

An Action For Damages Before The Court Of Justice Of The European Union

Ioana Nely Militaru

Lecturer PhD. Academy of Economic Studies, Bucharest

Email: ioanelimilitaru@yahoo.com

To Link this Article: <http://dx.doi.org/10.6007/IJAREMS/v2-i4/146> DOI:10.6007/IJAREMS/v2-i4/146

Published Online: July, 2013

Abstract

Among the actions that take place before the Court of Justice of the European Union and forming competence include liability action. This is triggered due to the fact that the European Union through the work they carry can cause damage, training on such civil liability. The paper is structured in the action for damages, both delictual and contract, in the light of the Lisbon Treaty, namely the Treaty on the Functioning of the European Union.

Keywords: Action, Task Competence, Liability, Contractual Liability

Introduction

Court was in 1957 (under the Convention on certain institutions common to the European Communities, signed at the same time and TEuratom CEECs) a unique institution for the three communities, exercising the powers under the Treaties institution.

Thus, national courts apply EU law, while CJ is assigned only certain powers, which are defined in Art. 19 par. 3 TEU. In support of conferred powers coming provisions of art. 274 TFEU, which read: "Union party status does not preclude national courts in disputes that, unless the ECJ jurisdiction is conferred by the Treaties."

European Union, the Treaties having legal personality, can produce the work they perform, as such damage to be repaired, training thus its civil liability (Radulescu, 2012).

TFEU provisions governing both tort (contractual) Union, directly or indirectly, and contractual liability driven failure to perform obligations arising from a contract.

Under the terms of the TFEU persons may obtain compensation for the damage thus caused by an action for damages, tort or contract, as applicable, before the Court of Justice.

Action In Contractual Liability of The European Union

According to art. 340 TFEU, as a rule "the non-contractual liability, the Union shall fix, in accordance with the general principles common to the laws of the Member States, the damage caused by its institutions or by its servants in the performance of their duties." (Militaru, 2011)

In this regard, the Union is the institution of the European Central Bank because, notwithstanding the rule stated above, the ECB shall repair, in accordance with the general principles common to the Member States, the damage caused by it or by its servants in the

performance of their resolving disputes relating to compensation for such damage for the Court of Justice of the EU (Article 268 TFEU).

However, if the Union is a party to a dispute, and it is not expressly provided for in the treaty jurisdiction to resolve this dispute by the Court of Justice the power to resolve the dispute in the court of the Member State concerned (Article 274 TFEU).

Which means that in matters of action for compensation for damage to the EU Court of Justice has jurisdiction exceptional aspect TFEU expressly stated "a party of the Union does not remove national courts in disputes that, except where the Treaties jurisdiction is conferred on the Court "(274 TFEU).

Applicants, holders are active procedural legitimacy "according to the general principles common to the laws of the Member States" (Article 340 TFEU) in tort "any natural or legal person, even a non-Community citizens and virtually any state, even a third, proving that suffered an injury caused by the act institution or agent of the Union in exercising his functions "(ECJ, 44/1959 EEC Fiddelaer v. Commission ECR. VI, p 1093; Stefanescu, 1979, Voicu, 2010).

Therefore, it may indicate that natural or legal persons who have suffered an injury (Căescu, Constantinescu & Ploșteanu, 2012) caused by the act or agency institutions, exceptionally are required to apply to the Court "is bound to get around, in order to exploit the claims, the national courts of the place production tort - competent court according to the principles of private international law allowed (ECJ, 44/1959 EEC Fiddelaer v Commission ECR. VI, p 1093; Stefanescu, 1979, Voicu, 2010).

An action for damages must be brought within five years, running from the production of injurious act, or from the date the damage, if they occurred after that injury.

You also need to distinguish between direct and indirect tort Union. In the first case, the Union legal personality manifests itself in relationships with third parties through its institutions, namely 'Union is represented by the institutions under their administrative autonomy, in matters relating to their operation "(Article 335 TFEU). This means that the damage caused by these institutions in the exercise of functions (skills), are caused by the Union and therefore involve direct tort(Cruceru Popescu, 2008).

In the second case, where the harmful event is produced by an agent / officer of the Union in carrying out its duties, will be held liable in tort indirect posture Union for servant or principal - agent / officer.

Compared to Union agencies namely, its officials personally liable (direct liability). This liability is governed by the provisions set status regime applies. In this matter TEuratom provisions are similar, thus providing power CJEU expressly disputes "between Community (Euratom Community) and its servants within the limits and conditions determined by statute" (art. 152 TEuratom). On the other hand, the status of EC and Euratom provides also compulsory jurisdiction of the ECJ, as follows "any dispute between one of the communities covered by this statute a person is subject to ECJ / CJEU, which has jurisdiction "full jurisdiction in disputes concerning financial matters between the parties concerned (Stefanescu, 1979).

With regard to this matter - the direct and indirect contractual liability of the Union - art. 188 TEuratom has similarly to art. 340 TFEU, namely "Community (Euratom, na) shall repair, general principles common to the laws of the Member States, the damage caused by its institutions or by its servants in the performance of duties (duties) of them."

The Court, in one of its decisions, gave a restrictive definition (ECJ, 09.18.1995 Holle in Jean Claude Gautron, 1997) fault committed by an agent of the Community in the exercise of its functions (ECJ, 10.07.1969, Sayog quoted Jean Claude Gautron, 1997), thus reducing the scope of liability of the Community (ECSC Treaty excludes all liability without fault).

Jurisprudence on the TEC does not exclude any liability without fault, a priori, but not formally consecrated it to today, although it is present in the law of several Member States.

Court of First Instance considered also as liability based on fault (Radulescu, 2012). Regarding the conditions relating to the injury (which must be actual and certain), the causal link between the action (wrongful act of the Community) (Gautron, 1997) and injury (which must be direct) are identical in both treated (TEC / TFEU and TEuratom).

The main contribution is to extend liability jurisprudence on legislative activity of the Community / Union. Therefore, damage can be caused by various acts, including the normative. Were excluded from the scope of Community treaties and their equivalent documents currently Treaties (TFEU and TEU), something which is maintained by the entry into force of the Lisbon Treaty.

The legislation may cause harm through adoption, in this case is introduced with action for damages and for cancellation of the act in question (art. 263 TFEU) (when the damage resulting from a regulation adopted by the Council on proposing the Commission action may be brought against the two institutions, see Voicu, 1997).

It also can cause injury in the event of wrongful abstention an institution is formulated in this case an action for failure to act against the institution required (art. 265 TFEU).

Therefore it may bring actions on the validity of these acts (Article 263 TFEU) and to require concomitant damage. The Court has, however, to rule on the validity of the act separately and damages (O. Manolache, 2006). Thus, contractual liability is autonomous in relation to the action for annulment or for failure because they have different objectives. Contractual liability is autonomous, in fact, over all other proceedings before the Court (Cruceru Popescu, 2006).

Action in contractual liability of the European Union

The Court of Justice has jurisdiction to resolve a dispute arising in connection with a contract concluded by the Union if the contract contained an arbitration clause (Cristea, 2012).

The arbitration clause is that which provides that if a dispute arises Court has jurisdiction to settle it. The arbitration clause concluded between the contracting parties (Stoica, 2012).

In this sense, art. Article 272 TFEU. 1, provides "the EU Court of Justice has jurisdiction to give judgment pursuant to any arbitration clause contained in a contract of public or private law, signed by or on behalf of the Union.

The Court of Justice shall have jurisdiction to rule on any dispute between Member States on the subject of treaties, where it is seised of the dispute on the basis of a compromise (art. 273 par. 2 TFEU).

The conditions under which the Court has jurisdiction pursuant to a compromise are:

- always comes compromise between the parties to the dispute, the parties to the dispute;
- Member States are parties to the dispute;
- is related to the subject of the dispute Union treaties.

Conclusion

Actions before the Court of Justice is competent form (Voicu, 2010). Home jurisdiction conferred on the Court is to review the legality of legal acts of the Union, a task performed mainly by an action for annulment (Article 263 TFEU and 14 TEuratom), a plea of illegality (277 TFEU and 156 TEuratom) and by an action for failure (art. 265 TFEU).

The Court is empowered to request national courts to interpret EU law (legal acts of the Union and the Treaties) or examine the validity of legal documents of the Union (Article 267 TFEU), art. 150 TEuratom) via submission injury.

Court jurisdiction also on actions to address damages caused by Union institutions or servants in the performance of their duties (Article 268 and 340 TFEU, art. 151 TEuratom).

Court has jurisdiction to rule on any dispute between the Union and its servants (art. 270 TFEU). It can become arbitration court (according to art. 272 TFEU, art. 153 TEuratom), which have jurisdiction pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union.

As a court of last instance, the Court has jurisdiction to review the decisions of the Court exceptionally to the conditions and limits laid down by the Statute, where there is a serious risk of the unity or consistency of Union law (art. 225 TFEU hair. 2 art. 56 of the Statute).

The Court has jurisdiction to review the decisions of the Tribunal exceptional in its reference for a preliminary ruling in the art. 267 TFEU, in specific areas laid down by the Statute, where there is a serious risk of the unity or consistency of Union law (art. 256 par. 3 para. 2 TFEU).

It also covers disputes between the Commission and the Member States (Art. 258 TTFU, art. 141 TEuratom) or between Member States (Article 259 TFEU and Art. 143 TEuratom). In these cases, the Court itself as an international court.

The Court of Justice has an advisory capacity that allows to issue an opinion on the compatibility of the envisaged agreement between the Union and third countries or international organizations with the Treaties according to art. 218 par. 11. TFEU (the Court had jurisdiction to issue advisory opinions and so-called small revision according TCECO, according to art. 95).

European Union, the Treaties having legal personality, can produce the work they perform, as such damage to be repaired, training thus its civil liability (Brândușa Stefanescu, 1979).

TFEU provisions governing both tort (contractual) Union, directly or indirectly, and contractual liability driven failure to perform obligations arising from a contract.

Under the terms of the TFEU persons may obtain compensation for the damage thus caused by an action for damages, tort or contract, as applicable, before the Court of Justice.

References:

- Cristea S.L. (2012), *Dreptul afacerilor*, 3 ed., Universitară Publishing House, Bucharest
- Căescu Ș.C., Constantinescu M., Ploșteanu M.G. (2012) – *Strategic Marketing and Quality of Life*, Revue Analalele Universității din Oradea, Științe Economice, vol. 21, no. 2, pg. 801-807
- Gautron J.C. (1997), *Droit Europeen* 10 ed., Dalloz Publishing House, Paris.
- Guy I., Blanquet M. (2001), *Droit communautaire general*, 8 ed., Dalloz Publishing House, Paris.
- Manolache O. (2006), *Tratat de Drept comunitar*, 5. ed., C. H. Beck Publishing House, Bucharest.
- Militaru I.N. (2011), *Dreptul Uniunii Europene. Cronologie. Izvoare. Principii. Instituții*. 2 ed., Universul Juridic Publishing House, Bucharest.
- Popescu-Cruceru A.S. (2006) - *Economic-juridic în economia concurențială*, Economică Publishing House, Bucharest.
- Popescu-Cruceru A.S. (2008) - *Economia concurențială în Uniunea europeană*, Artifex Publishing House, Bucharest.

- Radulescu D.M. (2012) - *Uniunea Europeană. De la tradiții la drepturi fundamentale. Afirmarea dreptului fundamental al omului la un mediu sănătos*, Pro Universitaria Publishing House, Bucharest.
- Radulescu D.M. (2012), *Alternative Dispute Resolution*, Romanian Statistical Review, Supplement Trim. I/2012 8 pp. (133-141), the National Institute of Statistics, Romanian Statistical Society, Bucharest.
- Camelia F.S. (2012), *Dreptul afacerilor. Contracte*, ASE Publishing House, Bucharest.
- Stefanescu B. (1979), *Curtea de Justiție a Comunităților Europene*, Științifică și Enciclopedică Publishing House, Bucharest.
- Voicu M. V. (2010), *Jurisdicții și Proceduri judiciare în Uniunea Europeană*. Universul juridic Publishing House, Bucharest.