

Joined Cases 256, 257, 265 and 267/80, 5 and 51/81 and 282/82

Birra Wührer SpA and Others

v

Council and Commission of the European Communities

(Maize gritz — Non-contractual liability — No need to give a decision)

Order of the Sixth Chamber of the Court, 17 February 1987 789

Summary of the Order

Procedure — Costs — No need to give a decision
(Rules of Procedure, Art. 69 (5))

ORDER OF THE SIXTH CHAMBER OF THE COURT
17 February 1987 *

In Joined Cases 256, 257, 265 and 267/80, 5 and 51/81 and 282/82,

Birra Wührer SpA, whose registered office is at 62 viale Bornata, Brescia, acting through its Chairman and legal representative, Francesco Wührer,

Mangimi Niccolai SpA, whose registered office is at 196 Corso Garibaldi, Naples, acting through its legal representative and managing director Giovanni Niccolai,

* Language of the Case: Italian.

De Franceschi Marino & Figli SpA, whose registered office is at 72a viale Grigoletti, Pordenone, represented by its legal representative and managing director, Dino De Franceschi,

Riseria Modenese Srl, whose registered office is at 5 via Milano, Carpi (Province of Modena), acting through its legal representative, Natalino Baetta,

and

Ditta Riserie Angelo et Giacomo Roncaia, whose registered office is at Castelforte (Mantua), acting through its proprietors, Angelo and Giacomo Roncaia,

all represented and assisted by Giuseppe Sajeve, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34/B/IV Centre Louvigny, rue Philippe II,

and

De Franceschi SpA Monfalcone, whose registered office is at Monfalcone, acting through its legal representative *pro tempore*, Coclite De Franceschi, and represented and assisted by Giovanni Mario Ubertazzi and Fausto Capelli, of the Milan Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 83 boulevard Grande-Duchesse Charlotte,

and

Birra Peroni SpA, whose registered office is at 6/A via Guattani, Rome, acting through its Chairman and legal representative, Giorgio Natali, and represented by Raimondo Marini-Clarelli, of the Rome Bar, with an address for service in Luxembourg at the Chambers of Jean Hoss, avocat, 15 côte d'Eich,

applicants,

v

Council and Commission of the European Communities, represented, in the case of the Council, by Arthur Brautigam, an Administrator in its Legal Department, assisted by Tito Gallas, a Lawyer-Linguist in the Council's Legal Department, with an address for service in Luxembourg at the office of Jörg Käser, a Director in the Legal Affairs Department of the European Investment Bank, 100 boulevard Konrad Adenauer, and, in the case of the Commission, by Richard Wainwright, Legal Adviser, and Guido Berardis, a member of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION under Article 178 and the second paragraph of Article 215 of the EEC Treaty for damages equivalent to the production refunds for maize gritz and broken rice which the applicants would have received if, during the periods commencing on 1 August and 1 September 1975 and terminating on 19 October 1977, the use of maize gritz and broken rice for the purpose of brewing had conferred an entitlement to the same refunds as the use of maize for the manufacture of starch,

THE COURT (Sixth Chamber)

composed of: C. Kakouris, President of the Chamber, T. Koopmans, O. Due, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo

Registrar: P. Heim

after hearing the Opinion of the Advocate General,

makes the following

Order

- 1 By judgment of 13 November 1984, the Court (Fifth Chamber), while reserving the costs, allowed the applicants' applications (with the exception of Case 267/80 where the application brought by Riseria Modenese Srl was dismissed) and ordered the European Economic Community to pay them by way of compensation an amount which, at the Court's request, was to be established within six months by agreement as between the parties on the basis of objective data.
- 2 The Court further ordered that interest at the rate of 6% should be paid on the abovementioned amount as from the date of that judgment, which was also to be the date to be taken into account for the purposes of the conversion of those amounts into national currency.

- 3 By letter of 11 April 1986 the Commission informed the Court that the compensation agreed with the applicants in Cases 256, 257 and 265/80 and 51/81 had been paid to them in January 1986, which was confirmed, by letter dated 30 January 1986, by the applicant in Case 51/81 and, by telex message of 4 February 1986, by the applicants in Cases 256, 257 and 265/80. By telex message of 22 September 1986 the Commission notified the Court that the compensation agreed with the other two applicants (Cases 5/81 and 282/82) had also been paid to them, which those applicants confirmed by telex message on 11 and 15 December 1986.
- 4 In those circumstances, the Court observes that, apart from the question of costs, the dispute between the parties in these cases is settled and there is therefore no need to give a decision.
- 5 As regards the costs, under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs and, under Article 69 (5), where a case does not proceed to judgment the costs are to be in the discretion of the Court.
- 6 Since as a result of the judgment of 13 November 1984 and the agreement reached between the parties the applicants, with the exception of the applicant in Case 267/80, Riseria Modenese, have been successful in their claims, the defendant institutions should be ordered to pay the costs, as requested by the applicants, except in Case 267/80, where Riseria Modenese, being the unsuccessful party, must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby orders as follows:

- (1) There is no need to give a decision in Cases 256, 257 and 265/80, 5 and 51/81, and 282/82;

- (2) **The Council and the Commission of the European Communities are ordered to pay the costs in Cases 256, 257 and 265/80, 5 and 51/81, and 282/82;**
- (3) **In Case 267/80, the applicant, Riseria Modenese, is ordered to pay the costs.**

Luxembourg, 17 February 1987.

P. Heim
Registrar

C. Kakouris
President of the Sixth Chamber