ORDER OF THE COURT (Second Chamber)
18 July 2002 *

In Case C-136/01 P,

Autosalone Ispra dei Fratelli Rossi Snc, established in Ispra, Italy, represented by F. Venuti, avvocato, with an address for service in Luxembourg,

appellant,

APPEAL against the order of the Court of First Instance of the European Communities (Second Chamber) of 17 January 2001 in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *EAEC* [2001] ECR II-53, seeking to have that order set aside,

the other party to the proceedings being:

European Atomic Energy Community, represented by the Commission of the European Communities, represented in turn by H.M. Speyart and P. Stancanelli, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Italian.

THE COURT (Second Chamber),

composed of: N. Colneric (Rapporteur), President of the Chamber, R. Schintgen and V. Skouris, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

after hearing the Opinion of the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 23 March 2001, Autosalone Ispra dei Fratelli Rossi Snc ('Autosalone') brought an appeal pursuant to the first paragraph of Article 50 of the EAEC Statute of the Court of Justice against the order of the Court of First Instance of 17 January 2001 in Case T-124/99 *Autosalone Ispra dei Fratelli Rossi* v *EAEC* [2001] ECR II-53 ('the order under appeal') dismissing as inadmissible the appellant's application for, in essence, a declaration that the European Atomic Energy Community was liable for the

damage suffered by Autosalone after the flooding which occurred in Ispra during the night of 1 to 2 June 1992 and, consequently, for an order requiring the Community to pay compensation for the said damage.

Legal background

2 Article 44 of the EAEC Statute of the Court of Justice, which was applicable to proceedings before the Court of First Instance pursuant to Article 47 of the Statute, provides:

'Proceedings against the Community in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Community. In the latter event the proceedings must be instituted within the period of two months provided for in Article 146; the provisions of the second paragraph of Article 148 shall apply where appropriate.'

The facts

3 The facts and background to the dispute are set out in the following terms in the order under appeal:

'2 During the night of 1 to 2 June 1992, the municipality of Ispra suffered a violent storm causing extensive flooding which affected, in particular, the property of the applicant.

3 The applicant's property was flooded after a drain overflowed in the part of the town of Ispra in which the property is situated. After running alongside the applicant's property, the drain becomes open for a short stretch before entering a tunnel passing underneath a railway line and then running through a pipe-line under the land belonging to the EAEC Joint Research Centre (hereinafter "the JRC").

4 The flooding caused the applicant significant damage, which was assessed by the loss adjuster, Mr Galleri, in a report dated 14 October 1993 commissioned by the applicant, to be in the amount of ITL 1 245 000 000.

5 By registered letter of 17 June 1992, the applicant requested compensation from the JRC for the damage suffered by reason of the fact that the main drain, whose pipes pass under the Centre's land, was unable to evacuate the waste water and rainwater because the Centre had placed a grill at the opening of the drain, which was blocked by waste material and rubbish carried by the flowing water.

6 On 20 July 1992, the JRC replied that its staff were carrying out the necessary investigations to determine whether liability had been incurred as a consequence of the flooding in question.

7 On 22 February 1993, the JRC's insurance company, the Cigna Insurance Company of Europe SA, brought an action before the Tribunale di Varese [Italy] for an order that a technical expert's report be obtained, drawing up an inventory and statement of state of repair, and describing the quality and condition of the property damaged by the flooding, in the light of the fact that the issue of the JRC's liability had been raised by its neighbours. By Order of the Tribunale di Varese of 27 March 1993, Mr Speroni was appointed to prepare the expert's report, which was to be submitted within 90 days.

8 The expert's report drawn up by Mr Speroni was lodged at the Registry of the Tribunale di Varese on 10 May 1995. In the report it is stated, in particular:

"From information gathered on the premises in question, it appears that, at the time of the flooding, the inspection well down-stream of the railway line had a solid metal grille which held back various materials carried along by the water (planks, trunks, etc.) thus obstructing the flow of water and causing flooding upstream."

9 By document dated 28 February 1996, the applicant brought an action for compensation for damage against the Commission under national law before the Tribunale di Varese.That case, in which the Commission contended that the action before the national court was inadmissible, was still pending when the Commission lodged its defence in the present case.'

Action before the Court of First Instance

4 Accordingly, on 21 May 1999, Autosalone brought an action before the Court of First Instance for a declaration that the European Atomic Energy Community was liable for the damage suffered and, consequently, for an order requiring the Community to pay to the applicant the sum of ITL 1 245 000 000, together with monetary revaluation and interest on that sum.

5 In its defence, the Commission contended, in essence, that the application was inadmissible since the action on which it was based was time-barred. Article 44 of

the EAEC Statute establishes, for proceedings in matters arising from non-contractual liability, a limitation period of five years from the occurrence of the event giving rise to that liability (see Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others* v *Council and Commission* [1982] ECR 85, paragraph 10). In the present case, therefore, the limitation period started to run from 1 June 1992.

6 Autosalone claimed, by contrast, that it became aware of the causes of the damage it had suffered only after 10 May 1995, the date on which Mr Speroni submitted the expert's report. Before that date, it could not have known the events giving rise to the damage or the causal link between the two since, on the one hand, it had waited, in all good faith, for the result of the expert's report requested by the defendant and, on the other, it had not had access to the JRC's installations.

7 With regard to the case-law invoked by the Commission, Autosalone pointed out that, under paragraph 10 of the judgment in *Birra Wührer and Others* v *Council and Commission*, cited above, the Community incurs non-contractual liability if three factors are present: an unlawful event, damage and a causal link between them. Such liability is not incurred, therefore, solely by virtue of the fact that an unlawful event has taken place nor, consequently, can the limitation period begin to run merely because that event has occurred.

8 Autosalone also maintained that the JRC's letter of 20 July 1992 and the proceedings for obtaining an expert's report initiated by the request of the Cigna Insurance Company of Europe SA of 10 March 1993 and concluded on 10 May 1995 when Mr Speroni submitted his report, should be regarded as acts which interrupted the limitation period.

The order under appeal

9 By the order under appeal, the Court of First Instance dismissed the application as inadmissible.

10 That order is based, in particular, on the following considerations.

'21 It should... be pointed out that, under Article 44 of the EAEC Statute of the Court of Justice, proceedings against the Community in matters arising from non-contractual liability are to be barred after a period of five years from the occurrence of the event giving rise thereto.

22 In the present case, the flooding which caused the damage suffered by the applicant occurred during the night of 1 to 2 June 1992.

23 It should next be observed that the case-law cited by the applicant, according to which the limitation period for actions for damages cannot begin to run until all the conditions governing the obligation to pay compensation have been satisfied, seeks to establish the criterion that, if the liability of the Community has its origin in a legislative measure, the damage which is the subject-matter of a claim for compensation must have materialised. In that situation, therefore, the limitation period cannot begin to run until the harmful effects of that measure have occurred. Therefore, far from rejecting the decisive criterion, laid down in Article 44 of the EAEC Statute, of occurrence of the act giving rise to the damage, which, in this case, is the flooding of 1 to 2 June, that case-law, in essence, merely defines the

parameters of that criterion in a situation, substantially different from the circumstances of this case, in which an action for compensation is brought in respect of damage which the applicants may suffer as a consequence of the implementation of a legislative measure adopted at Community level.

24 Even assuming that that case-law had been applicable in the present case, it should be pointed out, first of all, that it is not disputed that the flooding which caused the damage suffered by the applicant took place during the night of 1 to 2 June 1992 and that the damage materialised immediately. It should next be noted that the letter dated 17 June 1992 sent by the applicant to the JRC shows that the applicant... considered that it already had, at that time, sufficient knowledge of the facts appertaining to the three conditions for establishing liability to bring a claim for compensation against the Community. The fact that the applicant may have considered, when it sent the letter, that it did not yet have all the evidence it needed to prove to the requisite legal standard in judicial proceedings that the Community was liable could not, as such, prevent the limitation period from running. If that were the case, a confusion would arise between the procedural criterion relating to the commencement of the limitation period and the finding that the conditions for liability were satisfied, which can ultimately be made only by the court before which the matter has been brought for final adjudication on its substance.

25 So far as concerns the applicant's argument regarding the interruption of the limitation period, it should be noted that, under Article 44 of the EAEC Statute [of the Court of Justice], that period is interrupted either by the application made to the Community Court, or by a preliminary request addressed to the relevant institution, it being however understood that, in the latter case, interruption only occurs if the request is followed by an application within the time-limits determined by reference to Article 173 of the EC Treaty (now, after amendment, Article 230 EC) or Article 175 thereof (now Article 232 EC), which correspond to Articles 146 and 148 of the EAEC Treaty, to which the abovementioned article of the EAEC Statute [of the Court of Justice] refers....

26 The letters and procedures on which the applicant relies clearly cannot be regarded as an application made to the Court of Justice or the Court of First Instance. Moreover, none of the documents sent to the Commission has been followed by an application within the prescribed time-limit. Therefore, the limitation period which started to run on 2 June 1992 has not, at any time, been interrupted within the meaning of Article 44 of the EAEC Statute [of the Court of Justice] (see, in support of this, order in [Case T-106/98] *Fratelli Murri* v *Commission* [[1999] ECR II-2553], paragraph [30]).

27 Furthermore, it should be pointed out that, in the present case, the applicant could still have brought an action for damages, within the time-limits prescribed by Article 44 of the EAEC Statute [of the Court of Justice], after Mr Speroni's report had been received on 10 May 1995 but at the time did not consider it expedient to do so and chose to bring legal proceedings in this connection before the national courts.'

The appeal

11 In its appeal, Autosalone claims in essence that the Court should annul the order under appeal, find and declare that the European Atomic Energy Community is liable under the second paragraph of Article 188 of the EAEC Treaty on the basis of the facts and reasons relied upon in the application, which are to be deemed to be reproduced in their entirety for the purposes of this appeal, and order the Community, represented by the Commission, to pay to the appellant the principal sum of ITL 1 245 000 000, adjusted by way of monetary revaluation, with interest accruing thereon until due payment, or such other sum as may be held to be fair.

12 By way of a measure of inquiry, Autosalone asks the Court to grant the preparatory measures which it had requested before the Court of First Instance,

on the grounds set out in its application, which are to be deemed to be reproduced in their entirety in the present case, in particular the elements relied on in the application initiating proceedings.

13 In support of its appeal, Autosalone raises a plea alleging infringement of Article 111 of the Rules of Procedure of the Court of First Instance and several pleas concerning an infringement of Article 44 of the EAEC Statute of the Court of Justice.

14 The Commission requests the Court, principally, to dismiss the appeal as manifestly inadmissible or manifestly unfounded and, alternatively, to adopt the forms of order which it sought at first instance.

15 A preliminary point to note is that, under Article 119 of the Rules of Procedure of the Court of Justice, where the appeal is clearly inadmissible or clearly unfounded, the Court may at any time dismiss it by reasoned order.

The first plea, alleging infringement of Article 111 of the Rules of Procedure of the Court of First Instance

Autosalone's arguments

16 Autosalone alleges infringement of Article 111 of the Rules of Procedure of the Court of First Instance on the ground that the Court failed to hear the Advocate General, in breach of the obligation stemming from the text of that provision.

Findings of the Court

17 Although the text of Article 111 of the Rules of Procedure of the Court of First Instance provides for the intervention of the Advocate General, under the second subparagraph of Article 2(2) of those Rules that provision can apply only where a Judge has actually been designated as Advocate General.

18 In this case, the Court of First Instance did not seek the assistance of an Advocate General, nor was it required to do so. Indeed, it is apparent from Article 18 of the Rules of Procedure of the Court of First Instance that the Court may be assisted by an Advocate General if it is considered that the legal difficulty or the factual complexity of the case so requires.

19 The first plea must therefore be rejected as manifestly unfounded.

The second plea, alleging infringement of the limitation rule laid down in the first sentence of Article 44 of the EAEC Statute of the Court of Justice

20 Autosalone makes several claims in support of the alleged infringement by the Court of First Instance of the limitation period in proceedings against the Community in matters arising from non-contractual liability. It considers that the limitation period in such proceedings is suspended for the whole period during

which the person entitled to bring the action could not have knowledge of the facts giving rise to his right to compensation and was unable to verify them sufficiently or that that limitation period cannot begin to run in circumstances such as those of this case.

The alleged infringement of the right of action

Autosalone's arguments

21 Drawing a distinction between the activities and issues inherent in the right of action and those inherent in the admissibility of the action, Autosalone claims, by the first limb of its second plea, that the Community legislation on limitation, as applied by the Court of First Instance, unjustifiably limits and restricts its right of action. The appellant alleges that the Court infringed its right of action by failing to take into consideration, in calculating the limitation period, whether or not it was possible for the parties to have sufficient knowledge of the facts to be relied upon in the proceedings.

22 Autosalone states in that regard that knowledge of the facts is linked to the right of action. It presupposes the opportunity to have specific and detailed knowledge of the facts before bringing an action and to evaluate their accuracy sufficiently in order to present them to the court.

23 Autosalone observes that possible factual obstacles, which prevent full knowledge of the facts, are irrelevant if the person entitled to bring the action may effectively interrupt the limitation period without necessarily having to bring legal proceedings in order to do so. In that case, factual obstacles do not lead either to limitation of the action or to limitation of the underlying right.

24 On the other hand, if failure to bring an action leads to the loss of the action itself and of the underlying right, the obstacles become relevant for the purpose of the passing of the limitation period, since the person entitled to bring the action is in the position of having either to initiate it even though he does not know the facts and has been unable to investigate them, have them at his disposal or verify them sufficiently, or to do nothing, thus losing both the action and the right on which it is based owing to the operation of the limitation rule. This clearly infringes his right to bring an action and to be a party to judicial proceedings in order to protect his own rights, a principle which is recognised as a fundamental right of personal freedom by all legal systems.

25 Autosalone complains that the Court disregarded that objection in holding, in paragraph 24 of the order under appeal, that Autosalone had had knowledge of the facts on which the action was based since June 1992, when its legal representative sent the extrajudicial letter of formal notice to the JRC. In the same context, Autosalone complains that the Court failed to have regard to the nature of that formal notice which did not in any way presuppose that the facts in the case were known or had been verified.

Findings of the Court

26 First of all, the right to bring an action before the Community Courts can be exercised only under the conditions laid down in that regard by the provisions governing each specific action, in this case, an action for damages. As a consequence, the right of action can have been infringed by the Court of First Instance only if it did not correctly apply, in particular, the provisions governing the limitation rules specific to that action.

27 According to the express wording of the first sentence of Article 44 of the EAEC Stature of the Court of Justice, proceedings against the Community in matters arising from non-contractual liability are to be barred after a period of five years from the occurrence of the event giving rise thereto.

28 As the Commission rightly maintained in its defence, the function of the limitation period is to reconcile protection of the rights of the aggrieved person and the principle of legal certainty. The length of the limitation period was determined by taking into account, in particular, the time that the party who has allegedly suffered harm needs to gather the appropriate information for the purpose of a possible action and to verify the facts likely to provide the basis of that action.

29 It is apparent from the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) and from Article 44 of the EAEC Statute of the Court of Justice, the latter provision being worded in the same terms as Article 43 of the EC Statute of the Court of Justice, that non-contractual liability on the part of the Community and the assertion of the right to compensation for damage suffered are subject to a number of conditions relating to the existence of an unlawful act on the part of the Community institutions, actual damage and a causal link between them (see *Birra Wührer and Others* v *Council and Commission*, cited above, paragraph 9, and Case C-104/97 P *Atlanta* v *European Community* [1999] ECR I-6983, paragraph 65).

30 It follows that the period of limitation which applies to proceedings in matters arising from non-contractual liability cannot begin to run before all the requirements governing an obligation to make reparation are satisfied and in particular before the damage to be made good has materialised (see *Birra Wührer and Others* v *Council and Commission*, cited above, paragraph 10).

31 By contrast, Autosalone's argument that the limitation period cannot begin until the victim has specific and detailed knowledge of the facts of the case is misconceived. Knowledge of the facts is not one of the conditions which must be met in order for the limitation period to run.

32 Admittedly, it is apparent from paragraph 50 of the judgment in Case 145/83 *Adams* v *Commission* [1985] ECR 3539 that expiry of the limitation period cannot constitute a valid defence to a claim by a person who has suffered damage where that person only belatedly became aware of the event giving rise to it and thus could not have had a reasonable time in which to submit his application to the Court or to the relevant institution before expiry of the limitation period. However, that judgment does not contain a ruling on the conditions necessary for the commencement of the period of limitation provided for in Article 43 of the EC Statute and Article 44 of the EAEC Statute of the Court of Justice. *Adams* v *Commission*, cited above, deals rather with the expiry of the limitation period. In any event, Autosalone's position is not comparable to that which gave rise to that judgment and, furthermore, it has not claimed that it is.

33 In consequence, Autosalone's argument that the Court of First Instance was wrong to hold, in paragraph 24 of the order under appeal, that Autosalone had known the facts on which the action was based since the date of the extrajudicial letter of formal notice is also irrelevant.

34 In paragraph 23 of the order under appeal, the Court of First Instance interpreted Article 44 of the EAEC Statute of the Court of Justice as meaning that the decisive criterion for determining the starting point of the limitation period is the occurrence of the event giving rise to the damage. However, it is apparent from paragraph 24 of the order under appeal that the Court considered, although in the alternative, that the date of the occurrence of the damage was the date on

which the limitation period started to run, in accordance with the case-law mentioned in paragraph 30 of this order. Accordingly, although the Court calculated the limitation period only in the alternative, in accordance with the rule laid down by the case-law, the mistake thus made by the Court in determining the starting point of the limitation period in paragraph 23 has had no effect.

35 The first limb of the second plea must therefore be rejected as manifestly unfounded.

The alleged impossibility of bringing an action before 10 May 1995

Autosalone's arguments

36 By the second limb of the second plea, Autosalone claims that it could not have brought an action before 10 May 1995, the date on which Mr Speroni submitted his expert's report, owing to a series of objective factors combined with the Community's wrongful conduct.

37 As regards, firstly, the objective causes of that impossibility, Autosalone maintains that it had doubts as to whether, at the time the events took place, there was a grill placed at the opening of the waste water and rainwater drain, which constituted an obstacle to the rubbish carried along by the water which, by accumulating there, caused the harmful event. Admittedly, verbal information received from third parties had circulated at the time regarding the existence of such a grill but there was no certainty that it had not been removed because of the immediate risk of damage.

38 In the absence both of an on-the-spot check, which was impossible because of the Community's regime of immunity and extraterritoriality, and of confirmation by the JRC that the grill was in place up to the date of the accident, Autosalone considers that the verbal information it had was insufficient to provide grounds for bringing judicial proceedings in good faith before the Community Courts. It is only as a result of the preliminary technical expert's report ordered by the Tribunale di Varese, in connection with *inter partes* proceedings with the Commission, that Autosalone was reasonably able to have confirmation of the existence of the grill and of its possible harmful effects.

39 Secondly, Autosalone claims that it was also unable to bring judicial proceedings because of the wrongful conduct of the Community. The non-contractual unlawful act giving rise to the damage constitutes an event likely to endanger the public safety of persons and property which, under Article 449 of the Italian Criminal Code, is punishable by a term of imprisonment of between one and five years. It is because Community officials enjoy immunity under Italian criminal law that the Italian courts did not initiate a criminal investigation against the JRC officials in order to establish the facts and liabilities.

40 Autosalone considers that such an inquiry should nevertheless have been initiated by the Commission, as the owner and body responsible for JRC's installations. The principle of sovereignty and extraterritoriality cannot exempt the Community and the Commission from fulfilling the obligations attaching to that sovereignty to protect the general interest and act impartially, which undoubtedly include the obligation to establish, in accordance with a commitment made by the Commission, liabilities for events which endanger public safety, property and human lives, and to communicate the result of those investigations to interested parties who have sent claims for compensation to the Commission. However, in spite of such a promise from the JRC's director, nothing was done to fulfil that obligation.

41 Autosalone maintains that that conduct constitutes a continuous and enduring omission. Under Italian law it would be characterised as an omission and/or 'undue delay in taking official measures' ('indebito ritardo di atti d'ufficio') provided for by and punishable under Article 328 of the Italian Criminal Code with a term of imprisonment of between six months and two years. In any event, the Commission is liable for wrongful conduct which is continuous and enduring, which is penalised in terms of non-contractual liability by Article 2043 of the Italian Civil Code and is characterised by Italian case-law as 'improper exercise of public office'.

42 In conclusion, Autosalone claims that it could neither have knowledge of the facts necessary for asserting its right nor verify them, since it was waiting in all good faith — and is still waiting — for the Commission to inform it of the result of its investigations.

Findings of the Court

43 It should be pointed out that those arguments designed to show that it was impossible for Autosalone to have sufficient knowledge of the facts are based on the premiss, which is discounted as misconceived in paragraphs 31 and 32 of this order, that the limitation period starts to run only when the aggrieved person is in possession of all the evidence which it considers relevant for bringing an action.

44 Consequently, the second limb of the second plea must be rejected as manifestly unfounded.

The alleged curtailment of the limitation period

Autosalone's arguments

45 By this ground of appeal, which constitutes the third limb of the second plea, Autosalone challenges the arguments set out by the Court of First Instance in paragraph 27 of the order under appeal. It considers that its rights have been seriously prejudiced by the Court of First Instance which relied on the fact that, in February 1996, Autosalone brought the same action against the Commission before the national courts as the one which is pending before the Community Courts and inferred that it could have exercised its right of action before the expiry of the limitation period.

46 In that regard, Autosalone reiterates that limitation is the exception to the rule, an exception which is justified by the inaction, during the whole of the limitation period, of the person entitled to initiate proceedings. However, particularly following wrongful conduct by the person responsible for the damage, the limitation period cannot be curtailed.

47 Autosalone adds that it does not understand how an action can be time-barred before it can be brought. It considers that, for that reason, the application by the Court of First Instance of the Community limitation rule in fact improperly shortened the limitation period for bringing an action, reducing it from five years to little more than two years or allowed the Community to curtail that period by its wrongful conduct.

Findings of the Court

48 Autosalone's complaint that the Court of first Instance reduced the limitation period to little more than two years is also based on the incorrect premiss, discounted in paragraphs 31 and 32 of the present order, relating to the starting point of the five-year limitation period provided for in Article 44 of the EAEC Statute of the Court of Justice. Autosalone in no way disputes the finding of the Court of First Instance that it could have brought an action for damages within the time-limits prescribed by Article 44 after 10 May 1995, the date on which Mr Speroni's report was submitted. In essence, Autosalone complains that the Court of First Instance fixed the starting point of the limitation period at a date which is too early compared with the date which Autosalone considers to be relevant.

49 On the same grounds as those set out in paragraph 43 of this order, the third limb of the second plea must also be rejected as manifestly unfounded.

The third and fourth pleas concerning the effects on the limitation period of the actions brought before the national court

Autosalone's arguments

50 Noting that the Commission has not pleaded in its defence that the action brought as a precaution before the Tribunale di Varese by the Cigna Insurance Company of Europe SA was inadmissible on the ground that the national court

lacked jurisdiction, Autosalone maintains, firstly, that that stage may and must therefore be included in the stage of proceedings before the Community Courts as being admissible and relevant to them. That stage fully constitutes part of the present stage of proceedings. Autosalone concludes that the limitation period must, in any event, be regarded as having been suspended during the whole stage of proceedings for protective measures or for measures of inquiry. Therefore, the stage of the preliminary technical expert's report cannot be taken into account for the purposes of calculating the limitation period.

51 According to Autosalone, it follows that, even if it is conceded that the period began to run on 2 June 1992, the date on which the flooding in question occurred, it was suspended on 22 February 1993, the date on which the preliminary expert's report was requested, or, at the latest, on 27 March 1993, the date of the first hearing before the national court and of the initiation of the *inter partes* proceedings with the Commission, and the period did not start to run again until 11 May 1995, that is to say, at the end of the preliminary technical report process. The period therefore expired on 18 August 1999 or, if it was not suspended until 27 March 1993, on 15 July 1999, that is to say in any event well after the originating application was lodged before the Community Courts.

52 Autosalone relies, secondly, on the action which it brought before the Tribunale di Varese in March 1997, by summons dated 28 February 1996, the admissibility of which was called in question by the Commission on the ground that the national court before which proceedings were brought lacked jurisdiction. It points out in that regard that the Commission maintained, for its defence at first instance, that the subject-matter of that action before the national court is identical to the subject-matter of the action brought subsequently before the Community Courts and that it would already have been possible to bring an action before the Community Courts at that time for the purpose of interrupting the limitation period in accordance with law. The Court of First Instance upheld that plea when it examined the substance of that action in paragraph 27 of the order under appeal.

53 Thus, the Commission, which pleaded in its defence before the national court that the action was inadmissible on the ground that the court lacked jurisdiction, has

now accepted that action and rendered it admissible and relevant for the purposes of its defence in the proceedings before the Community Courts. In consequence, Autosalone argues that it too is entitled to rely on the substance of that action for the purposes of its own defence.

54 Such an examination reveals that that action before the national court is not time-barred and was not time-barred when the proceedings were initiated before the Community Courts and that, since it is the same action as that brought before the Community Courts, the plea raised in the latter proceedings that the action is time-barred should be rejected. For that reason, the application made by Autosalone before the Community Courts is admissible since it relates specifically to an action which is not time-barred.

55 Autosalone also invokes conduct on the part of the Commission in the proceedings before the national court which is incompatible with its intention to rely on limitation.

Findings of the Court

56 Quite apart from the fact that Article 43 of the EC Statute and Article 44 of the EAEC Statute of the Court of Justice refer only to interruption of the limitation period, it should be pointed out that it is clear from the very wording of those provisions that they require, in the two situations for which they provide, an application before the Court of Justice or the Court of First Instance, before which those provisions are applicable by virtue of the first paragraph of Article 46 and the first paragraph of Article 47 of those Statutes respectively. By contrast, neither a similar action brought before a national court, namely an application for damages, nor a request for measures of inquiry, such as a request for the appointment of an expert, nor even a request for protective measures brought before a national court can have that effect of interruption.

57 It should also be pointed out that, as regards in particular the initiation of proceedings before the Tribunale di Varese similar to those brought before the Community Courts, neither the Commission's conduct before the national court nor the fact that the subject-matter of the proceedings before that court is identical to the subject-matter of the action dismissed as inadmissible by the order under appeal can be relevant to the outcome of the case.

58 The Court of First Instance did not therefore err in law by refusing to accept that the limitation period was interrupted by the proceedings for protective measures and the action brought before the Tribunale di Varese. In consequence, the third and fourth pleas must also be rejected as manifestly unfounded.

59 It is evident from all the foregoing considerations that the appeal must be dismissed in its entirety as manifestly unfounded, and that it is unnecessary to adjudicate on the measures of inquiry requested by Autosalone.

Costs

60 Under Article 69(2) of the Rules of Procedure, which is to apply to the procedure on appeal by virtue of Article 118, 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 Commission has applied for costs against Autosalone and the latter has been unsuccessful, Autosalone must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby orders:

1. **The appeal is dismissed.**

2. **Autosalone Ispra dei Fratelli Rossi Snc is ordered to pay the costs.**

Luxembourg, 18 July 2002.

R. Grass

Registrar

N. Colneric

President of the Second Chamber