

JUDGMENT OF THE COURT (Fifth Chamber)
7 July 1987 *

In Joined Cases 89 and 91/86

L'Étoile commerciale, Paris, a company represented by Jean-René Gaud, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Jean Medernach, 11 A boulevard Prince-Henri,

and

Comptoir national technique agricole (CNTA), Paris, a company represented by Jean-François Pericaud, of the Paris Bar, with an address for service in Luxembourg at the Chambers of Messrs Loesch and Wolter, 2 rue Goethe,

applicants,

v

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

defendant,

APPLICATION for a declaration that Commission Decision 85/456/EEC of 28 August 1985 on the clearance of the accounts presented by the French Republic in respect of the European Agricultural Guidance and Guarantee Fund, Guarantee Section, expenditure for 1981 is void as regards the subsidy for sunflower seed processing which the Société interprofessionnelle des oléagineux paid to CNTA,

* Language of the Case: French.

THE COURT (Fifth Chamber),

composed of: Y. Galmot, President of Chamber, G. Bosco, U. Everling, R. Joliet and J. C. Moitinho de Almeida, Judges,

Advocate General: J. L. da Cruz Vilaça

Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 20 January 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 March 1987,

gives the following

Judgment

- 1 By applications lodged at the Court Registry on 26 and 27 March 1986, the companies L'Étoile commerciale and Comptoir national technique agricole (CNTA) brought actions under the second paragraph of Article 173, Article 178 and the second paragraph of Article 215 of the EEC Treaty for:
 - (i) a declaration that Commission Decision 85/456/EEC of 28 August 1985 on the clearance of the accounts presented by the French Republic in respect of the European Agricultural Guidance and Guarantee Fund ('the EAGGF'), Guarantee Section, for 1981 (Official Journal 1981, L 267, p. 24) is void, in so far as it did not recognize as chargeable to the EAGGF an amount for subsidies in respect of certain consignments of oil seeds pressed by CNTA in October and November 1980;
 - (ii) compensation for the damage suffered by reason of the fact that, in consequence of that decision, Société interprofessionnelle des oléagineux (SIDO), the French agency responsible for applying the subsidy system for oil seeds, required the applicants to repay the subsidies in question; and

- (iii) in the alternative, for a declaration that Commission Regulation No 1204/72 of 7 June 1972 laying down detailed rules for the application of the subsidy system for oil seeds (Official Journal, English Special Edition 1972 (II), p. 493) is void.
- 2 According to the documents before the Court, in October and November 1980 CNTA pressed several consignments of oil seeds and applied to the competent national authority for the corresponding subsidies provided for in Article 27 (1) of Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats (Official Journal, English Special Edition, 1965-66, p. 221). Having ascertained that CNTA had not complied with certain administrative provisions concerning control of the processing of the seeds in question and that the grant of the subsidies might therefore be incompatible with the Community provisions in force at the material time, SIDO made payment of the subsidies conditional upon the provision by CNTA of a guarantee for repayment on demand of such sum as might be due from CNTA 'when the EAGGF gave its decision as to the eligibility of the advances paid'. That guarantee, for an amount of FF 8 586 278, was provided for CNTA by L'Étoile commerciale.
 - 3 Subsequently, when clearing the accounts of the EAGGF, Guarantee Section, for 1981, the Commission, by Decision 85/456 of 28 August 1985, addressed to the French Republic, refused to recognize the amount of the abovementioned subsidies as chargeable to the EAGGF.
 - 4 By a letter dated 27 January 1986, the SIDO informed L'Étoile commerciale of that Commission decision and sent it a copy of the summary report on the checks carried out by the Commission. At the same time, it formally required it to pay the amount of the guarantee furnished on behalf of CNTA, which had been in court-supervised receivership since 1983. L'Étoile commerciale, for its part, informed CNTA of that demand and paid to SIDO the amount which had been debited to the latter under Commission Decision 85/456.
 - 5 Opposing the present applications, in which L'Étoile commerciale and CNTA challenge the Commission's refusal to recognize the subsidies in question as chargeable to the EAGGF and seek compensation for the loss suffered by them, the

Commission raised an objection of inadmissibility by a separate document lodged in accordance with Article 91 (1) of the Rules of Procedure.

- 6 In support of that objection, the Commission contends essentially
 - (i) that the applicants did not comply with the time-limit for bringing proceedings laid down in the third paragraph of Article 173 of the EEC Treaty and Article 81 (1) of the Rules of Procedure;
 - (ii) that the contested decision is not of direct concern to the applicants within the meaning of the second paragraph of Article 173, since the clearance of the accounts in question is a matter confined to relations between the Member State and the Commission;
 - (iii) that the Court has jurisdiction only to adjudicate on compensation for damage caused by Community institutions or their servants.
- 7 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure 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.

The applications for Decision 85/456 to be declared void

- 8 With respect to the applications for Commission Decision 85/456 to be declared partially void, it should be noted that under the second paragraph of Article 173 of the EEC Treaty any natural or legal person may institute proceedings against a decision addressed to another person where that decision is of direct and individual concern to the former.
- 9 In deciding the question whether the decision at issue is of direct and individual concern to the applicants, it must first be observed that the decision does no more than fix the amount recognized as chargeable to the EAGGF in the clearance of the accounts submitted by the French Republic for the 1981 financial year. It is apparent both from the wording of that decision and from Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy (Official Journal, English Special Edition 1970 (I), p. 218), pursuant

to which it was adopted, that the decision relates only to financial relations between the Commission and the French Republic.

- 10 The applicants claim that in this case the contested decision did nevertheless have direct repercussions on their situation since as a result of that decision the SIDO exercised the right, which it had reserved when the subsidies were granted, to demand their repayment.
- 11 In that connection, it must be stated that according to the general principles on which the institutional system of the Community is based and which govern the relations between the Community and the Member States, it is for the Member States, in the absence of any contrary provision of Community law, to ensure that Community regulations, particularly those concerning the common agricultural policy, are implemented within their territory (see judgment of 21 September 1983 in Joined Cases 205 to 215/82 *Deutsche Milchkontor v Germany* [1983] ECR 2633). As regards more particularly financing measures adopted under that policy, it is incumbent upon the Member States, by virtue of Article 8 of Regulation No 729/70, to take the measures necessary to recover sums lost as a result of irregularities or negligence.
- 12 As regards the system of subsidies set up as part of the common organization of the markets with which this case is concerned, it is therefore for the national authorities to implement the Community regulations and to take the necessary individual decisions regarding the traders concerned. In doing so, the Member States act in accordance with the rules and procedures laid down in national legislation, subject to the limits imposed by Community law (see judgment of 6 June 1972 in Case 94/71 *Schlüter v Hauptzollamt Hamburg* [1972] ECR 307, and *Deutsche Milchkontor v Germany, supra*).
- 13 It is true that in this case the Commission's decision, addressed to the French Republic, not to recognize the subsidies concerned as chargeable to the EAGGF prompted the SIDO to recover those amounts. However, that was not a direct consequence of the contested decision itself but derived from the fact that the SIDO had made the definitive grant of the subsidies conditional upon their finally being charged to the EAGGF.

14 It follows that the contested decision does not directly affect the legal situation of the applicants. It must be borne in mind in that connection that traders can be effectively protected against individual decisions adopted by national bodies by means of the remedies available in the national courts.

15 Accordingly, the applications are inadmissible to the extent to which they seek to have Commission Decision 85/456 declared partially void, and it is unnecessary to consider whether the actions were brought within the time-limit laid down in the third paragraph of Article 173.

The claims for compensation

16 The applications also contain a claim under Article 178 and the second paragraph of Article 215 of the EEC Treaty for compensation for the damage caused by the SIDO's decision to demand from the applicants repayment of the subsidies which had been granted to CNTA.

17 It must be borne in mind that the combined provisions of Articles 178 and 215 of the Treaty give jurisdiction to the Court only to award compensation for damage caused by the Community institutions or by their servants in the performance of their duties or, in other words, for damage capable of giving rise to non-contractual liability on the part of the Community. Damage caused by national institutions, on the other hand, can give rise to liability only on the part of those institutions and the national courts retain sole jurisdiction to order compensation for such damage (see judgment of 26 February 1986 in Case 175/84 *Krohn & Co. v Commission of the European Communities* [1986] ECR 753).

18 Where, as in this case, the decision adversely affecting the applicants was adopted by a national body acting in order to ensure the implementation of Community rules, it is necessary, in order to establish the jurisdiction of the Court, to determine whether the unlawful conduct alleged in support of the claim for compensation is in fact the responsibility of a Community institution and cannot be attributed to the national body.

19 In the present case, the applicants, in support of their claim for compensation, merely allege that Decision 85/456, whereby the Commission fixed the amount

recognized as chargeable to the EAGGF in the clearance of the accounts submitted by the French Republic for 1981, is unlawful. But as has been stated above, that decision, which was concerned solely with internal financial relations between the Commission and the French Republic, was not intended to give, and could not have the effect of giving, instructions to the SIDO to adopt the decision giving rise to the alleged damage. The latter decision was adopted by the SIDO alone, in fulfilment of the general obligation imposed upon it by Regulation No 729/70 to recover aid unduly paid.

- 20 In those circumstances, the damage to which the applicants refer derived exclusively from the decision adopted by the SIDO, which is a national body, and the Court of Justice has no jurisdiction to order compensation on the basis of Article 178 and the second paragraph of Article 215 of the EEC Treaty.

- 21 The claims for compensation must therefore also be dismissed as inadmissible.

The claims that Regulation No 1204/72 should be declared void

- 22 In the alternative, the applicants claim, on the basis of Article 184 of the Treaty, that Regulation (EEC) No 1204/72 of the Commission laying down detailed rules for the application of the subsidy system for oil seeds is inapplicable. It is clear from previous decisions of the Court (see judgment of 16 July 1981 in Case 33/80 *Albini v Council and Commission* [1981] ECR 2141) that the possibility provided by that article of invoking the inapplicability of a regulation does not constitute an independent right of action and may only be sought incidentally. Since the main claims are inadmissible, the applicants cannot rely upon Article 184.

- 23 For those reasons, the actions must be dismissed as inadmissible in their entirety.

Costs

- 24 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicants have failed in their submissions they must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

- (1) Dismisses the actions as inadmissible;**
- (2) Orders the applicants to pay the costs.**

Galmot

Bosco

Everling

Joliet

Moitinho de Almeida

Delivered in open court in Luxembourg on 7 July 1987.

P. Heim

Y. Galmot

Registrar

President of the Fifth Chamber