

Judgment of the Court of Justice, Lütticke, case 4/69 (28 April 1971)

Caption: Excerpt from the Lütticke judgment relating to the admissibility of action for damages. It results from this judgment that action for damages constitutes an autonomous form of action with respect to action for failure to act.

Source: Reports of Cases before the Court. 1971. [s.l.].

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Judgment of the Court of 28 April 1971 Alfons Lütticke GmbH v Commission of the European Communities

Case 4-69

Summary

1. *Procedure - Application - Admissibility - Conditions - Reference to other proceedings - Permissibility (Rules of Procedure, Article 38)*

2. *Procedure - Action for damages - Independent nature - Result comparable to that of action for failure to act - Permissibility (EEC Treaty, Articles 178, 215)*

[...]

1. An application satisfies the requirements of Article 38 (1) of the Rules of Procedure when it contains all the details necessary to establish with certainty the subject-matter of the dispute and the legal scope of the grounds invoked in support of the submissions. Its admissibility is not affected by reference, in addition, to other proceedings brought before the Court.

2. The action for damages provided for by Article 178 and the second paragraph of Article 215 was established by the Treaty as an independent form of action with a particular purpose to fulfil within the system of actions and subject to conditions for its use conceived with a view to its specific purpose.

It would be contrary to the independent nature of this action as well as to the efficacy of the general system of forms of action created by the Treaty to regard as a ground of inadmissibility the fact that, in certain circumstances, an action for damages might lead to a result similar to that of an action for failure to act under Article 175.

[...]

In Case 4/69

ALFONS LÜTTICKE GMBH, having its registered office in Germinghausen and a branch office in Cologne-Deutz, represented by Peter Wendt, Advocate of the Hamburg Bar, with an address for service in Luxembourg at the office of Félicien Jansen, huissier, 21 rue Aldringen,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Advisers, Jochen Thiesing and Rolf Wägenbaur, acting as Agents, with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

defendant,

Application for damages under the second paragraph of Article 215 of the EEC Treaty,

THE COURT,

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

Advocate-General: A. Dutheillet de Lamothe

Registrar: A. Van Houtte

gives de following

JUDGMENT

[...]

Grounds of judgment

1 The applicant requests the Court, on the basis of Article 178 and the second paragraph of Article 215 of the EEC Treaty, to order the Community to make good the damage caused to the applicant by the Commission's failure to address to the Federal Republic of Germany a directive or a decision under the second paragraph of Article 97 ordering it to abolish with effect from 1 January 1962 the turnover equalization tax on milk powder or, at least, to reduce it to a level compatible with the provisions of Article 95 and the first paragraph of Article 97.

Admissibility

2 The defendant maintains that the application does not satisfy the requirements of Article 38 (1) of the Rules of Procedure by reason of the fact that, first, it refers, in respect of certain aspects of the dispute, to arguments put forward in other cases brought before the Court and, secondly, it does not give grounds for the claim of 8 per cent interest in addition to the principal sum claimed.

Under Article 38 (1) of the Rules of Procedure the application must contain, *inter alia*, an indication of the subject-matter of the dispute, a brief statement of the grounds on which the application is based and the submissions of the applicant. The application has satisfied these requirements since it gives all the details necessary to establish with certainty the subject-matter of the dispute and the legal scope of the grounds invoked in support of the submissions. In these circumstances, reference, in addition, to other proceedings brought before the Court of Justice does not affect the admissibility of this action. The question of giving grounds for the interest claimed in addition to the principal sum concerns the substance of the dispute and not the question of admissibility as such.

4 Consequently, the objection based on Article 38 (1) of the Rules of Procedure must be dismissed.

5 Secondly, the defendant contests the admissibility of the action by reason of the fact that, although introduced on the basis of Article 178 and the second paragraph of Article 215, it seeks in reality to establish a failure to act on the part of the Commission and to constrain it indirectly to initiate against the Federal Republic of Germany the procedure under the second paragraph of Article 97 and, possibly, that under Article 169. It is claimed that this manner of proceeding has the effect of distorting the conditions to which Article 175 has subjected actions for failure to act.

6 The action for damages provided for by Article 178 and the second paragraph of Article 215 was established by the Treaty as an independent form of action with a particular purpose to fulfil within the system of actions and subject to conditions for its use, conceived with a view to its specific purpose. It would be contrary to the independent nature of this action as well as to the efficacy of the general system of forms of action created by the Treaty to regard as a ground of inadmissibility the fact that, in certain circumstances, an action for damages might lead to a result similar to that of an action for failure to act under Article 175.

7 This objection of inadmissibility must therefore be dismissed.

8 Since the defendant asserts also that the right to damages claimed by the applicant is, for the most part, time-barred, it must be observed that this objection concerns, in reality, not the admissibility of the application but the extent of reparation and it must therefore be dismissed.

[...]

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 establishing the European Economic Community, especially Articles 95, 97, 155, 169, 171, 173, 176, 178 and 215;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Articles 38 and 69;

THE COURT

hereby:

- (1) Dismisses the application;**
- (2) Orders the applicant to bear the costs.**

Lecourt
Donner
Trabucchi
Monaco
Mertens de Wilmars
Pescatore
Kutscher

Delivered in open court in Luxembourg on 28 April 1971.

A. Van Houtte
Registrar

R. Lecourt
President

1 - Language of the Case: German