

Case T-178/98

Fresh Marine Company SA

v

Commission of the European Communities

(Provisional anti-dumping and countervailing duties — Farmed Atlantic salmon — Non-contractual liability of the Community)

Judgment of the Court of First Instance (Third Chamber, Extended Composition), 24 October 2000 . . . . . II - 3335

Summary of the Judgment

1. *Procedure — Application initiating proceedings — Procedural requirements — Identification of the subject-matter of the proceedings — Brief statement of the grounds on which the application is based — Application seeking compensation for damage caused by a Community institution*  
(EC Statute of the Court of Justice, Arts 19 and 46, first para.; Rules of Procedure of the Court of First Instance, Art. 44(1)(c))
2. *Actions for damages — Action against the institution alleged to have rendered the Community liable — Whether admissible — Nature of the measure for which the institution is criticised — No bearing*  
(EC Treaty, Arts 178 and 215, second para. (now Art. 235 EC and Art. 288, second para., EC))

3. *Actions for damages — Independent of actions for annulment — Limits — Action seeking withdrawal of an individual decision which has become definitive — Inadmissible*  
(EC Treaty, Arts 178 and 215, second para. (now Art. 235 EC and Art. 288, second para., EC))

4. *Non-contractual liability — Conditions — Sufficiently serious breach of a superior rule of law for the protection of the individual — Measure relating to an anti-dumping proceeding but not involving choices of economic policy — Mere infringement of Community law sufficient*  
(EC Treaty, Art. 215 (now Art. 288 EC))

5. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — Concept — Burden of proof*  
(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC))

6. *Non-contractual liability — Conditions — Fault on the part of an institution — Lack of diligence in correcting an error known to the relevant department*  
(EC Treaty, Art. 215, second para. (now Art. 288, second para., EC))

1. According to Article 19 of the Statute of the Court of Justice, which is applicable to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 of that Statute and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, an application must state, *inter alia*, the subject-matter of the dispute and must contain a brief statement of the grounds on which the application is based. In order to fulfil those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged by the applicant against the institution may be identified, the reasons for which the applicant considers there to be a causal link between the conduct and the damage which it claims to have suffered and the nature and extent of that damage.
2. The legislative or administrative nature of a measure for which a Community institution is criticised has no bearing on the admissibility of an action for damages. In the context of such an action, that factor is relevant exclusively to assessment of the substance of the case, where what is at issue is the definition of the test of what degree of fault is required when examining the non-contractual liability of the Community.

(see para. 38)

(see para. 30)

3. The action for damages provided for in the second paragraph of Article 215 of the Treaty (now the second paragraph of Article 288 EC) is an independent form of action with a particular pur-

pose to fulfil within the system of actions and subject to conditions as to its use dictated by its specific nature. It differs from an application for annulment in that its end is not the abolition of a particular measure but compensation for damage caused by an institution.

Furthermore, it cannot be inferred from the case-law that the bringing of an action for damages must be preceded by an action for annulment of the act allegedly giving rise to the damage incurred. A party may bring an action for damages without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage.

An action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of a measure which has become definitive and would, if upheld, nullify the legal effects of the measure in question.

principle be regarded as constituting legislative action involving choices of economic policy, so that the Community can incur liability by virtue of such measures only if there has been a sufficiently serious breach of a superior rule of law for the protection of individuals. However, where the operation in question, being administrative in nature, does not involve any choices of economic policy and confers on the Commission only very little or no discretion, mere infringement of Community law will be sufficient to lead to the non-contractual liability of the Community. In particular, a finding of an error which, in analogous circumstances, an administrative authority exercising ordinary care and diligence would not have committed will support the conclusion that the conduct of the Community institution was unlawful in such a way as to render the Community liable under Article 215 of the Treaty (now Article 288 EC).

(see paras 57, 61)

(see paras 45, 49-50)

4. The measures of the Council and the Commission in connection with a proceeding relating to the possible adoption of anti-dumping measures must in
5. There is a causal link for the purposes of the second paragraph of Article 215 of the Treaty (now the second paragraph of Article 288 EC) where there is a direct causal nexus between the fault committed by the institution concerned and the injury pleaded, the burden of proof of which rests on the applicant. The Community cannot be held liable for any damage other than that which

is a sufficiently direct consequence of the misconduct of the institution concerned.

When examining the causal link between the conduct alleged against the institution and the injury claimed by the applicant, it must be ascertained whether the latter showed reasonable diligence in limiting the extent of the damage which it claims to have suffered.

(see paras 118-121)

6. Where the damage caused by the misconduct of the institution is ongoing, that institution commits a fault by failing to take the necessary and appropriate measures, which it alone is able to take, in order to limit the extent of that damage.

(see paras 131-132)