

PRACTICAL CASE-SOLVING IN EUROPEAN LAW

Case 7
(facts of the case)

A regulation of the European Community empowers the Commission to order the compulsory distillation of table wine if in a year with an extraordinarily rich wine harvest the wine prices threaten to collapse. One year, due to the climate change, even North European winegrowing regions such as Cornwall (England), Saale-Unstrut (Germany), Lebus (Poland) and Kurzeme (Latvia) are throwing enormous quantities of dry and heavy red wine on the table wine market. Therefore, the Commission issues a lawful regulation that determines for every winegrowing region a specific total amount of table wine that has to be made available for the compulsory distillation. The competent authorities of the member states execute this regulation by issuing administrative acts that allocate the quotas to the individual winegrowers and oblige them to deliver the allocated quantity of wine. Many winegrowers take actions against these decisions at the administrative courts, but they are not successful.

Under the administrative procedural law of the member state A-land, actions for annulment against administrative acts have a so-called "suspensory effect", that means that they automatically suspend the right of the authorities to execute and enforce the disputed act until the court has delivered its judgement. The authorities may order the "immediate execution" of the administrative act if this is imperative to ensure that the law is applied and enforced effectively, but with regard to the tensions in the winegrowing population, they refrain from doing this. These tensions fade quickly because the winegrowers make use of the "suspensory effect" to sell all their wine on the regular wine market during the court proceedings.

The Commission considers this conduct of the authorities in A-land as a violation of the EC Treaty. Already at an early stage, it issues a formal notice. A-land denies any Treaty violation. It argues that the authorities are taking all the common measures of application and are obliging the individual winegrowers specifically and bindingly to deliver specified amounts of wine. Resentfully, the Commission now delivers a reasoned opinion with the request to comply within a period of two months. It reasons that the member states are not allowed to apply [execute] its regulations "somehow" but must apply and enforce them effectively with all necessary means. After ten weeks, the situation has not changed and the Commission takes action before the European Court of Justice.

Will the legal action be successful?

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(discussion of the case)

SUBJECTS:

proceedings for failure to fulfil obligations [= infringement proceedings]; obligation of the member states to apply [execute] Community law effectively; obligation of the member states to enforce Community law; interim relief against the implementation of Community law.

OUTLINE OF THE CASE SOLUTION:

The action of the European Commission will be successful if it is admissible and well-founded.

A. Admissibility of the action

The action must be admissible. In the case under consideration, the Commission has taken an enforcement action against member state A-land under art. 226 EC Treaty^I that has initiated proceedings for failure to fulfil obligations (infringement proceedings). Therefore the requirements originating in art. 226 EC Treaty must be met.

I. Jurisdiction of the European Court of Justice

The European Court of Justice has jurisdiction to decide this case. Art. 226 EC Treaty establishes the jurisdiction of the courts of the European Union; within the Union, the jurisdiction lies with the Court of Justice.

II. Capacity to sue and to be sued

Concerning the enforcement action under art. 226 EC Treaty, the Commission has the capacity to sue and A-land, as a EU member state, can be sued before the European Court of Justice (cf. art. 226 sub-sect. 1 and 2 EC Treaty).

III. Preliminary proceedings

The enforcement action is only admissible if the Commission has fully and duly carried out the preliminary proceedings prescribed in art. 226 sub-sect. 1 EC Treaty. A letter of formal notice issued by the Commission, which invites the concerned member state to submit observations, initiates these proceedings. In the case under consideration, the Commission has issued such a formal notice and member state A-land has submitted its observations, denying any Treaty violation. As required, the exchange of positions was followed by a formal, reasoned opinion of the Commission, in which it specified the alleged failure and called on A-land to fulfil its obligations under the EC Treaty within a fixed period of time. By this, the preliminary proceedings were completed. After A-land had not complied with the opinion within the period of two months laid down by the Commission, the latter was entitled to file the application before the Court of Justice.

^I In future (if the Treaty of Lisbon comes into force) art. 258 of the Treaty on the Functioning of the European Union (FEU Treaty).

IV. Suitable subject-matter for an application

The enforcement action is only admissible if it is directed against a member state's failure to fulfil an obligation "under this Treaty" (cf. art. 226 sub-sect. 1 EC Treaty). Such failures include all violations of primary or secondary law. In the present case, the Commission alleges that the defendant has failed to fulfil its *obligation* to [effectively] apply [execute] the binding and directly applicable regulation of the European Community on the compulsory distillation of table wine (art. 10 read together with art. 249 sub-sect. 2 EC Treaty²). This is a suitable subject-matter for an action under art. 226.

V. Legal interest in bringing proceedings

The Commission does not only suspect but is actually convinced that the criticised action of the member state A-land represents a violation of the EC Treaty. Since A-land has not complied with its reasoned opinion and has not taken the measures considered necessary by the Commission, the allegation is still virulent and needs to be adjudicated. Therefore, the required legal interest in bringing proceedings is given.

The enforcement action of the European Commission is admissible.

B. Well-foundedness of the action (substance/merits of the case)

The action must also be well-founded. This is the case if the defendant, member state A-land, actually has *failed to "fulfil an obligation under this treaty"*, here the obligation deriving from art. 10 read together with art. 249 sub-sect. 2 EC Treaty to apply [execute] the regulation on the compulsory distillation of table wine on its territory. In the case under consideration, the authorities in A-land have issued administrative acts that allocated the quotas to the individual winegrowers and obliged them to deliver the allocated quantity of wine for the purpose of distillation. So they have taken the regularly necessary measures for the application of the regulation. However, due to the automatic "suspensory effect" of the actions for annulment brought by the local winegrowers before the local administrative courts, these measures were actually ineffective and eventually failed their purpose to normalise the market and to secure the wine prices by skimming excess quantities of wine. This raises the question of whether the member states are only obliged to apply the regulations of the Community formally (by acts legally binding the citizen) or if they must apply them effectively (with actual effect), and whether, for this purpose, they are even required to adopt *coercive measures* where they may be necessary. Furthermore, it raises the question of to what extent interim relief for reasons linked to the rule of law allows exceptions.

I. Obligation to apply Community law effectively

The obligation of the member states to apply Community law is in principle an obligation to apply it *effectively*. Otherwise, the *effectiveness of Community law* (effet utile) would not be guaranteed. The uniform validity and application of the Community law and hence an essential foundation of the European Union would be put into question. The issuing of executing administrative acts does not in itself ensure the actual effect of the legal norm. It is also necessary, as an essential part of the application, to enforce these administrative acts. This may include, within the limits set by the rule of law, coercive measures and even the exercise of physical force.

II. Exceptions from the obligation to apply Community law for reasons of interim relief - conditions and limits

Certainly, in individual cases, during court proceedings, interim relief, as required by the rule of law and for the protection of the rights of the citizen, may lead to exceptions. In the legal order of the European Union as in national law, the protection of the citizen, in particular against the creation of a *fait accompli*, is an important concern.³ However, interim relief *must not create a fait accompli in its turn* that makes impossible the effective enforcement of Community law, as it has happened here. The authorities of the member states must consider this within their strategy for the implementation of Community law. This means: If in a member state the citizens have achieved the suspension of

² In future art. 4(3) EU Treaty read together with art. 288 sub-sect. 2 FEU Treaty.

³ Cf. ECJ, joint cases C-143/88 and others, Zuckerfabrik Süderdithmarschen.

the enforcement of administrative acts issued to apply a Community regulation and this threatens to thwart the achievement of the objective of the concerned regulation, the authorities *must* eliminate the "suspensory effect" by ordering the "immediate execution" of these administrative acts, if they have the power to do so.⁴ Inequitable hardship for the citizen can be avoided by careful weighting and balancing in the individual case. In the case under consideration, where citizens are obliged to deliver a limited quantity of a product produced for sale in order to stabilise the (high) price for this product on the market, such hardships are not evident.

Hence, by refraining from ordering the "immediate execution" of their administrative acts addressed to the winegrowers, the authorities in the member state A-land have failed to fulfil their obligation to - effectively - apply the regulation of the Commission on the compulsory distillation of table wine that derives from art. 10 read together with art. 249 sub-sect. 2 EC Treaty. Therefore, the enforcement action of the Commission is not just admissible but also well-founded.

Conclusion: The legal action will be successful.

FURTHER READING:

This case has been remotely modelled on the case C-217/88, *vin de table*. In that case, German winegrowers took a great advantage of the "suspensory effect" of their objections before the administrative authorities during the period of the objection proceedings ["Widerspruchsverfahren"].

More informations on this course at www.lanet.lv/~tschmit1. For any questions, suggestions and criticism please contact me via e-mail at tschmit1@gwdg.de.

(Datei: Case7 (Cases-EULaw))

⁴ Cf. with regard to a similar case ECJ, case C-217/88, *vin de table*, no. 25.

A. Admissibility of the action

I. Jurisdiction of the European Court of Justice

II. Capacity to sue and to be sued

III. Preliminary proceedings

- formal notice of the Commission, observations of member state A-land, reasoned opinion of the Commission with request to comply within two months, fruitless expiration of the period for compliance

IV. Suitable subject-matter for an application

V. Legal interest in bringing proceedings

B. Well-foundedness of the action (substance/merits of the case)

I. Obligation to apply [execute] Community law effectively

- including, if necessary, the enforcement of executing administrative acts by coercive measures

II. Exceptions from the obligation to apply Community law for reasons of interim relief - conditions and limits

- no creation of a *fait accompli*, which makes it impossible to achieve the objective of the Community regulation
- where possible and necessary, national authorities must eliminate the "suspensory effect" of remedies by ordering the "immediate execution" of the concerned administrative acts