

JUDGMENT OF THE COURT (Sixth Chamber)

10 December 1986 *

In Case 267/80 TO

Birra Dreher SpA, having its registered office at 1 Via Capo Pescara, Popoli, in the person of its chairman Léopold Van Stirum, represented by Ugo Uppi, of the Milan Bar, and with an address for service in Luxembourg at the Chambers of Ernest Arendt, Avocat, 34 B IV rue Philippe-II, Centre Louvigny,

applicant,

v

Riseria Modenese Srl, in the person of its legal representative, represented by Giuseppe Sajeve, of the Rome Bar, 10 Via Antonio Baiamonti, Rome, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B IV rue Philippe-II, Centre Louvigny,

Council of the European Communities, represented by Daniel Vignes, Director in the Council's General Secretariat, assisted by Arthur Brautigam, Principal Administrator in the Legal Department of the said General Secretariat, with an address for service in Luxembourg at the office of Dr Jörg Käser, Head of the Legal Affairs Department of the European Investment Bank, 100 boulevard Konrad-Adenauer,

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

defendants,

APPLICATION originating third-party proceedings contesting the judgment of the Court of Justice of the European Communities (Fifth Chamber) of 13 November 1984 in Joined Cases 256, 257, 265, 267/80, 5 and 51/81 and 282/82,

* Language of the Case: Italian.

THE COURT (Sixth Chamber)

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

Advocate General: J. Mischo

Registrar: P. Heim

having regard to the Report for the Hearing and further to the hearing on 7 October 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 October 1986,

gives the following

JUDGMENT

- 1 By an application received at the Court Registry on 4 February 1985 Birra Dreher SpA lodged, pursuant to Article 39 of the Protocol on the Statute of the Court of Justice and Article 97 (1) of the Rules of Procedure, an application originating third-party proceedings contesting the judgment of the Court of Justice of 13 November 1984 in Joined Cases 256, 257, 265, 267/80, 5 and 51/81 and 282/82 *Birra Wührer SpA and Others v Council and Commission* [1984] ECR 3693 with a view to the amendment of the operative part of that judgment in so far as it dismissed as inadmissible the action brought by Riseria Modenese in Case 267/80 with a view to giving Riseria Modenese the right to be compensated for the fact that it was not paid production refunds for broken rice between 1 September 1975 and 19 October 1977.
- 2 Reference is made to the Report for the Hearing for the background to the case and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 3 Article 39 of the Statute of the Court of Justice provides as follows: 'Member States, institutions of the Community and any other natural or legal persons may, in cases and under conditions to be determined by the Rules of Procedure, institute third-party proceedings to contest a judgment rendered without their being heard, where the judgment is prejudicial to their rights.' Article 97 (1) of the Rules of Procedure lays down by way of conditions of admissibility that 'an application [originating third-party proceedings] shall... (b) state how... [the contested] judgment is prejudicial to the rights of the third party; (c) indicate the reasons why the third party was unable to take part in the original case'.
- 4 As regards the condition of admissibility mentioned above under (b), Birra Dreher argues that the judgment of 13 November 1984 was prejudicial to its rights in so far as it dismissed the action brought by Riseria Modenese on the ground that that company had assigned all its rights to the payment of refunds to Birra Peroni, which was not the case, since part of those rights had been assigned to Birra Dreher. As a result, the contested judgment prevented it from asserting the rights that were thus assigned against Riseria Modenese and against the Commission.
- 5 The applicant in the main proceedings, Riseria Modenese, observes in that regard that the contested judgment precludes Birra Dreher from asserting its rights against Riseria Modenese itself and against the Commission since in that judgment it was found that the rights to the refunds had been assigned in their totality to Birra Peroni and no account was taken of the fact that part of those rights had been assigned to Birra Dreher.
- 6 The Council contends that the application originating third-party proceedings is inadmissible on the ground that the judgment of 13 November 1984 is not prejudicial to the rights of Birra Dreher, since on the date of its publication Birra Dreher's rights to the payment of refunds had been time-barred since 19 October 1982 (period of operations giving entitlement to refunds: 1 September 1975 to 18 October 1977 — five-year period of limitation under Article 43 of the Statute of the Court).
- 7 The Commission also contends that the application is inadmissible, on the ground that since the contested judgment dismissed Riseria Modenese's action because the latter had assigned its rights to the payment of refunds and it was therefore not

open to it to bring proceedings, the judgment cannot be prejudicial to Birra Dreher which, since it was the holder of the assigned rights, alone was capable of asserting them before the Court.

- 8 The following reasons were given for the dismissal of Riseria Modenese's action by the contested judgment of 13 November 1984:

'However, the applicant in Case 267/80, Riseria Modenese, although seeking compensation for the damage which it sustained as a result of the non-payment of the refunds for broken rice between 25 November 1975 and 31 August 1977 — amounting, according to calculations given in its answer to a question put by the Court, to 59 954.5598 ECU —, formally admits in its reply and in its answer to the Court's question that it assigned its rights to the refunds in question to Birra Peroni, the applicant in Case 282/82. Since by means of that assignment it has disposed of its rights to the refunds at issue, it has ceased to be entitled to be compensated for the damage caused by the refusal to pay the refunds. Consequently, its claim for compensation must be dismissed.'

- 9 It is clear from those grounds of judgment that Riseria Modenese's action was dismissed by the contested judgment simply because it was claiming rights of which it had disposed by means of assignment and not because it had assigned them to a particular assignee. The reference to Birra Peroni as the assignee was not necessary to support the operative part of the judgment. Consequently, the action would have been dismissed irrespective of the identity of the assignee or assignees of Riseria Modenese's rights. The matter raised by Birra Dreher could therefore have had no bearing on the result of the main action.
- 10 Consequently, the contested judgment could not have been prejudicial to Birra Dreher's rights since the judgment could not have altered its legal situation, in particular in its relations with Riseria Modenese, or prevented it from taking legal action to assert the rights which it claims to have in its capacity as assignee of the rights to the payment of refunds.
- 11 It follows from all the foregoing considerations that Birra Dreher's application originating third-party proceedings must be dismissed, and it is not necessary to consider the other grounds of inadmissibility which have been put forward.

Costs

- 12 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

Since the applicant originating third-party proceedings has failed in its submissions it must be ordered to pay the costs of the Council and the Commission. The applicant in the main proceedings, Riseria Modenese, which intervened in support of the conclusions of the applicant originating third-party proceedings, shall pay its own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

- (1) Dismisses the application originating third-party proceedings;**
- (2) Orders the applicant originating the third-party proceedings to pay the costs of the Council and the Commission. Riseria Modenese shall pay its own costs.**

Kakouris

Koopmans

Due

Bahlmann

Rodríguez Iglesias

Delivered in open court in Luxembourg on 10 December 1986.

P. Heim

C. Kakouris

Registrar

President of the Sixth Chamber