Procurement Services* v *Commission*, cited above, paragraphs 56 and 57).

46 Since the applicant has not established a causal link between the Commission's alleged misconduct and the damage pleaded, this action must be dismissed.

Costs

47 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, he must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby:

1. Dismisses the action;

2. Orders the applicant to pay the costs.

Lenaerts Azizi Jaeger

Delivered in open court in Luxembourg on 13 February 2003.

H. Jung K. Lenaerts

Registrar President