# JUDGMENT OF THE COURT OF FIRST INSTANCE (Single Judge)
21 June 2000 *

In Case T-429/93,

**Madeleine Amélie Le Goff,** residing in Plounevezel, France,

**Liliane Ropars,** residing in Rouziers-de-Touraine, France,

**Jacqueline Ropars,** residing in Gleize, France,

**Marie-Christine Ropars,** residing in Guerlesquin, France,

**Gisèle Ropars,** residing in Morlaix, France,

**Madeleine Ropars,** residing in Glomel, France,

**Louise Ropars,** residing in Saint Laurent-du-Maroni, French Guiana,

**Joseph Ropars,** residing in Laniscat, France,

as successors of **Edmond Ropars,** represented by C. Larzul and F. Buffet, and subsequently by A. Delanoé, of the Rennes Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch,

applicants,

* Language of the case: French.

**Council of the European Union,** represented by A.M. Colaert, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of A. Morbilli, General Counsel of the European Investment Bank, 100 Boulevard Konrad Adenauer,

defendant,

APPLICATION for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by Edmond Ropars as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Single Judge),

Judge: R.M. Moura Ramos,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and further to the hearing on 28 January 2000,

gives the following

## Judgment

### Legislative background

1 In 1977, in view of surplus milk production in the Community, the Council adopted Regulation (EEC) No 1078/77 of 17 May 1977 introducing a system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1977 L 131, p. 1). That regulation gave producers the opportunity of undertaking not to market milk, or undertaking to convert their herds, for a period of five years, in return for a premium.

2 Despite the fact that many producers gave such undertakings, overproduction continued in 1983. The Council therefore adopted Regulation (EEC) No 856/84 of 31 March 1984 (OJ 1984 L 90, p. 10), amending Regulation (EEC) No 804/68 of the Council of 27 June 1968 establishing a common organisation of the market in milk and milk products (OJ, English Special Edition 1968 (I), p. 176). The new Article 5c of the latter regulation introduced an 'additional levy' on milk delivered by producers in excess of a 'reference quantity'.

3 Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13) fixed the reference quantity for each producer on the basis of production delivered during a reference year, namely the 1981 calendar year, subject to allowing the Member States to choose the 1982 or 1983 calendar year. The French Republic chose 1983 as reference year.

4 The non-marketing undertakings entered into by certain producers under Regulation No 1078/77 covered the reference years chosen. Since they produced no milk in those years, they could not be allocated a reference quantity, and were consequently unable to market any quantity of milk exempt from the additional levy.

5 By judgments of 28 April 1988 in Case 120/86 *Mulder* v *Minister van Landbouw en Visserij* [1988] ECR 2321 ('*Mulder I*') and Case 170/86 *Von Deetzen* v *Hauptzollamt Hamburg-Jonas* [1988] ECR 2355 the Court of Justice declared Regulation No 857/84, as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation No 804/68 (OJ 1984 L 132, p. 11), invalid on the ground that it infringed the principle of protection of legitimate expectations.

6 To comply with those judgments, the Council adopted Regulation (EEC) No 764/89 of 20 March 1989 amending Regulation No 857/84 (OJ 1989 L 84, p. 2). Pursuant to that amending regulation, producers who had entered into non-marketing undertakings received a reference quantity known as a 'special' reference quantity (or 'quota').

7 Allocation of that special reference quantity was subject to several conditions. Certain of those conditions, in particular those dealing with the time when the non-marketing undertaking expired, were declared invalid by the Court of Justice

in judgments of 11 December 1990 in Case C-189/89 *Spagl* v *Hauptzollamt Rosenheim* [1990] ECR I-4539 and Case C-217/89 *Pastätter* v *Hauptzollamt Bad Reichenhall* [1990] ECR I-4585.

8 Following those judgments, the Council adopted Regulation (EEC) No 1639/91 of 13 June 1991 amending Regulation No 857/84 (OJ 1991 L 150, p. 35), which, by removing the conditions which had been declared invalid, made it possible for the producers concerned to be allocated a special reference quantity.

9 By judgment of 19 May 1992 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [1992] ECR I-3061 ('*Mulder II*'), the Court of Justice held the Community liable for the damage caused to certain milk producers who had been prevented from marketing milk owing to the application of Regulation No 857/84 because they had given undertakings under Regulation No 1078/77.

10 Following that judgment, the Council and the Commission published Communication 92/C 198/04 on 5 August 1992 (OJ 1992 C 198, p. 4). After setting out the implications of the *Mulder II* judgment, and in order to give it full effect, the institutions stated their intention to adopt practical arrangements for compensating the producers concerned. Until such time as those arrangements were adopted, the institutions undertook not to plead against any producer entitled to compensation that his claim was barred by lapse of time under Article 43 of the EEC Statute of the Court of Justice. However, that undertaking was subject to the condition that entitlement to compensation was not already time-barred on the date of publication of the communication or on the date on which the producer had applied to one of the institutions.

11 The Council then adopted Regulation (EEC) No 2187/93 of 22 July 1993 providing for an offer of compensation to certain producers of milk and milk products temporarily prevented from carrying on their trade (OJ 1993 L 196,

p. 6). That regulation provides for an offer of flat-rate compensation to producers who, in certain circumstances, have suffered damage as a result of application of the rules at issue in *Mulder II*.

## Facts of the dispute

12 Edmond Ropars, a farmer in Kervézec, France, gave an undertaking to convert his dairy herd to meat production in the context of Regulation No 1078/77, by which he undertook not to produce milk for four years from 1 February 1980.

13 He retired on 31 December 1983. His wife, who had also signed the undertaking, took his place in running the farm until 11 June 1986. On that date their son-in-law Mr Carmes took over management of the farm, and then on 29 September 1987 Mr Ropars took over the farm again on the basis of a national law allowing him to combine retirement with carrying on an economic activity.

14 On 17 November 1987 Mr Ropars applied to the prefect of the *département* of Finistère to be allocated a reference quantity. The application was refused by a decision of the prefect of 27 November 1987, on the ground that he had not produced milk in 1983.

15 On application by Mr Ropars, the refusal was annulled on 2 March 1989 by a judgment of the Tribunal Administratif de Rennes (Administrative Court, Rennes), France, on the ground that the Community regulation on which it was based had been declared invalid by the Court of Justice.

16 On 9 January 1990, on the basis of that judgment, Mr Ropars again applied for a reference quantity to the French Minister for Agriculture, and for compensation for his loss. That application was impliedly refused. The actions brought against the refusal were dismissed, first by the Tribunal Administratif de Rennes on 28 April 1993 on the ground that Mr Ropars was retired and therefore had no claim to a quota, and then by the French Conseil d'État (Council of State) on 30 April 1997 on the ground that neither the prefect nor the Minister for Agriculture was competent to grant a quota. The only national authority which had jurisdiction under the French legislation was the Office National Interprofessionel du Lait et de Produits Laitiers ('Onilait').

17 Mr Ropers ceased farming on 31 December 1991.

18 On 26 January 1995 Onilait refused his application for compensation under Regulation No 2187/93.

19 Following the judgment of the Conseil d'État referred to in paragraph 16, Mr Ropars applied on 10 May 1997 to Onilait for a quota.

20 By decision of 11 September 1997, the application was refused on the ground that the right to the quota had lapsed when Mr Carmes ceased farming in 1987. Mr Ropars brought an action challenging that decision in the Tribunal Administratif de Rennes, which has not yet given judgment.

## Procedure and forms of order sought by the parties

21 By application lodged at the Registry of the Court of Justice on 27 June 1991, Mr Ropars brought the present action. It was registered as Case C-167/91.

22 By decision of 14 September 1993, the Court of Justice suspended the proceedings pending final judgment in Joined Cases C-104/89 (*Mulder and Others* v *Council and Commission*) and C-37/90 (*Heinemann* v *Council and Commission*).

23 By order of 27 September 1993, the Court of Justice remitted the case to the Court of First Instance, in accordance with Article 3 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities (OJ 1988 L 319, p. 1), as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993 (OJ 1993 L 144, p. 21).

24 By order of 10 February 1999, the President of the Fourth Chamber, Extended Composition, of the Court of First Instance, after hearing the parties at an informal meeting on 30 September 1998, ordered that the proceedings be resumed.

25 By decision of 6 July 1999, the case was assigned to a chamber of three judges.

26 Edmond Ropars died on 29 November 1998. His wife and seven of his children duly declared that they wished to continue the action in their capacity as successors.

27 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure and requested the applicants to reply in writing to certain questions.

28 Pursuant to Articles 14(2) and 51 of the Rules of Procedure, the Fourth Chamber assigned the case to Mr Moura Ramos, sitting as a single judge.

29 The parties presented oral argument and replied to the Court's oral questions at the hearing on 28 January 2000.

30 The applicants claim that the Court should:

— order the Community to pay them compensation of FRF 461 949.60 with interest at 8% per annum from the date of bringing the action, and FRF 180 000 for the loss in value of the agricultural land which was sold;

— order the Community to pay all the costs of the proceedings and FRF 40 000 as reimbursement for recoverable expenses;

— stay the proceedings pending the judgment of the Tribunal Administratif de Rennes on the action brought against Onilait's decision of 11 September 1997.

31 The Council contends that the Court should:

— dismiss the application;

— order the applicants to pay the costs.

## The application for a stay of proceedings

32 As the decision of the Tribunal Administratif de Rennes could affect only the extent of the damage alleged by the applicants, not the question of the Community's liability, the application for a stay of proceedings must be refused.

## Substance

*Arguments of the parties*

33 The applicants claim that Edmond Ropars suffered loss because under Regulation No 857/84, which was declared invalid by the Court of Justice in *Mulder I*, he was not allocated a reference quantity. The Court then further held in *Mulder II* that that regulation infringed the legitimate expectations of producers who had entered into non-marketing or conversion undertakings and who intended to

resume milk production after the undertakings expired. In those circumstances, it is for the Council to make good the damage caused.

34 They submit that Mr Ropars satisfied all the conditions for compensation in accordance with the *Mulder II* judgment. It is common ground that he complied fully with his conversion undertaking and subsequently, while he was still operating the farm, expressly manifested his intention to resume milk production by applying on 17 November 1987 to the prefect of the *département* of Finistère to be allocated a quota.

35 They state that, although Mr Ropars retired before the undertaking expired, his wife succeeded him in running the farm, and, in that she was also party to the undertaking, there was no transfer of the holding on that occasion.

36 They consider that Mr Ropars suffered damage of two kinds. The first resulted from the fact that he was unable to produce milk until he ceased farming on 31 December 1991. The second consisted in the loss of value of his agricultural land because he could not obtain a reference quantity. They state in this respect that Mr Ropars sold 12.5309 hectares of land in 1985 for FRF 120 000, whereas a parcel of that size had previously been valued at FRF 180 000.

37 Finally, the applicants contest the assertion that their claim is out of time, since Mr Ropars stopped time running by bringing his action.

38 In replying to the written questions put by the Court, the applicants submitted that Mr Ropars had in fact never ceased working on his holding and had always been the real operator of the Kervézec farm.

39 The Council submits, first, that the applicants' claim is unfounded, second, that it is largely out of time and, third, that the amount of damage alleged is too high.

*Findings of the Court*

40 The non-contractual liability of the Community for damage caused by the institutions, provided for in the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC), may be incurred only if a set of conditions relating to the illegality of the conduct complained of, the occurrence of actual damage and the existence of a causal link between the unlawful conduct and the harm alleged is fulfilled (Joined Cases 197/80 to 200/80, 243/80, 245/80 and 247/80 *Ludwigshafener Walzmühle and Others* v *Council and Commission* [1981] ECR 3211, paragraph 18, and Joined Cases T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others* v *Commission* [1995] ECR II-2941, paragraph 80).

41 As regards the position of milk producers who have signed a non-marketing undertaking, the Community is liable to every producer who has suffered a reparable loss owing to the fact that he was prevented from delivering milk by Regulation No 857/84 (*Mulder II*, paragraph 22).

42 That liability is based on breach of the legitimate expectation which producers who were encouraged by a Community measure to suspend marketing of milk for a limited period in the general interest and against payment of a premium were entitled to have in the limited scope of their non-marketing undertakings (see *Mulder I*, paragraph 24, and *Von Deetzen*, paragraph 13). However, the principle of protection of legitimate expectations does not preclude, in the case of a scheme such as that concerning the additional levy, the imposition of restrictions on a producer by reason of the fact that he has not marketed milk during a given period prior to the entry into force of that scheme, for reasons which have nothing to do with his non-marketing undertaking (Case T-1/96 *Böcker-Lensing and Schulze-Beiering* v *Council and Commission* [1999] ECR II-1, paragraph 41).

43 The applicants claim that they were unlawfully deprived of a reference quantity between 1 April 1984 and 31 December 1991 as a result of the application of Regulation No 857/84. That regulation, it is claimed, frustrated Mr Ropars's legitimate expectation to be able to resume milk production at the end of his conversion period.

44 In the circumstances of the case, it must first be examined whether the allegations made by the applicants in support of the right to compensation are proven, in particular with regard to the existence of unlawful conduct on the part of the institutions and the occurrence of actual damage.

45 On this point, it must be noted that, according to settled case-law, it is for the party seeking to establish the Community's liability to adduce conclusive proof as to the existence or extent of the damage he alleges and to establish the causal link between that damage and the conduct complained of on the part of the

Community institutions (see, in particular, Case C-401/96 P *Somaco* v *Commission* [1998] ECR I-2587, paragraph 71).

46 Next, even if it is accepted that Mr Ropars did not in fact transfer his holding at any time following his retirement on 31 December 1983 and continued to farm after that date, the applicants must still show that it was his intention to produce milk after his conversion period ended.

47 It appears from the documents in the case that Mr Ropars did not resume milk production when his undertaking expired on 1 February 1984, despite the fact that Regulation No 857/84 did not enter into force until 1 April 1984. It is common ground, next, that he did not apply for a reference quantity until 17 November 1987. Finally, it has not been shown that he took steps which could demonstrate his intention to resume milk production after the conversion period.

48 In those circumstances, the applicants cannot claim that Mr Ropars had a legitimate expectation of being able to resume milk production which could have been frustrated by the Community legislation at issue.

49 While Mr Ropars did manifest the intention to produce milk in 1987 when he applied for a reference quantity, he could not have a legitimate expectation in the possibility of resuming milk production at some unspecified future date. In the sphere of the common organisations of the market, whose purpose involves constant adjustments to meet changes in the economic situation, economic operators cannot legitimately expect that they will not be subject to restrictions which may arise out of future rules of market or structural policy (see Joined Cases 424/85 and 425/85 *Frico* v *Voedselvoorzienings In- en Verkoopbureau*

[1987] ECR 2755, paragraph 33, *Mulder I*, paragraph 23, *Von Deetzen*, paragraph 12, and *Böcker-Lensing and Schulze-Beiering*, paragraph 47).

50 Consequently, the Community cannot be held liable to Mr Ropars as a result of the application of Regulation No 857/84, and it is unnecessary to ascertain whether the other conditions for such liability are satisfied.

51 It is also unnecessary to consider whether the application was out of time.

52 The application must accordingly be dismissed.

## Costs

53 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Council.

On those grounds,

THE COURT OF FIRST INSTANCE (Single Judge)

hereby:

1. **Refuses the application for a stay of proceedings;**

2. **Dismisses the application;**

3. **Orders the applicants to pay the costs.**

Delivered in open court in Luxembourg on 21 June 2000.

H. Jung
Registrar

R.M. Moura Ramos
Judge