

Case T-138/03

É. R. and Others

v

**Council of the European Union and
Commission of the European Communities**

(Common agricultural policy — Animal health — Bovine spongiform encephalopathy ('mad cow disease') — New variant Creutzfeldt-Jakob disease — Action for damages — Non-contractual liability — Community liability in the absence of unlawful conduct of its institutions — Damage — Causal link — Procedural defects — Parallel national proceedings — Limitation period — Inadmissibility)

Judgment of the Court of First Instance (First Chamber), 13 December 2006 II - 4928

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Formal requirements*
(*Statute of the Court of Justice, Art. 21; Rules of Procedure of the Court of First Instance, Art. 44(1)(c)*)

2. *Actions for damages — Autonomous form of action — Exhaustion of national rights of action — Exception — Impossibility of obtaining compensation before a national court*
(Arts 235 EC and 288, second para., EC)
3. *Actions for damages — Limitation period — Point from which time starts to run*
(Statute of the Court of Justice, Art. 46)
4. *Non-contractual liability — Conditions*
(Art. 288, second para., EC)
5. *Non-contractual liability — Conditions*
(Art. 288, second para., EC)
6. *Non-contractual liability — Conditions*
(Art. 288, second para., EC)

1. Under Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, every application must state the subject-matter of the dispute and contain a brief statement of the pleas in law on which it is based. In order to guarantee legal certainty and sound administration of justice it is necessary, in order for an action to be admissible, that the basic legal and factual particulars relied on be indicated, at least in summary form, coherently and intelligibly in the application itself. 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 which the applicant attributes to the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage

which he claims to have suffered, and the nature and extent of that damage.

(see para. 34)

2. The action for damages under Article 235 EC and the second paragraph of Article 288 EC was established as an autonomous remedy with a particular function to fulfil within the system of remedies, whose exercise is subject to conditions imposed in view of its specific objective. It must however be appraised with regard to the entire system for the

judicial protection of the individual and its admissibility may thus, in some cases, be subject to the prior exhaustion of national remedies that are available for obtaining annulment of a decision of a national authority. In order for this to be the case, it is a necessary precondition that those national remedies give effective protection to the individuals concerned and that they are capable of leading to compensation for the damage alleged.

That is not the case where, first, compensation for the damage alleged by the applicants cannot be obtained, even in part, through the annulment of one or more specific measures of a national authority, and, second, the action for damages brought by the applicants is based on allegedly unlawful conduct of the Council and the Commission. Given in particular that the Community judicature has exclusive jurisdiction under Article 288 EC to hear actions seeking compensation for damage attributable to the Community, remedies available under national law cannot in such a case automatically guarantee effective protection of the applicants' rights, that is to say in particular compensation for all the damage alleged by them.

Where the same damage is the subject of two actions for compensation, one

against a Member State before a national court and the other against the Community before the Community judicature, it may prove necessary, before deciding on the amount of the damage for which the Community will be held liable, to wait until the national court has given judgment on any liability on the part of the Member State, in order to avoid the applicant's being insufficiently or excessively compensated because of the different assessment of two different courts. That question does not however concern the admissibility of the action brought before the Community judicature, but merely, where relevant, the final decision on the amount of the compensation it should grant.

(see paras 40-42)

3. The five-year limitation period under Article 46 of the Statute of the Court of Justice for proceedings against the Community in matters arising from non-contractual liability cannot begin, however, before all the requirements governing the obligation to make good the damage are satisfied and, in particular, in cases where liability stems from legislative measures, before the injurious

effects of the measures have been produced. Where the victim could have known only belatedly of the event giving rise to the damage, the limitation period cannot begin for that person before he could have become aware of it.

Where that institution has only a considerably reduced or even no discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach.

(see para. 49)

Where one of those conditions is not satisfied the action must be dismissed in its entirety and it is unnecessary to examine the other conditions.

4. Non-contractual liability of the Community for the unlawful acts of its institutions and servants, for the purposes of the second paragraph of Article 288 EC, depends on fulfilment of a set of conditions, namely: the unlawfulness of the conduct alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damaged complained of.

(see paras 99-101)

5. There is a causal link for the purposes of the second paragraph of Article 288 EC where there is a definite and direct causal nexus between the fault committed by the institution concerned and the injury pleaded, the burden of proof of which rests on the applicants.

As regards the first of those conditions, the case-law requires there to be a sufficiently serious breach of a rule of law intended to confer rights on individuals. So far as concerns the requirement that the breach must be sufficiently serious, the decisive test for determining whether that requirement is met is whether the Community institution concerned has manifestly and gravely disregarded the limits on its discretion.

In an area such as that of animal and human health, the existence of such a link must be established from an analysis of the conduct that could be required of the Community institutions on the basis

of the state of scientific knowledge at the time. Moreover, in cases where the conduct which allegedly causes the damage pleaded consists in refraining from taking action, it is particularly necessary to be certain that that damage was actually caused by the inaction complained of and could not have been caused by conduct separate from that alleged against those institutions.

(see paras 103, 133, 134)

6. When damage is caused by conduct of the Community institutions not shown to be unlawful, the Community can incur non-contractual liability if the conditions as to sustaining actual damage, to the causal link between that damage and the conduct of the Community institutions and to the unusual and special nature of the damage in question are all met.

(see para. 153)