

## Case T-166/98

**Cantina sociale di Dolianova Soc. coop. rl and Others**

**v**

**Commission of the European Communities**

(Common organisation of the market in wine — Regulation (EEC) No 2499/82 —  
Community aid — Action for annulment — Action for failure to act —  
Action for damages)

Judgment of the Court of First Instance (Second Chamber), 23 November  
2004 . . . . . II - 3998

### Summary of the Judgment

1. *Actions for annulment — Actionable measures — Measures producing binding legal effects — Institution lacking the power to adopt the measure requested — Not included — Rejection of an application to amend a legislative provision — Lack of legal standing (EC Treaty, Art. 173 (now, after amendment, Art. 230 EC); Commission Regulation No 2499/82)*

2. *Procedure — Originating application — Formal requirements — Identification of the subject-matter of the dispute*  
(*Rules of Procedure of the Court of First Instance, Art. 44(1)(c)*)
  
3. *Actions for failure to act — Natural or legal persons — Actionable omissions — Failure by the Commission to grant an application for payment of aid allegedly owing under Regulation No 2499/82 — Inadmissibility*  
(*EC Treaty, Art. 175, third para. (now Art. 232, third para., EC); Commission Regulation No 2499/82*)
  
4. *Actions for failure to act — Natural or legal persons — Requested measure — Regulation — Inadmissibility*  
(*EC Treaty, Art. 175 (now Art. 232 EC)*)
  
5. *Actions for damages — Subject-matter — Action for damages alleging unlawfulness of a decision taken by a Member State in applying Community legislation — Regulation No 2499/82 — Community aid for preventive distillation of table wines — Member State's choice to apply, for the payment of that aid, the procedure laid down in Article 9 of that regulation — Lack of means of ensuring payment of the aid to the producer in the event of the insolvency of the distiller — Regulation No 2499/82 itself vitiated by unlawfulness — Whether the alleged unlawful conduct can be attributed to a Community institution*  
(*EC Treaty, Art. 215, second para. (now Art. 288, second para., EC); Commission Regulation No 2499/82, Arts 8 and 9*)
  
6. *Actions for damages — Autonomous nature — Prior exhaustion of national remedies — Exception — Inability of the national court to allow an action for payment in the absence of Community provisions authorising national authorities to pay the amounts claimed — Admissibility of an action brought before exhaustion of national remedies*  
(*EC Treaty, Arts 178 and 215, second para. (now Arts 235 EC and 288, second para., EC)*)
  
7. *Actions for damages — Autonomy in relation to action for annulment and action for failure to act — Limits — Action for damages likely to give rise to a result comparable to that obtainable by other forms of action — Admissibility*  
(*EC Treaty EC, Art. 178 (now Art. 235 EC)*)

8. *Actions for damages — Time-limit — Starting point — Liability for a legislative act — Date on which the act's harmful effects became apparent*  
(EC Treaty, Arts 178 and 215, second para. (now Arts 235 EC and 288, second para., EC); Statute of the Court of Justice, Art. 46)
9. *Non-contractual liability — Conditions — Sufficiently serious breach of Community law — Article 9 of Regulation No 2499/82 — Community aid for the preventive distillation of table wines — Lack of means of ensuring payment of the aid to the producer in the event of the insolvency of the distiller — Breach of the principle prohibiting unjust enrichment — Breach of the principle of non-discrimination*  
(EC Treaty, Arts 178 and 215, second para. (now Arts 235 EC and 288, second para., EC); Commission Regulation No 2499/92)

1. The only acts or decisions against which an action for annulment may be brought are those which produce binding legal effects capable of affecting an applicant's interests and bringing about a distinct change in his legal position.

applicable regulation, because of the applicant's lack of legal standing.

(see paras 64, 76)

That is not the case of acts rejecting an application where the institution does not have the power to adopt the act requested and where therefore the refusal is not a decision.

2. Since an application, under Article 44(1)(c) of the Rules of Procedure of the Court of First Instance must state the form of order sought, any plea seeking annulment of measures other than the measure contested or which provide a basis for it or is consolidated with it without their being identified must, if it lacks adequate detail, be declared inadmissible.

In the same way, an action against a Commission refusal retroactively to rectify a measure will be inadmissible if the rectification requested would have had to be adopted in the form of a generally

(see para. 79)

3. Since the Commission does not have the power to grant the wine producers' request for payment by that institution of the aid allegedly owing to them under Regulation No 2499/82 laying down provisions concerning preventive distillation for the 1982/83 wine year, the action for failure to act is inadmissible in so far as it seeks to penalise such failure to act. The Commission cannot be criticised for failing to adopt in relation to the applicants any measure other than a recommendation or opinion of the kind referred to in the third paragraph of Article 175 of the Treaty (now the third paragraph of Article 232 EC).

(see paras 70, 81)

concerning preventive distillation for the 1982/83 wine year does not guarantee, particularly in the event of the bankruptcy of the distiller, indirect payment to the producers concerned of the aid included in the minimum buying-in price for wine delivered to that distiller and distilled in accordance with the provisions of that regulation, any unlawfulness consisting of a lack of guarantee for the producers that they will benefit from that aid is the direct result of an alleged lacuna in the regulation and not of the choice made by the Member State concerned to use the system of indirect payment of aid provided for in Article 9 of the regulation. It follows that the unlawfulness affects the regulation itself and not the conduct of the Member State concerned, which merely correctly applied that regulation.

4. Individuals who have no standing to challenge the legality of a legislative measure likewise have no standing to bring an action before the Court for a declaration relating to the failure to adopt that measure after being called upon to adopt it.

(see paras 109-112)

(see para. 82)

5. Since the system for payment of aid provided for in Article 9 of Regulation No 2499/82 laying down provisions

6. Although it is correct that an action for damages must be appraised with regard to the entire system for the judicial protection of the individual and that its admissibility may therefore be subject to the prior exhaustion of national remedies, it is none the less a necessary precondition that those national remedies give effective protection to the

individuals concerned who consider that they have been harmed by an act of a Community institution and that they are capable of leading to compensation for the damage alleged.

In that regard, the admissibility of an action for damages cannot be subject to the prior exhaustion of national remedies where, even if the disputed Community rules were declared invalid by a preliminary ruling of the Court of Justice, to which the matter has been referred under Article 177 of the Treaty (now Article 234 EC), the national courts could not allow an action for payment — or any other appropriate action — without the prior intervention of the Community legislature, owing to the lack of a Community provision authorising the competent national authorities to pay the amounts sought. In such circumstances, it would therefore not be in keeping with either the proper administration of justice and the requirements of procedural efficiency or the condition relating to the absence of an effective domestic remedy to compel the individuals concerned to exhaust national legal remedies before bringing an action for damages.

(see paras 115-117)

7. An action for compensation is an autonomous legal remedy with a particular purpose to fulfil within the system of remedies and subject to conditions on its use dictated by its specific nature. Its purpose is to redress the damage caused by a Community institution. It would therefore be contrary to the autonomy of that action, and the effectiveness of the system of remedies established by the Treaty, to consider that an action for damages is inadmissible on the ground that it might lead, at least for the applicants, to a result comparable to the results of an action for annulment or an action for failure to act. It is only where an action for damages is actually aimed at securing withdrawal of an individual decision addressed to the applicants which has become definitive — so that it has the same purpose and the same effect as an action for annulment — that the action for damages could be considered to be an abuse of process.

(see para. 122)

8. The limitation period for actions against the Communities in matters arising from non-contractual liability, laid down in Article 46 of the Statute of the Court of Justice, cannot begin to run before all the requirements governing the obligation to make good the damage are satisfied, namely the existence of unlawful conduct on the part of the Community institutions, of the damage alleged

and of a causal link between that conduct and the loss claimed. The abovementioned requirement relating to the existence of certain damage is met where the damage is imminent and foreseeable with sufficient certainty, even if the damage cannot yet be precisely assessed.

It follows that, where the Community's liability stems from a legislative measure, the limitation period cannot begin to run before all the injurious effects of the measure have been produced and hence before the time when the persons concerned have suffered certain damage. In this instance such a period of limitation begins to run when the applicant is in a position actually to become aware of that damage because it appears imminent and foreseeable.

(see paras 129-131, 145, 149, 154)

9. By failing, within the structure of Regulation No 2499/82 laying down provisions concerning preventive distillation for the 1982/83 wine year, to add to the system for payment of Community aid provided for in Article 9 of that

regulation a procedure guaranteeing payment of aid to the producers concerned in the event of the insolvency of the distiller, the Commission manifestly and seriously disregarded the limits on its discretion.

That system manifestly infringes the general principle of Community law prohibiting unjust enrichment, since it is not accompanied by any procedure to ensure payment of the aid to producers who complied with all their obligations and carried out the distillation within the time-limits laid down by the regulation.

Furthermore, in the event of the insolvency of the distiller, the choice between the procedures laid down in Articles 9 and 10 of Regulation No 2499/82 for payment of the Community aid leads to different treatment, depending on the Member State concerned, as regards the guarantee of payment of the aid to the producers concerned, although the aid is in principle due to them under the relevant Community regulations. Such a difference is not objectively justified by differences between the situations concerned since it does not relate to the conditions for granting the aid for

preventive distillation but only to the administrative procedures for granting the aid, and thus cannot be attributed to differences concerning the situation of the wine producers or, more generally, the situation of the wine sectors in the various Member States.

of the principle of non-discrimination, and of the principle prohibiting unjust enrichment, which accordingly incurs the Community's non-contractual liability for damage caused by the institutions.

It follows that Regulation No 2499/82 is vitiated by a sufficiently serious breach

(see paras 157, 161, 172-174, 176)