

## Judgment of the Court of Justice, Schöppenstedt, case 5/71 (2 December 1971)

**Caption:** Excerpt from the Schöppenstedt judgement relating to the admissibility of action for damages. It results from this judgement that action for damages constitutes an autonomous form of action with respect to action for annulment.

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

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**Judgment of the Court of 2 December 1971**  
**Aktien-Zuckerfabrik Schöppenstedt v Council of the European Communities**

Case 5-71

**Summary**

*1. Procedure - Action for damages - Autonomous nature - Difference between such action and an application for annulment (EEC Treaty, Article 178, Article 215)*

*2. Procedure - Action for damages - Alternative claim for 'another form' of compensation - Inadmissibility*

[...]

1. The action for damages provided for by Articles 178 and 215 of the Treaty 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.

[...]

In Case 5/71

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, Claus 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 COMMUNITIES, 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 215 of the EEC Treaty, 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, President of Chambers, A. M. Donner, A. Trabucchi, R. Monaco (Rapporteur) and P. Pescatore, Judges,

Advocate-General: K. Roemer

Registrar: A. Van Houtte

gives the following

JUDGMENT

[...]

### Grounds of the 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 215 of the EEC Treaty 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 second paragraph of Article 173, under which individuals are not entitled to bring applications for annulment of regulations.

3 The action for damages provided for by Articles 178 and 215, paragraph 2, of the Treaty 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.

[...]

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 40, 173 and the second paragraph of 215;  
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 Communities;  
Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

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

1 - Language of the Case: German.