

JUDGMENT OF THE COURT
2 DECEMBER 1971

**Aktien-Zuckerfabrik Schöppenstedt v
Council of the European [Union]**

Case 5/71

Summary

1. *Procedure - Action for damages - Autonomous nature - Difference between such action and an application for annulment*
([Article 268 TFEU], [Article 340 TFEU])
2. *Procedure - Action for damages - Alternative claim for 'another form' of compensation - Inadmissibility*
3. *E[U] - Non-contractual liability - Legislative measure involving choices of policy - Damage - Violation of a superior rule of law*
([Article 340 TFEU])

1. The action for damages provided for by [Articles 268 and 340 TFEU] was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on 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.
2. A claim for an unspecified form of damages is not sufficiently concrete and must therefore be regarded as inadmissible.
3. Where legislative action involving choices of economic policy is concerned, the [Union] does not incur non-contractual liability for damage suffered by individuals as a consequence of that action, by virtue of the provisions contained in [the second paragraph of Article 340 TFEU], unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred.

AKTIEN-ZUCKERFABRIK SCHÖPPENSTEDT, Schöppenstedt (Lower Saxony), represented by Rudolf Schrader, Chairman, and Alfred Isensee, Vice-Chairman of the Board of Directors, assisted by Arved Deringer, Oaus Tessin, Hansjürgen Herrmann and Jochim Sedemund, Advocates, of the Cologne Bar, with an address for service in Luxembourg at the Chambers of Marc Baden, Advocate, 1 boulevard Prince-Henri,

applicant,

v

COUNCIL OF THE EUROPEAN [UNION], represented by Ernst Wohlfahrt, Director-General of the Legal Department of the Council, acting as Agent, assisted by Hans Jürgen Lambers, Legal Adviser of the Council, with an address for service in Luxembourg at the Chambers of J.N. Van den Houten, Director of the Legal Department of the European Investment Bank, 2 place de Metz,

defendant,

Application for damages under the second paragraph of [Article 340 TFEU], as compensation for damage caused by Regulation No 769/68 of the Council laying down the measures needed to offset the difference between the national sugar prices and the prices valid from 1 July 1968,

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco (Rapporteur) and P. Pescatore, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

JUDGMENT

Grounds of judgment

- 1 By application filed at the Registry on 13 February 1971 the undertaking Aktien-Zuckerfabrik Schöppenstedt asks the Court under the second paragraph of [Article 340 TFEU] to order the Council to make good the damage which it caused the applicant by adopting Regulation No 769/68 of 18 June 1968 (OJ 1968, L 143) laying down the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968. Its principal claim is for the payment by the Council of 38'852.78 u.a., that is DM 155 411.13, representing the loss of income which it suffered in relation to the former German price of raw sugar. In the alternative it seeks moreover to be compensated otherwise for the damage which it has suffered.

Admissibility

- 2 The Council contests the admissibility of the application contending in the first place that it is aimed in fact not at compensation for damage due to its wrongful act or omission but to the removal of the legal effects arising from the contested measure. To recognize the admissibility of the application would frustrate the contentious system provided for by the Treaty in particular in [the fourth paragraph of Article 263 TFEU], under which individuals are not entitled to bring applications for annulment of regulations.
- 3 The action for damages provided for by [Articles 268 and the second paragraph of Article 340 TFEU] was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on 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 in the performance of its duties.
- 4 The Council further contends that the principal conclusions are inadmissible in that they involve the substitution of new rules, in accordance with the criteria described by the applicant, for the rules in question, a substitution which the Court has not the power to order.
- 5 The principal conclusions seek only an award of damages and, therefore, a benefit intended solely to produce effects in the case of the applicant. Therefore this submission must be dismissed.

- 6 The defendant then maintains that if the claim for damages is accepted the Court, in order to determine the amount of the damage in question, would have to fix criteria according to which the compensation with regard to prices would have had to be fixed and would thus encroach upon the discretion which the Council has in adopting legislative measures.
- 7 The determination of the criteria applicable to the calculation of the compensation in question relates not to admissibility but to the substance of the case.
- 8 The defendant pleads that the alternative claim is inadmissible since its subject-matter is unclear and since it is wholly lacking in a statement of the grounds relied on.
- 9 A claim for any unspecified form of damages is not sufficiently concrete and must therefore be regarded as inadmissible.
- 10 Only the principal claim is therefore admissible.

The substance of the case

- 11 In the present case the non-contractual liability of the [Union] presupposes at the very least the unlawful nature of the act alleged to be the cause of the damage. Where legislative action involving measures of economic policy is concerned, the [Union] does not incur non-contractual liability for damage suffered by individuals as a consequence of that action, by virtue of the provisions contained in: [Article 340 TFEU], second paragraph, of the Treaty, unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred. For that reason the Court, in the present case, must first consider whether such a violation has occurred.
- 12 Regulation No 769/68 was adopted pursuant to Article 37(1) of Regulation No 1009/67 which requires the Council to adopt provisions concerning the measures needed to offset the difference between national sugar prices and prices valid from 1 July 1968, and it authorizes the Member State in which the price of white sugar is higher than the target price to grant compensation for such quantities of white sugar and raw sugar which are in free circulation in its territory at 0.00 hours on 1 July 1968. The applicant points out that as regards Member States with a low price this regulation provides for the payment of dues on sugar stocks only if the previous prices were less than the intervention price valid from 1 July 1968 and concludes from this that by adopting different criteria for the right to compensation of sugar producers in a Member State with high prices, the regulation infringes the provision of the last subparagraph of [Article 40(2) TFEU] according to which any common price policy shall be based on common criteria and uniform methods of calculation.

- 13 The difference referred to does not constitute discrimination because it is the result of a new system of common organization of the market in sugar which does not recognize a single fixed price but has a maximum and minimum price and lays down a framework of prices within which the level of actual prices depends on the development of the market. Thus it is not possible to challenge the justification of transitional rules which proceeded on the basis that where the previous prices were already within the framework set up they must be governed by market forces and which therefore required the payment of dues only in cases where the previous prices were still too low to come within the new framework of prices and authorized compensation only in cases where the previous prices were too high to come within the said framework.
- 14 In addition, having regard to the special features of the system established with effect from 1 July 1968, the Council by adopting Regulation No 769/68 satisfied the requirements of Article 37 of Regulation No 1009/67.
- 15 It is also necessary to dismiss the applicant's claim that Regulation No 769/68 infringed the provisions of Article 40 of the [TFEU] because the method of calculating the compensation and dues for the raw sugar stocks was derived from that adopted for white sugar, which could, according to the applicant, result in the unequal treatment of the producers of raw sugar. Although, relying on hypothetical cases, the applicant stated that the calculation methods selected did not necessarily lead to uniform results with regard to producers of raw sugar, it was not proved that this could have been the case on 1 July 1968.
- 16 The applicant's action founded upon the Council's liability does not therefore satisfy the first condition mentioned above and must be dismissed.

Costs

- 17 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs. The applicant has failed in its submissions.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the parties;

Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty [on the Functioning of the European [Union]], especially Articles 40, [263] and the second paragraph of [340];
Having regard to Regulation No 1009/67 of the Council of 18 December 1967, especially Article 37 (1);
Having regard to Regulation No 769/68 of the Council of 18 June 1968; Having regard to the Protocol on the Statute of the Court of Justice of the European [Union];
Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

THE COURT

hereby:

- 1. Dismisses the application as unfounded;**
- 2. Orders the applicant to bear the costs.**

Lecourt

Mertens de Wilmars

Kutscher

Donner

Trabucchi

Monaco

Pescatore

Delivered in open court in Luxembourg on 2 December 1971.

A. Van Houtte
Registrar

R. Lecourt
President