exemptions from the conditions laid down by that regulation.

3. A question relating to the application of the second paragraph of Article 215 of the Treaty cannot be determined in proceedings for a preliminary ruling.
4. The question of compensation by a national agency for damage caused to private individuals by the agencies and servants of Member States, either by reason of an infringement of Community law or by an act or omission contrary to national law, in the application of Community law does not fall within the second paragraph of Article 215 of the Treaty and must be determined by the national courts in accordance with the national law of the Member State concerned.
5. The application of the second paragraph of Article 215 of the Treaty falls within the exclusive jurisdiction of the Court of Justice and lies outside that of the national courts.

In Case 101/78

REFERENCE to the Court under Article 117 of the EEC Treaty by the College van Beroep voor het Bedrijfsleven for a preliminary ruling in the action pending before that court between

GRANARIA BV Rotterdam,

and

HOOFDPRODUKTSCHAP VOOR AKKERBOUWPRODUKTEN, The Hague,

on the interpretation of, *inter alia*, Council Regulation (EEC) No 563/76 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs (Official Journal No L 67 of 15 March 1976, p. 18) and also the second paragraph of Article 215 of the EEC Treaty,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), A. M. Donner, P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

1. The Hoofdproduktschap voor Akkerbouwprodukten (Central Board for Agricultural Products), the defendant in the main action, by its decisions of 24 March and 8 September 1976, refused to issue to the undertaking Granaria, the plaintiff in the main action, a protein certificate for certain vegetable feedingstuffs on the ground that Granaria had not provided a security as laid by Council Regulation No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs (Official Journal No L 67 of 15 March 1976, p. 18).

2. In its appeal against the above-mentioned decisions to the College van Beroep voor het Bedrijfsleven Granaria requested it to annul them because Regulation No 563/76 was invalid, leaving it to the College to determine the consequences of such an annulment.

3. The College, by an order of 7 December 1976, stayed proceedings and requested the Court to give a preliminary ruling on the validity of Regulation No 563/76. In its judgment of 5 July 1977 in Case 116/76 ([1977] ECR 1247) the Court held that the regulation was invalid.

4. Following that judgment the parties filed further submissions on 8 September 1977. In its submissions Granaria requested the College to annul the decisions appealed against and to order the Hoofdproduktschap to make good the damage which it has suffered as a result of those decisions and also the costs and disbursements of the action.

In support of its submissions Granaria stresses that the decisions against which it has appealed are based on Regulation No 563/76 which the Court in its judgment of 5 July 1977 ruled was invalid. Granaria assesses the damage which it has suffered, made up of financing charges, staff and administrative expenses and also loss of profit and loss of turnover, at Hfl 604 070.

The Hoofdproduktschap has agreed that the application for the annulment of the decisions appealed against should be granted but has denied that it is liable for the damage suffered by Granaria as a result of those decisions.

Nor does it accept that the quantification of the loss which Granaria states it has suffered is correct, but has conceded that Granaria has suffered some damage, for example the banking charges incurred in connexion with the provision of the security within the meaning of Articles 3 (2) and 11 of Regulation No 563/76.

5. Since the College van Beroep considered that the action raises questions of interpretation of Community law, it stayed proceedings by an order of 31 March 1978 and, pursuant to Article 177 of the Treaty, requested the Court of Justice to give a preliminary ruling on the following questions of interpretation:

I. 1. On a true interpretation, does it result from the provisions of Regulation No 653/76, so long as the latter had not been declared null and void, that the defendant, in answer to an application such as that by the plaintiff for the issue of a protein certificate, was obliged to refuse to issue such certificate:

before 1 April 1976: if the applicant had not lodged a security within the meaning of Article 11 of the regulation?

and

as from 1 April 1976: if the applicant had not either produced a document as prescribed by Article 6 of the regulation or provided a security as prescribed by Article 3 (2) of the regulation?

2. If Question 1 is answered in the affirmative, must it then be held that on a true interpretation of the Treaty and the principles which are fundamental thereto the defendant was nevertheless empowered to exempt an applicant for a protein certificate from the obligation to comply with the conditions for the issue of a protein certificate imposed by the regulation for the period before 1 April 1976 and for the period from 1 April 1976?

II. If Question 1 is answered in the affirmative and Question 2 in the negative, the following questions arise:

3. Must the second paragraph of Article 215 of the Treaty be interpreted as meaning that because the Community enacted the regulation and because the regulation was declared null and void by the Court of Justice of the European Communities in its aforementioned judgment on the grounds relied on in that judgment which are set out above, the Community is directly liable to the injured party, in the present instance the plaintiff, for the damage suffered by the injured party as a consequence of the sole fact that for so long as it had not been declared null and void by the Court of Justice that regulation was implemented and applied by the competent authority wholly in accordance with its content and scope?

4. If so, is the second paragraph of Article 215 of the Treaty to be understood as meaning that the Community is directly and exclusively liable for the damage suffered or that the Member State or the authority appointed by the Member State which implemented and applied the regulation is liable, either wholly or in part?

5. On a true interpretation of the second paragraph of Article 215 of the Treaty, if the Member State or the authority appointed by it is directly liable in whole or in part for the damage referred to in the two previous questions, is the Member State or the authority entitled to have recourse to and seek redress from the Community?

III. 6. If the Community is not held to be exclusively liable for the damage referred to under II and the College must consequently rule on the possible liability of the defendant and its obligation to pay damages, on a true interpretation of Article 215 and the other provisions of the Treaty must the College in that case reach its decision pursuant to the principles set out in the second paragraph of Articles 215 of the Treaty or exclusively on the basis of Netherlands national law?

7. If, in that case, the College must reach its decision pursuant to the principles set out in the second paragraph of Article 215 of the Treaty, on a true interpretation of the second paragraph of Article 215 is compensation payable for all damage suffered in so far as it was reasonably foreseeable?

8. Do those principles or other provisions of the Treaty mean that in proceedings such as these the costs of legal representation are to be regarded as damage suffered for which the injured party can in principle demand full compensation or as procedural costs which must be awarded in accordance with the relevant national provisions?

6. It is clear from the order making the reference that, apart from the question whether the heads of damage mentioned by Granaria and the sums which it has arrived at are in fact correct, the College is of the opinion that the method adopted by Granaria for the purpose of assessing the amount of the damage which it has suffered as a result of the two decisions appealed against is in principle acceptable. The College assumes that in connexion with the decisions appealed against, independently of the various items mentioned, Granaria must in any event bear the additional banking charges relating to the provision of the security. Similarly, the College assumes that Granaria had to incur expenses incidental to the action.

7. The order making the reference was entered in the Court Register on 27 April 1978.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted by the plaintiff in the main action, the Netherlands Government and also by the Council and the Commission of the European Communities.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Written observations submitted to the Court

A — Observations of the plaintiff in the main action

1. *With regard to the first question for a preliminary ruling* Granaria submits that national authority responsible for the implementation of Community provisions may in principle assume that those provisions are valid until the competent court has held otherwise. However, there is an exception to that principle where the provisions in question are provisions of general applications the implementation of which has been entrusted to the Member States; that exception arises where the national authorities concerned, taking into account the general principles of good administration and legal certainty, have reasonable grounds for apprehending, even before the court has given its ruling,

that a Community provision is invalid and that its application is contrary to Article 5 of the Treaty.

According to Granaria it is the latter situation which has arisen in the present case. The Netherlands business circles concerned had in fact pointed out to the defendant in the main action, before and immediately after the adoption of Regulation No 563/76, that the latter was invalid. Granaria takes the view that, since the defendant in the main action took no notice of those warnings, it ran the risk of the regulation's not being valid. It is clear from the judgment of the Court in the beforementioned Case 116/76, *Granaria*, that it has in this respect made a mistake of law. It must accept the consequences of such a mistake.

2. Granaria takes the view that the answer to *the second question for a preliminary ruling* must be in the negative, as neither Regulation No 563/76 nor the general principles of Community law give the defendant in the main action the right to exempt interested parties from the obligations laid down in the regulation, since the latter does not provide for such an exemption.

3. *With regard to the third question for a preliminary ruling* Granaria emphasizes that it has not pleaded that the Community is liable for the damage which it has suffered through the application of the invalid regulation. According to Granaria, under domestic law the defendant in the main action is liable for the damage which it has suffered.

Granaria bases itself on the assumption that the Community is liable under Article 215 of the Treaty only for specific damage caused to the person who has suffered loss, where the latter has formally instituted proceedings against the Community for a declaration of liability.

Granaria is of the opinion that the Court has already given a negative answer in principle to the third question, in Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL Vermehrungsbetriebe GmbH & Co. KG and Others* v *Council and Commission of the European Communities* [1978] ECR 1209.

Granaria also points out that the principal subject-matter of the main action is not the damage which, in consequence of the application of the invalid regulation, culminated in an increase in the prices of the products concerned, but primarily the "individual damage", which is entirely different and which Granaria can under no circumstances pass on to its customers: administrative and staff expenses. That "individual damage", because of its unusual extent, cannot be regarded as a part of the risk involved in every business venture and which, as such, according to the case-law of the Court on Article 215 of the Treaty, must be entertained by the individual trader. In so far as it may be necessary, Granaria adds that in its opinion such "individual damage" must be assessed in the main action with reference to domestic law and not to Article 215 of the Treaty.

Granaria takes the view that in principle it could, in the light of the recent case-law of the Court on Article 215, bring a separate action against the Community on the basis of the latter's non-contractual liability under the second paragraph of Article 215 of the Treaty.

4. Granaria's answer to the *fourth question for a preliminary ruling* is that the party suffering the damage in question can obtain only a single order for compensation against the Community and/or the Member State which is liable. Injured parties may choose to claim compensation for damage either from

the Community or from the Member State concerned, if and to the extent to which there is any legal liability.

A Member State, however, cannot be liable under Article 215 of the Treaty but only on the basis of domestic law for the damage caused. The Community can be declared to be liable under Article 215 only if a separate action is brought against it. Such a declaration of liability cannot be obtained in proceedings before a national court such as those in this case.

Granaria's opinion implies that the defendant in the main action, as the authority concerned, is liable for the damage flowing from the invalidity of Regulation No 563/76 and its application as well as for the loss caused by the contested decisions. The national court must determine the extent of the "European" damage in accordance with domestic law.

5. In answer to the *fifth question for a preliminary ruling* Granaria points out that where the Community and a Member State are jointly and severally liable, it may happen that the liable party, who has compensated the injured party as required by law, will ultimately look to the other liable party or subsequently bring an action against that party for part of the compensation paid, in accordance with the general principles of Community law.

6. Granaria points out *with regard to the sixth question for a preliminary ruling* that it is clear from the foregoing that the liability of the defendant in the main action for the "European" damage and for the "national" damage caused by the application of the invalid regulation and by the contested decisions must be determined on the basis of Netherlands law.

7. According to Granaria the *seventh question* referred to the Court by the College van Beroep is not relevant.

In case the Court should come to a different conclusion Granaria asserts that a proper construction of Article 215 of the Treaty leads to the finding that all the damage suffered by the injured party must in principle be taken into consideration, in so far as such damage could reasonably be foreseen.

8. Granaria's answer to the *eighth question for a preliminary ruling* is that the costs of legal representation must be assessed according to national law and treated as damage for which the injured party may, in principle, claim compensation, if and in so far as those costs were reasonably foreseeable.

If the Court were to hold that this question must be determined by applying Community law, Granaria takes the view that the costs of legal representation must be treated as damage for which the injured party may, in principle, claim compensation in so far as such damage was reasonably foreseeable.

B — Observations of the Netherlands Government

1. The Netherlands Government points out that the Community alone is liable for the damage caused to Granaria owing to the fact that the Netherlands authorities adopted, before 1 April 1976, national measures pursuant to the third paragraph of Article 11 of Regulation No 563/76. The notion that the national courts which have to apply the regulation must always, before giving effect to it, form an opinion as to its possible invalidity, is incompatible with the institutional system established by the

Treaties and could give rise to enormous practical difficulties. This emerges from the judgment of the Court of 7 February 1973 in Case 39/72, *Commission of the European Communities* v *Italian Republic* [1973] ECR 101.

In the view of the Netherlands Government both the Communities and the Member States who apply a regulation which is subsequently declared to be null and void are liable only to the extent to which they have manifestly and seriously exceeded their powers. It refers on this point to the judgment of the Court in the abovementioned Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL.* In this case those factors are missing.

2. The Netherlands Government then lays particular stress on the fact that at the first stage, to which Granaria belongs, of the marketing process for the products in question the increase in charges occasioned by Regulation No 563/76 is passed on to the later stages. This factor must be taken into account when assessing the damage.

3. The Netherlands Government is of the opinion that the answer to the *first question for a preliminary ruling* must be in the affirmative. It was in fact impossible from the administrative point of view, before 1 April 1976, to waive the requirement of the provision of a security.

The Netherlands Government points out with reference to the period subsequent to 1 April 1976 that there is nothing in the regulations at issue to indicate that in certain circumstances the Member States were not obliged to make the issue of a protein certificate conditional upon the provision of a security as mentioned in Article 3 (2) of Regulation No 563/76 or upon production of the document referred to in Article 6 of the said regulation.

4. The Netherlands Government gives the same answer to *the second question for a preliminary ruling:* there is nothing in the regulations at issue to indicate that in certain circumstances the Member States were empowered to exempt the plaintiff from compliance with the formalities laid down in the regulation for the purpose of obtaining the protein certificate.

C — Observations of the Council

1. The Council is of the opinion that the *first question for a preliminary ruling* should be answered in the affirmative.

2. The Council takes the view that the *second question for a preliminary ruling* must be answered in the negative, since Regulation No 563/76 does not provide that the Member States may derogate from its provisions.

3. The Council considers that it would be preferable to elucidate the other questions for a preliminary ruling in the context of a direct action against the Community or its institutions under Article 178 and the second paragraph of Article 215 rather than in the context of a reference for a preliminary ruling.

D — Observations of the Commission

1. According to the Commission the answer to the *first question for a preliminary ruling* must be in the affirmative.

2. In the judgment of the Commission the answer to the *second question for a preliminary ruling* must be in the negative owing to the fact that Regulation No 563/76 does not allow the Member States to exercise any real discretion. A Member State wishing to call in question the validity of a regulation must do so in accordance with the procedure laid down for that purpose in the Treaty.

3. (a) The Commission, in answer to the *third question for a preliminary ruling*, submits that it is clear from the Court's judgment in the above-mentioned Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL*, that the Community is not in the present case directly liable for the damage which the plaintiff in the main action claims to have suffered.

3. (b) The Commission also gives its opinion, in connexion with its answer to the third question, on the decision which the national court must take in the actions brought before it by the plaintiff in the main action. It first of all points out in this connexion that actions for non-contractual damages against national authorities which are alleged to be in breach of Community provisions, because for instance they have implemented a regulation subsequently declared to be invalid, must be brought before the national courts. In fact the second paragraph of Article 215 of the Treaty gives the Court sole jurisdiction in actions brought against the Community for compensation for damage caused by its institutions or servants. The national authorities do not form part of those institutions, even when they implement Community regulations.

As Regulation No 563/76 gives the national authorities a discretion of a purely formal nature, it is extremely unlikely that Member States can incur non-contractual liability in respect of their own conduct when implementing and applying that regulation.

Without prejudice to these substantive observations the Commission is of the opinion that in principle national authorities responsible for implementation and application are liable for non-contractual damage caused by their own conduct, both directly and in the last resort — that is to say, they cannot pass on their liability to the Community: in every case where Member States are given certain powers for the purpose of implementing provisions of Community law they in fact act within the ambit and by virtue of their own sovereign power rather than as representatives of the Community; the Court has confirmed this in connexion with measures taken by Member States on behalf of the Community with a view to collecting the Community's own resources — for example in paragraphs 5 to 7 of its judgment of 25 October 1972 in Case 96/71, *R. & V. Haegeman* v *Commission of the European Communities* [1972] ECR 1014 and 1015 — and also in connexion with the non-contractual liability of Member States when implementing a valid Community regulation — for example in its judgment of 2 March 1978 in Joined Cases 12, 18 and 21/77, *Debayser SA and Others* v *Commission of the European Communities* [1978] ECR 553. This is also apparent from the second and third paragraphs of Article 215 of the Treaty, which do not mention that there is any such indirect liability or that the Community may have a right of recourse against the Member States or vice versa.

The Commission then asks itself the following question: on the assumption that a Member State is held to be liable for non-contractual damage caused by the measures which it has taken to implement a Community regulation, can that have any effect on the possible liability of the Commission? The answer to this question is in the affirmative where, for example, the unlawful conduct of the Member State responsible for implementing the regulation, having regard in particular to the extent of the discretion given to the Member State concerned by the regulation and to the seriousness of the respective instances of unlawful conduct, is such that the intervention of the Member State breaks the

chain of causation between the damage and the unlawful act of the Community.

3. (c) The Commission next gives its opinion on the elimination of the effects of an invalid regulation.

It points out in this connexion that actions for restitution of a given sum must, according to the well-established case-law of the Court, for example according to the judgment which it gave in the beforementioned Case 96/71, *R. & V. Haegeman,* be brought before the national courts. Actions for restitution seek a declaration that an act undertaken for the purpose of the immediate implementation of the regulation which has been declared invalid is void. Such acts, which are a direct effect of the regulation that has been declared invalid, fall within the second paragraph of Article 174 of the Treaty, which moreover empowers the Court to state which of the effects of the regulation shall be considered as definitive. The Commission considers that the same applies where the Court declares that a regulation is invalid in proceedings based on Article 177 of the Treaty. The Commission emphasizes that such an elimination of the effects of a regulation is different from compensation for damage within the meaning of the second paragraph of Article 215 of the Treaty.

An application for repayment of sums paid by way of security together, where appropriate, with interest and an application for the release of a bank guarantee are actions for restitution. The question whether there are grounds for granting such applications has to be decided by the national court in accordance with its domestic law. That applies, *inter alia,* to the question of the period within which proceedings must be brought. It is similarly for the national court to decide whether restitution must be refused in whole or in part when it transpires that the undertaking which provided the security or gave the guarantee has passed on the costs which it thereby incurred to its customers. In this connexion the national court may nevertheless refer a question for a preliminary ruling to the Court, which has jurisdiction under the second paragraph of Article 174 of the Treaty to state which of the effects of the regulation which it has declared void shall be considered as definitive.

The Commission also emphasizes that the application for repayment of the whole or part of the purchase price of the skimmed-milk powder is linked to the question of the validity or continued enforcement of agreements subject to private law entered into subsequent to and even for the purpose of the implementation of a regulation later declared to be invalid. Whether and in what circumstances such an agreement is automatically null and void, what the effects of such automatic nullity are and, finally, to what extent such effects are to be expected, if, for example, it were to be established that the undertaking concerned has passed on the damage which it has suffered to its customers, are questions for the national court to determine in accordance with national law, subject to the possibility of referring questions to the Court for a preliminary ruling.

If the national court neither declares that the contracts for the purchase of skimmed-milk powder are void or terminates them nor makes an order for repayment of the whole or part of the price then the question of compensation for continued enforcement of the contracts concerned may arise. Nevertheless, the possibility cannot be ruled out that a claim for further damage might be made if the contracts are declared to be void or are terminated, with the possible obligation to repay the price. Such actions for damages must be brought, in accordance with the rules specified above, either against the Community or the national authorities or, if necessary, against the two jointly.

Finally, the Commission points out that in the case of undertakings which

applied for but were not granted a protein certificate because they refused to provide a security or to buy skimmed-milk powder, their claim is not for repayment of a given sum but for compensation.

3. (d) The Commission then applies the above-mentioned observations to the claims made by the plaintiff in the main action.

According to the Commission, actions for the release of a security or bank guarantees and the recovery of administrative expenses and financing charges incidental thereto must be brought against the national authorities in the national courts.

Actions for a declaration that a contract of purchase is void or for the termination thereof and, where the contract is declared to be void or is terminated, actions for recovery of the whole or part of the price and for payment of the charges and expenses incidental thereto must also be brought against the national authorities in the national courts.

Actions for damages where contracts are maintained in force or for incidental damages where contracts are declared to be void or terminated and also actions for damages caused by the refusal to grant an application for a "protein" certificate because a security has not been provided or a contract of purchase has not been concluded must be brought against the Community before the Court of Justice and/or against the national authorities before the national court. However, in this case such an action could not be entertained since, according to the Court, on the one hand, the Community has not incurred non-contractual liability and neither, on the other hand, at least according to the Commission, have the national authorities.

Finally, the Commission suggests that the College van Beroep be told that under the general principles of the Community legal order actions for restitution by direct purchasers of skimmed-milk powder can succeed only if it can be shown that the relevant sums, charges and/or expenses have not been passed on to the subsequent purchasers. In this connexion it refers to the system introduced by Article 2 of Commission Regulation No 749/76 of 31 March 1976 laying down rules for the application of Article 5 of Regulation No 563 on the compulsory purchase of skimmed-milk powder (Official Journal No L 86 of 1 April 1976, p. 50). The Court should also draw the attention of the College to the fact that actions brought by the customers of direct purchasers at the different successive levels cannot be entertained, for the reasons set out in the sixth paragraph of its judgment in the beforementioned Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL* in connexion with actions for damages against the Community.

4. In reply to the *fourth and fifth questions for a preliminary ruling* the Commission refers specifically to its observations on the third question.

It adds that by reason of the institutional structure of the Community it is impossible to accept that, where the Community and a Member State or a national authority are liable concurrently, the Community and the national authorities are jointly and severally liable.

The application of the rules proposed by the Commission can, according to the latter, scarcely raise any difficulties in this case, because in its view it is impossible to accept *in casu* that the Member States or the national auth-

orities concerned, any more for that matter than the Community, can incur liablility as a result of the implementation of Regulation No 563/76 which has been declared to be invalid.

5. In answer to the *sixth and seventh questions for a preliminary ruling* the Commission also refers to its observations on the preceding questions.

It adds the specific observation that the question whether the national authorities may be liable must be determined on the basis of the national law applicable to the matter. However, the national courts whose task it is to settle this question of liability are often prompted to request the Court for a preliminary ruling on the interpretation or validity of the Community provisions at issue. In fact, according to the Commission, in order to assess whether or not acts of a national authority are in order, it is often material to know the precise scope of the Community provisions, the application of which has given rise to the irregularity which has been found to exist. The national court might also wish, when establishing that the various requirements under national law for the existence of liability are present, to be acquainted with the extent to which the Community may be held to be liable for the damage which has been caused.

6. Finally, according to the Commission, the *eighth question for a preliminary ruling* must be determined by the national court in accordance with the provisions of its national law.

III — Oral Procedure

1. The plaintiff in the main action, represented by B. H. ter Kuile, the defendant in the main action, represented by A. W. P. Helmstrijd, the Council of the European Communities, represented by A. Brautigam, a member of its Legal Department, acting as Agent, and the Commission of the European Communities, represented by its Legal Adviser, J. H. J. Bourgeois, acting as Agent, assisted by Professor W. van Gerven, submitted their oral observations at the hearing on 30 November 1978.

2. *Granaria* submitted, in particular, in connexion with the fourth question for a preliminary ruling, that a Member State of the Community can be jointly and severally liable only where the liability arises under the same legal order. That legal order can only be Community law. Liability under national law and Community law, which are two different legal orders, is not joint and several.

Granaria submitted with reference to the fifth question for a preliminary ruling that it seems to be possible in principle to bring an action for contribution where there is concurrent liability under a single legal order but not where such liability arises under two different legal orders.

With reference to the sixth question for a preliminary ruling Granaria added to its written observations the further observation that, although the national court may rely on Community law when it orders a Member State to make good damage, it cannot make such an order on the basis of Article 215 because that article relates solely to the Community's liability and the consequences thereof.

3. The *Hoofdproduktschap*, as far as concerns the first two questions for a preliminary ruling, agreed with the observations of the Council and the Commission. In the opinion of the Hoofdproduktschap the other questions are not relevant.

4. The *Council*, as far as concerns the third, fourth, fifth, sixth, seventh and

eighth questions, upon which it did not define its position in its written observations, agreed with the observations of the Netherlands Government and the Commission.

5. The Court had requested the *Commission* to supply particulars of the decisions which have been taken in the Member States following its judgments of 5 July 1977 in Case 114/76, *Bela-Mühle* v *Grows-Farm,* in Case 116/76, *Granaria BV* v *Hoofdproduktschap voor Akkerbouwprodukten,* in Joined Cases 119 and 120/76, *Ölmühle Hamburg AG* v *Hauptzollamt Hamburg-Waltershof* and *Firma Kurt A. Becher* v *Hauptzollamt Bremen-Nord* [1977] ECR 1211, 1247 and 1269, and its judgment of 25 May 1978 in Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL* v *Council and Commission* [1978] ECR 1209, and especially in connexion with proceedings which may have been brought for reimbursement of amounts paid under the system introduced by Regulation No 563/76.

The Commission answered that apart from the present case, no proceedings have been commenced, except in the Federal Republic where there are five pending actions. They are concerned with the refusal by the administrative authority to grant applications for reimbursement of the security on the ground that the importers concerned have been able to pass the charge on to their purchasers and with its refusal to issue protein certificates. Some two thousand applications have been lodged with the relevant German administrative authority; pending the outcome of the five abovementioned pending actions those procedures have been suspended.

In the Federal Republic a claim for DM 2.9 million has also been lodged with the administrative authority representing reimbursement of the difference between the purchase price of the skimmed-milk powder and the standard value of imported value of imported feedingstuffs. The national administrative authority has rejected this claim and the Commission expects that proceedings will shortly be commenced in this connexion.

In Belgium the administrative authority has rejected two claims for repayment of the security.

In Denmark no claim for repayment of the security has been lodged with the administrative authority.

In France objections have been raised against the failure to repay the security.

In Ireland a claim for repayment of the security has been rejected on the ground that the importer concerned had passed the charge on to his purchasers.

In Italy a claim for repayment has been lodged relating to a security which has not yet been declared forfeit in the absence of certain formalities.

In the Netherlands letters have been sent to the administrative authority placing the onus of liability for the damage resulting from the regulation which has been declared to be invalid on the State; these letters have remained unanswered.

Unlike the other Member States, the United Kingdom has repaid the securities which had been forfeited.

6. The Advocate General delivered his opinion at the hearing on 23 January 1979.

Decision

1 By an order of 31 March 1978, which was received at the Court on 27 April 1978, the College van Beroep voor het Bedrijfsleven referred to the Court for a preliminary ruling pursuant to Article 177 of the EEC Treaty a number of questions relating to the interpretation of various provisions of Community law, with special reference to the field of liability for damage caused by legislative measures declared to be invalid.

2 Those questions have been referred in the context of proceedings between an undertaking which imports feedingstuffs, the plaintiff in the main action, and the competent Netherlands authority, the defendant in the main action, concerning liability for the damage which the plaintiff in the main action claims to have suffered as a result of a decision taken by the defendant pursuant to Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs (Official Journal No L 67 of 15 March 1976, p. 18), which was subsequently declared to be null and void by the Court's judgment of 5 July 1977, in Case 116/76, *Granaria BV* v *Hoofdproduktschap voor Akkerbouwprodukten* [1977] ECR 1247.

The first question

3 The first question asks, in essence, whether the competent national administrative authority was obliged to refuse to issue a "protein certificate" pursuant to Regulation No 563/76 to all those persons who did not fulfil the conditions laid down by that regulation as long as it had not been declared to be invalid.

4 Every regulation which is brought into force in accordance with the Treaty must be presumed to be valid so long as a competent court has not made a finding that it is invalid.

This presumption may be derived, on the one hand, from Articles 173, 174 and 184 of the Treaty, which reserve to the Court of Justice alone the power to review the legality of regulations and to determine, where necessary, to what extent they are to be declared to be invalid and, on the other hand, from Article 177, which empowers the same Court to give rulings as a court of last instance on the validity of regulations where a dispute on that issue has been brought before a national court.

5 Thus it follows from the legislative and judicial system established by the Treaty that, although respect for the principle of the rule of law within the Community context entails for persons amenable to Community law the right to challenge the validity of regulations by legal action, that principle also imposes upon all persons subject to Community law the obligation to acknowledge that regulations are fully effective so long as they have not been declared to be invalid by a competent court.

6 The answer to the first question must therefore be that so long as Regulation No 563/76 of 15 March 1976 had not been declared null and void under the Treaty the national authorities responsible for its implementation were obliged to refuse to issue a "protein certificate" pursuant to that regulation to all those who did not comply with the prescribed conditions.

The second question

7 The second question asks, in essence, whether the Treaty and the principles upon which it is based imply that the competent national authorities were empowered to exempt an applicant from the conditions laid down for the issue of a "protein certificate" pursuant to Regulation No 563/76.

8 The answer to this question can only be in the negative since that regulation did not contain any express provision permitting derogations from those conditions and in the present case no overriding principle of Community law might be relied upon in order to permit the national authorities to interpret the regulation differently.

The third question

9 The third question asks, in essence, whether the second paragraph of Article 215 of the Treaty must be understood as meaning that, since the Community adopted Regulation No 563/76, it is directly liable towards persons who claim to have been injured for the damage which they have suffered merely by reason of the fact that the national authorities applied the regulation.

10 The Court in its judgment of 25 May 1978 in Joined Cases 83 and 94/76, 4, 15 and 40/77, *Bayerische HNL* v *Council and Commission* [1978] ECR 1209,

stated that the finding that Regulation No 563/76 is null and void is insufficient by itself to render the Community liable under the second paragraph of Article 215 of the Treaty.

The above reference to that decision removes the need for the Court to answer the question referred to it, especially as a question relating to the application of the second paragraph of Article 215 cannot be determined in proceedings under Article 177 of the Treaty.

The fourth and fifth questions

11 Since the fourth and fifth questions were referred in case the third question should be answered in the affirmative they are consequently devoid of purpose.

The sixth question

12 The sixth question, in essence, asks whether the national court, on the assumption that it has to decide whether and to what extent the national body is liable, must apply the second paragraph of Article 215 of the Treaty or solely Netherlands domestic law.

13 The second paragraph of Article 215 of the Treaty relates only to the Community's liability for any damage caused by its institutions or by its servants in the performance of their duties and does not refer to any liability which the Member States and their servants may incur.

14 The determination of the Community's liability under the second paragraph of Article 215 of the Treaty falls within the Treaty falls within the jurisdiction of the Court of Justice as provided for in Article 178 of the Treaty, and lies outside that of any national court.

The question of compensation by a national agency for damage caused to private individuals by the agencies and servants of Member States, either by reason of an infringement of Community law or by an act or omission contrary to national law, in the application of Community law does not fall within the second paragraph of Article 215 of the Treaty and must be determined by the national courts in accordance with the national law of the Member State concerned.

The seventh and eighth questions

15 These questions refer to the possible application of the second paragraph of Article 215 of the Treaty by the national court.

16 It is clear from the foregoing that the application of that provision falls within the exclusive jurisdiction of the Court of Justice and lies outside that of the national courts.

These questions are consequently devoid of purpose.

Costs

17 The costs incurred by the Netherlands Government and by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds

THE COURT,

in answer to the questions referred to it by the College van Beroep voor het Bedrijfsleven by order of 31 March 1978, hereby rules:

1. **So long as Regulation No 563/76 of 15 March 1976 had not been declared null and void under the Treaty the national authorities responsible for its implementation were obliged to refuse to issue a "protein certificate" under that regulation to all those who did not comply with the prescribed conditions.**

2. **In the absence of an express derogative clause the national authorities could not grant exemptions from the conditions prescribed by the regulation.**

3. The question of compensation by a national agency for damage caused to private individuals by the agencies and servants of Member States, either by reason of an infringement of Community law or by an act or omission contrary to national law, in the application of Community law does not fall within the second paragraph of Article 215 of the Treaty and must be determined by the national courts in accordance with the national law of the Member State concerned.

Kutscher Mertens de Wilmars Mackenzie Stuart Donner Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 13 February 1979.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 23 JANUARY 1979 [1]

Mr President,
Members of the Court,

1. For the second time in the context of the actions brought by the undertaking Granaria against the Hoofdproduktschap voor Akkerbouwprodukten (Central Board for Agricultural Products), the Netherlands intervention agency for agricultural products, the College van Beroep voor het Bedrijfsleven (Administrative court of last instance in matters of trade and industry) has submitted preliminary questions to the Court of Justice, thereby increasing the number of problems arising from Council Regulation (EEC) No 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding stuffs. It will be recalled that the earlier reference for a preliminary ruling gave rise to Case 116/76 which the Court settled with its judgment of 5 July 1977 ([1977] ECR 1247), declaring that the said regulation was void. On the basis of that judgment Granaria claimed

1 — Translated from the Italian.