

ORDER OF THE COURT OF FIRST INSTANCE (Second Chamber)
12 December 2000 *

In Case T-201/99,

Royal Olympic Cruises Ltd,
Valentine Oceanic Trading Inc.,
Caroline Shipping Inc.,
Simpson Navigation Ltd,
Solar Navigation Corporation,
Ocean Quest Sea Carriers Ltd,
Athena 2004 SA,
Freewind Shipping Company,

whose registered offices are in Monrovia (Liberia),

Elliniki Etairia Diipiroton Grammon AE, whose registered office is in Piraeus (Greece),

represented by N. Skandamis, of the Athens Bar, and A. Potamianos, of the Piraeus Bar, with an address for service in Luxembourg at the Chambers of S. Le Goueff, 9 Avenue Guillaume,

applicants,

* Language of the case: Greek.

Council of the European Union, represented by M. Vitsentzatos and S. Kyriakopoulou, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of E. Uhlmann, Director-General of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by T. Christoforou and A. Van Solinge, Legal Advisers, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for compensation for the loss allegedly suffered by the applicants as a result of the conduct of the European Community during the military intervention in Kosovo between 24 March and 9 June 1999,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Second Chamber),

composed of: A.W.H. Meij, President, A. Potocki and J. Pirrung, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

- 1 The applicant companies, which are shipowners, organise and operate cruises in the south-east Mediterranean.
- 2 From the end of 1998, tour operators and individuals made bookings on the applicants' cruise ships for the 1999 summer season. From 24 March 1999, the date on which the military intervention by certain States which are members of the North Atlantic Treaty Organisation (NATO) commenced against the Federal Republic of Yugoslavia (hereinafter 'the FRY'), a large number of those bookings, for the months of April and May 1999, were cancelled as a result of the hostilities and regional instability. Consequently, the number of bookings was significantly reduced in comparison with the corresponding period of the previous year.
- 3 The applicants claim to have suffered, as providers of tourist services, considerable harm starting on 24 March 1999 and continuing beyond 9 June, the date on which the intervention ended. They state that their total loss amounts to 73 963 000 United States dollars (USD).

- 4 The applicants submit that the military intervention against the FRY — perpetrated by several Member States of the European Union which are also members of NATO — was unlawful. They allege that the Council and the Commission, by several equally unlawful acts, supported that intervention and conclude therefrom that the European Community is required to compensate them for their loss.
- 5 By application lodged at the Registry of the Court of First Instance on 9 September 1999, the applicants brought the present action for damages against ‘the European Community, and more specifically its institutions, namely the Council of the European Union and the Commission of the European Communities’.
- 6 After the lodging of the rejoinders, the applicants were allowed to submit a supplementary pleading in order to be able to respond to the new pleas and arguments which, according to them, had been raised in the rejoinders. The Council and the Commission, in letters lodged on 16 and 19 June 2000 respectively, waived their right to comment on that pleading.

Forms of order sought by the parties

- 7 The applicants claim that the Court should:
 - declare that, by collaborating in acts adopted by the European Union which are unlawful under international law, the Council and the Commission have offended against the fundamental Community law principle of the protection of legitimate expectations in the field of the freedom to provide maritime-transport and leisure services;

- award the applicants USD 73 963 000 in damages under Article 235 EC and the second paragraph of Article 288 EC;
- order the defendants to pay the costs.

8 The Council and the Commission contend that the Court should:

- dismiss the action as inadmissible or, alternatively, as unfounded;
- order the applicants to pay the costs.

Law

Arguments of the applicants

- 9 According to the applicants, the military intervention in Kosovo appears to be a body of unlawful acts constituted by a succession of infringements of international law, European Union law and European Community law, committed by the European Union and the European Community as well as by those of their Member States which are also members of NATO.

- 10 First, the Member States of the European Union which are members of NATO, by the unilateral military intervention, attacked the territorial integrity of the FRY, in contravention of the United Nations Charter.
- 11 Secondly, the European Union participated in this unlawful conduct by providing active support at a political, moral, operational and legal level. It acted unlawfully in adopting a series of conclusions, common positions and decisions.
- 12 According to the applicants, that conduct of the European Union must be treated in the same way as the unlawful unilateral military intervention of NATO member countries against the FRY, inasmuch as it is an inseparable element of the intervention, in the specific form of non-military reprisals. Consequently, the European Union was implicated in the military intervention and committed unlawful acts autonomously, in failing to comply with the obligations arising from the United Nations Charter which it owes under Article 11(1) EU.
- 13 Thirdly, the European Community participated in the unlawful conduct of the NATO Member States in two ways: vicariously inasmuch as it is part of the single structure of the European Union, and autonomously, as a specific international organisation.
- 14 On the one hand, the European Union and the European Community, although separate legal persons, form a single political and legal entity. Consequently, unlawful conduct at a political level of the European Union undermines the very basis of Community law.

15 On the other hand, the European Community unlawfully participated in the military intervention by adopting several Community regulations imposing sanctions, namely:

- Council Regulation (EC) No 900/1999 of 29 April 1999 prohibiting the sale and supply of petroleum and certain petroleum products to the Federal Republic of Yugoslavia (OJ 1999 L 114, p. 7);

- Council Regulation (EC) No 1064/1999 of 21 May 1999 imposing a ban on flights between the European Community and the Federal Republic of Yugoslavia, and repealing Regulation (EC) No 1901/98 (OJ 1999 L 129, p. 27);

- Commission Regulation (EC) No 1084/1999 of 26 May 1999 establishing the list of competent authorities referred to in Article 2 of Regulation No 900/1999 (OJ 1999 L 131, p. 29);

- Commission Regulation (EC) No 1520/1999 of 12 July 1999 establishing the lists of competent authorities and of aircraft registered in the Federal Republic of Yugoslavia and lawfully present in the European Community referred to in Article 8 of Regulation No 1064/1999 (OJ 1999 L 177, p. 10).

According to the applicants, the regulations at issue implement acts of the European Union in the economic field — freedom of transport and the free movement of goods — and are therefore unlawful for the same reasons as the acts of the European Union.

- 16 The applicants state that the loss which they have suffered is not the result of the embargo on petroleum or the flight ban as such, but of the military intervention in which the European Community was implicated at a factual and legal level in so far as it adopted acts directly supporting that intervention. The present case does not concern Community liability resulting from the legislative content of the Community acts adopted, but Community liability as an internal aspect of the international liability arising from the very adoption of acts entailing involvement in the unlawful conduct. According to that analysis, the legislative content of the acts has no significance other than that of confirming the unlawful conduct. Consequently, the liability of the Community is based, directly and primarily, on the fact of the adoption of regulations which are linked to unlawful international conduct.
- 17 According to the applicants, the unlawful acts of the European Community institutions made a determining contribution to the occurrence of the loss suffered. If those acts had not been adopted, the applicants' position would have been different because a climate of extreme insecurity would not have developed in the south-east Mediterranean. The unlawful acts of the European Community coincided in time with the military operations and were clearly decided upon for the purpose of supporting the operations, in such a way that they fell within the framework of the military intervention and contributed to it.
- 18 The applicants add that, in any event, a causal link is superfluous, inasmuch as the liability of the European Union and, consequently, of the European Community arises automatically from the fact that, under the third subparagraph of Article 17(1) EU, the European Union and the European Community assume the obligations of the Member States which are also members of NATO.

Findings of the Court

- 19 Under Article 111 of the Rules of Procedure, where an action is manifestly lacking any foundation in law, the Court of First Instance may, without taking further steps in the proceedings, give a decision on the action by reasoned order. In the light of all the pleadings submitted by the parties, the Court of First Instance considers that it is able to give a decision on the substance of the present action without opening the oral procedure.
- 20 As a preliminary point, it should be noted that, the present action for damages being formally directed against 'the European Community', the Court has of its own motion corrected the names of the parties to the proceedings since, by virtue of Article 17 of the EC Statute of the Court of Justice, which applies to the Court of First Instance under the first paragraph of Article 46 of the Statute, only the institutions of the Community, which must be distinguished from the Community as such, may be defendants to a direct action (Case T-572/93 *Odigitria v Council and Commission* [1995] ECR II-2025, paragraph 22).
- 21 In accordance with settled case-law, in order for the Community to incur non-contractual liability, the applicant must prove the unlawfulness of the alleged conduct of the institution concerned, actual damage and the existence of a causal link between that conduct and the alleged damage (Case 26/81 *Oleifici Mediterranei v EEC* [1982] ECR 3057, paragraph 16; Case T-175/94 *International Procurement Services v Commission* [1996] ECR II-729, paragraph 44; Case T-336/94 *Efisol v Commission* [1996] ECR II-1343, paragraph 30; Case T-267/94 *Oleifici Italiani v Commission* [1997] ECR II-1239, paragraph 20; and Case T-113/96 *Dubois et Fils v Council and Commission* [1998] ECR II-125, paragraph 54). Where one of those conditions is not satisfied, the action must be

dismissed in its entirety without it being necessary to consider the other conditions for liability (Case C-146/91 *KYDEP v Council and Commission* [1994] ECR I-4199, paragraph 19).

- 22 It is to be observed, on the one hand, that the present action was expressly brought 'under Article 235 EC and the second paragraph of Article 288 EC' and against 'the European Community, and more specifically its institutions, namely the Council of the European Union and the Commission of the European Communities'. It follows that the action challenges only the allegedly unlawful conduct of those Community institutions constituted by the adoption of the four regulations referred to in paragraph 15 above.
- 23 On the other hand, the applicants have expressly emphasised that they attribute the alleged loss not to the economic sanctions imposed by those Community regulations, but exclusively to the military intervention against the FRY.
- 24 In addition, the applicants acknowledge that Article 46 EU excludes acts of the European Union from the jurisdiction of the Court of First Instance and that, for all the more reason, military acts, as such, cannot give rise to non-contractual liability of the European Community.
- 25 By that exposition, the applicants have not identified conduct attributable to the Community institutions whose unlawfulness could give rise to liability of the Community.
- 26 As regards the applicants' contention that the European Community, by the very adoption of the regulations complained of, gave its backing to the military

intervention and consequently supported the unlawful conduct of those of its Member States which were involved in the intervention, it is settled case-law that the alleged harm must be a sufficiently direct consequence of the conduct complained of (Joined Cases 64/76, 113/76, 167/78, 239/78, 27/79, 28/79 and 45/79 *Dumortier Frères and Others v Council* [1979] ECR 3091, paragraph 21, and *International Procurement Services v Commission*, cited above, paragraph 55), that is to say the conduct must be the determining cause of the harm (orders in Case T-614/97 *Aduanas Pujol Rubio and Others v Council and Commission* [2000] ECR II-2387, paragraph 19, and Joined Cases T-611/97 and T-619/97 to T-627/97 *Transfluvia and Others v Council and Commission* [2000] ECR II-2405, paragraph 17). In the field of non-contractual liability of public authorities for legislative measures, there is no obligation to make good every harmful consequence, even a remote one, of unlawful legislation (*Dumortier Frères and Others v Council*, cited above, paragraph 21).

- 27 The applicants' assertion in that regard, based solely on the adoption of Community Regulations Nos 900/1999, 1064/1999, 1084/1999 and 1520/1999, does not prove the existence of a sufficiently direct causal link between those regulations and the alleged pecuniary loss. As that loss was caused by the military intervention of parties distinct from the Community institutions, only a contribution by those institutions to the intervention might potentially have been considered to constitute a sufficiently direct causal connection. However, since the adoption of the regulations complained of did not in itself have any direct relationship with the military intervention and the alleged loss, the applicants cannot claim that their adoption is a contribution of that kind by those institutions.
- 28 It is apparent from all the foregoing considerations that the conditions necessary for giving rise to non-contractual liability of the Community are not satisfied.
- 29 Accordingly, the action for damages must be dismissed as manifestly lacking any foundation in law.

Costs

- ³⁰ Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and those of the Council and the Commission, who have applied for costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby orders:

1. The action is dismissed as manifestly lacking any foundation in law.
2. The applicants shall bear the costs.

Luxembourg, 12 December 2000.

H. Jung

Registrar

A.W.H. Meij

President