

## Case T-28/03

**Holcim (Deutschland) AG**

**v**

**Commission of the European Communities**

(Article 85 of the EC Treaty (now Article 81 EC) — Compliance with a judgment of the Court of First Instance — Reimbursement of bank guarantee charges — Non-contractual liability of the Community)

Judgment of the Court of First Instance (Third Chamber), 21 April 2005 . . . II - 1362

### Summary of the Judgment

1. *Actions for annulment — Judgment of annulment — Effects — Obligation to adopt implementing measures — Absence of remedy based on Article 233 EC — Possibility for those concerned to advance their rights on the basis of Articles 230 EC and 232 EC (Arts 230 EC, 232 EC and 233 EC)*

2. *Procedure — Application initiating the proceedings — Procedural requirements — Identification of the subject-matter of the dispute — Summary statement of the pleas raised*  
(*Rules of Procedure of the Court of First Instance, Art. 44(1)(c)*)
3. *Actions for damages — Limitation period — Starting point — Applicant considering, at the time of submitting his claim, that he is not in possession of all the evidence enabling the liability of the Community to be demonstrated — No effect*  
(*Art. 288, second para., EC*)
4. *Actions for damages — Limitation period — Starting point — Date to be taken into consideration*  
(*Arts 230 EC, 232, second para., EC and 288, second para., EC; Statute of the Court of Justice, Art. 46*)
5. *Non-contractual liability — Conditions — Sufficiently serious breach of Community law — Taking into account of the margin of discretion of the institution which adopted the measure*  
(*Art. 288, second para., EC*)
6. *Actions for annulment — Commission decision adopted pursuant to Article 85(1) of the Treaty — Complex economic assessment — Judicial review — Limits*  
(*EC Treaty, Art. 85(1) (now Art. 81(1) EC) and Art. 173 (now, after amendment, Art. 230 EC)*)
7. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — Definition — Bank guarantee charges resulting from an undertaking's choice not to pay the fine imposed by the Commission — No direct causal link*  
(*EC Treaty, Arts 185 and 192, first para. (now Arts 242 EC and 256, first para., EC); Art. 288, second para., EC*)

1. The Treaty provides, exhaustively, the remedies which are available to persons to assert their rights. As Article 233 EC does not establish a remedy, it cannot independently found a claim for reimbursement of the bank guarantee charges incurred by a company following a fine determined by a Commission decision relating to a proceeding pursuant to Article 85 of the Treaty (now

Article 81 EC) and annulled by the Court of First Instance.

That does not mean, however, that a person is without a remedy when he considers that the measures required for the purpose of complying with a judg-

ment have not been taken. Thus, the obligation arising under Article 233 EC may be implemented by means, in particular, of the remedies provided for in Article 230 EC and Article 232 EC.

apparent from the text of the application itself, even if only stated briefly, provided the statement is coherent and comprehensible

(see paras 43-44)

In that context, it is not for the Community judicature to usurp the function of the founding authority of the Community in order to change the system of legal remedies and procedures established by the Treaty.

3. The limitation period for proceedings against the Communities in matters arising from non-contractual liability cannot begin before all the requirements governing the obligation to make good the damage are satisfied.

(see paras 31-34)

2. 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, an application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which the application is based. That information must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to decide the case, if appropriate, without other information in support. In order to ensure legal certainty and the sound administration of justice, if an action is to be admissible, the essential facts and law on which it is based must be

Thus, the fact that an applicant considered that it did not yet have all the evidence it needed to prove to the requisite legal standard in judicial proceedings that the Community was liable cannot, as such, prevent the limitation period from running. Confusion would then arise between the procedural criterion relating to the commencement of the limitation period and the finding that the conditions for liability were satisfied, which can ultimately be made only by the court before which the matter has been brought for final adjudication on its substance.

(see paras 59, 64)

4. Where the damage was not caused by a single isolated incident, but was ongoing, the limitation period referred to in Article 46 of the Statute of the Court of Justice applies, by reference to the date of the event which interrupted the limitation period, to the period preceding that date by more than five years and does not affect rights which arose during subsequent periods.

In that regard, Article 46 envisages as an act interrupting the limitation period either the proceedings instituted before the Court or the application made prior to such proceedings by the aggrieved party to the relevant institution. In the latter case, the application must be made within the period of two months provided for in Article 230 EC and the provisions of the second paragraph of Article 232 EC are to apply where appropriate.

(see paras 70-71)

account is taken of, *inter alia*, the complexity of the situations to be regulated, difficulties in the application or interpretation of the texts and, more particularly, the margin of discretion available to the author of the act in question. The determining factor for regarding a breach of Community law as sufficiently serious lies in the manifest and serious failure by the Community institution concerned to observe the limits on its discretion. Where that institution has only 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 paras 86-87)

5. The non-contractual liability of the Community, within the meaning of the second paragraph of Article 288 EC, depends on the 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 the conduct and the damage complained of. As regards the first condition, a sufficiently serious breach of a legal rule designed to confer rights on individuals must be established. In that regard,
6. Although the Community judicature undertakes generally a comprehensive review of the question whether or not the conditions for the application of Article 85(1) of the EC Treaty (now Article 81(1) EC) are met, where it reviews complex economic appraisals made by the Commission it confines itself to verifying whether the rules on procedure and on the statement of reasons have been complied with,

whether the facts have been accurately stated and whether there has been any manifest error of appraisal or a misuse of powers.

(see para. 95)

7. In an action based on the second paragraph of Article 288 EC, the Community can be held liable only for the damage which is a sufficiently direct consequence of the unlawful conduct of the institution concerned.

In a situation in which an undertaking which brings an action against a Commission decision imposing a fine on it chooses, in so far as the Commission so

allows, to provide a bank guarantee as security for payment of the fine and default interest, in accordance with the conditions laid down by the Commission, that undertaking cannot validly maintain that the bank guarantee charges which it incurred are the direct consequence of the unlawfulness of the contested decision. The damage which it alleges in that regard is the consequence of its own decision not to comply with the obligation to pay the fine, in derogation from the rules laid down in the first paragraph of Article 192 of the EC Treaty and the first sentence of Article 185 of the EC Treaty (now the first paragraph of Article 256 EC and the first sentence of Article 242 EC), within the period prescribed by the contested decision, by providing a bank guarantee.

(see paras 119, 122-123)