In Case 209/83

FERRIERA VALSABBIA SpA, having its registered office in Odolo (Brescia), represented by its managing director, Giovabattista Brunori, and by Angelo Carattoni, Avvocato, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 34 B Rue Philippe-II,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Oreste Montalto, acting as Agent, with an address for service in Luxembourg at the office of Manfred Beschel, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for a declaration that the Commission decision of 14 July 1983 imposing a fine on the applicant is void,

THE COURT (Second Chamber)

composed of: K. Bahlmann, President of Chamber, P. Pescatore and O. Due, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts

From 14 September to 2 October 1981 Commission inspectors carried out at the

premises of the undertaking Ferriera Valsabbia investigations into the prices of steel invoiced by that undertaking. After the investigation had disclosed infringements of Article 60 of the ECSC Treaty, the Commission, by letter dated 18 August 1982, notified the undertaking of them and invited it to submit its comments in accordance with Article 36 of the Treaty. Ferriera Valsabbia did so at a hearing held at the Commission on 15 October 1982 and by letters of 17 November and 16 December 1982. On 14 July 1983 the Commission adopted the contested decision fining the applicant LIT 284 240 000 for the alleged infringements of Article 60 of the ECSC Treaty, which, according to the Commission, consisted in the failure to adhere to its price-list owing to increases in the prices charged for reinforcing bars, billets and wire rod sold in July and August 1981. That decision was notified to the applicant by registered letter of 21 July 1983. Valsabbia then brought this action under Article 36 of the ECSC Treaty. In its application, which was lodged at the Court Registry on 19 September 1983, is for a declaration that the Commission decision of 14 July 1983 is void or alternatively a reduction of the fine imposed or, in the further alternative, a long extension of the period within which it must be paid.

II — Written procedure and conclusions of the parties

By a separate document lodged on 7 October 1983 the Commission applied to the Court under Article 91 (1) of the Rules of Procedure for a decision on an objection of inadmissibility. At the request of the President of the Court of 7 October 1983, the applicant submitted in writing its submissions and conclusions regarding the Commission's application.

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

By an order of 29 February 1984 the Court assigned the case to the Second Chamber.

The *Commission* claims that the Court should declare the application inadmissible and order the applicant to pay the costs.

The *applicant* contends that the Court should dismiss the objection of inadmissibility and proceed to examine the substance of the case.

III — Submissions and arguments of the parties

The *Commission* contends that the action is inadmissible because it was brought after the prescribed period had expired and that *force majeure* cannot be relied upon in support of its admissibility. It observes that, according to Article 39 of the Statute of the Court of Justice of the ECSC, the proceedings provided for in Articles 36 and 37 of the ECSC Treaty must be instituted within the time-limit of one month of the date of notification. To that it added the extension, on account of distance, of 10 days for parties habitually resident in Italy. Since the applicant was notified of the contested decision on 21 July 1983, the period prescribed for commencing proceedings, including the extension on account of distance, therefore expired on 1 September 1983, by which date the application ought to have been lodged at the Court Registry. Consequently, the

applicant failed to observe the time-limit for bringing proceedings, which, according to the judgments of the Court, bars the right of action.

As regards the *force majeure* argument put forward by the applicant, the Commission observes that only Community law should be applied in this case and that, according to Article 80 of the Rules of Procedure, periods for the taking of procedural steps continue to run during vacations. In any case, time-limits are not suspended in the summer period in the Italian legal system either.

As regards the concept of *force majeure*, it should, as an exception to the general rule, be interpreted narrowly, as it has been by the Court in many cases, *inter alia* in *Valsabbia and Others* v *Commission* [1980] ECR 907. Moreover, *force majeure* should be defined by reference to the legal context in which it is to apply. In this case, it meant that between 22 July and 30 August it was almost completely impossible to find a lawyer to institute proceedings before the Court. The applicant has not proved and, moreover, could not prove that it was impossible for it to find a lawyer.

The *applicant* makes two submissions in support of the admissibility of its action: the first relates to the inapplicability of the time-limit of 30 days to actions brought under Article 36 of the ECSC Treaty; the second concerns the existence of *force majeure* in this case.

On the first point, the applicant submits that Article 36 of the ECSC Treaty does not prescribe any fixed period for bringing an action. The third paragraph of Article 36 refers directly to the "conditions" laid down in the first paragraph of Article 33. In law "conditions" mean something different from a time-limit, which legal writers classify under "procedure" or which are regarded as an independent element. That reference is specific both in relation to the first paragraph of Article 33 and in relation to the second paragraph, which does not prescribe or refer to any time-limit. The provision contained in the third paragraph of Article 33 is not applicable, however, because only an indirect reference is involved. In this case, the time-limit for bringing an action is two months, as prescribed in the decision requiring payment of the fine and, in addition, by the EEC Treaty.

On the second point, the applicant submits that the conditions for *force majeure* are fulfilled. It was in fact impossible for it to take action to defend itself, because the Commission decision was notified to it during the summer holiday, a period during which there is a complete cessation of work at the Italian Bar and in Italian undertakings. As a matter of fact, under Italian Law No 742 of 7 October 1969, the periods of time prescribed for the taking of procedural steps before the ordinary and administrative courts are suspended from 1 August to 15 September every year with the result that time starts to run again in law from the end of the suspension period.

Although that law is a national law, it created a situation in which the applicant was prevented from taking action. However, the essence of the problem was not that it was impossible to obtain a lawyer but that it was impossible to obtain a lawyer who satisfied certain specific requirements, both formal (right of audience before the higher courts)

and substantive (knowledge of the Rules of Procedure of the Court of Justice of the European Communities), as the case demanded particular qualifications and a particular preparation. However, the most specialized lawyers are precisely those who are the most difficult to obtain, even during the judicial term. In any case, during the summer holiday period, lawyers' chambers are all closed, apart from those of some criminal lawyers.

As regards the concept of *force majeure,* the applicant argues that a distinction must be drawn between questions of substance (such as the performance of obligations), to which a "strict and formalistic" approach has been adopted, and questions of procedure (such as the observance of time-limits), to which principles of equity should be applied. That is especially necessary where the barring of the action owing to the rigidity of the time-limit effectively excludes all possibility of taking and defending proceedings and results in the breach of constitutional principles or, more precisely, the breach of fundamental rights of the individual.

The applicant does not regard as relevant the judgments of the Court relied upon by the Commission. For its part, it refers to the Opinion which Mr Advocate General Gand delivered on 14 December 1966 in Joined Cases 25 and 26/65, *Società Industriale Metallurgica di Napoli and Another* v *High Authority,* [1967] ECR 33, in which he defined unforeseeable circumstances and *force majeure* as external events beyond the control of the person under the obligation, of a kind which that person could not foresee and the consequences of which he could not imagine. According to the decisions of the Court (judgment of 20. 2. 1975 in Case 64/74, *Adolf Reich* v *Hauptzollamt Landau,* [1975] ECR 261), the crucial question is whether the person under the obligation or the party bringing proceedings has shown "a normal degree of prudence". In other words, the degree of any negligence must be examined. In this case, neither the diligence nor the care needed to meet unforeseeable situations could have overcome the unavailability of a sufficiently well-qualified lawyer.

The applicant also refers to Italian legal writers who also consider that the test for the existence of *force majeure* is the exercise of due diligence, care and forethought. Articles 650, 663 and 668 of the Italian Code of Civil Procedure and Article 183 bis of the Italian Code of Criminal Procedure empower courts to consider the circumstances pleaded by the parties with a view to relaxing time-limits. The relevant circumstances cannot be evaluated on the basis of formalistic criteria; they must be evaluated by comparing certain objective factors with the actions of the person under the obligation. The situation which has existed for some years in Italy during the holiday period constitutes proof of *force majeure;* it is one which cannot be overcome by exercising normal diligence or by making every reasonable effort.

IV — Oral procedure

At the sitting on 5 April 1984 oral argument was presented and questions put by the Court were answered by F. Masperi, Avvocato, for the applicant, and by Oreste Montalto, acting as

Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 30 May 1984.

Decision

1 By application lodged at the Court Registry on 19 September 1983, the applicant, Ferriere Valsabbia SpA, having its registered office at Odolo (Brescia, Italy) brought an action under the second paragraph of Article 36 of the ECSC Treaty primarily for a declaration that Commission Decision C (83) 1022/4 of 14 July 1983 fining it LIT 284 240 000 pursuant to Article 64 of the ECSC Treaty is void, alternatively for a reduction of that fine and, in the further alternative, for a long extension of the period in which the fine must be paid.

2 In the contested decision it is stated that on several occasions during the third quarter of 1981 the applicant sold concrete reinforcing bars, billets and wire rod at prices higher than those shown in the price-list which it had published in accordance with Article 60 of the ECSC Treaty and in Article 1 of the decision it is found that such overcharging constitutes an infringement of that provision of the Treaty.

3 The decision was sent to the applicant by registered letter on the day on which it was adopted and the applicant received it on 21 July 1983.

Admissibility

4 The Commission has raised an objection of inadmissibility against the application under Article 91 (1) of the Rules of Procedure on the ground that the applicant did not observe the one-month period starting from notification of the contested decision which Article 39 of the Statute of the Court of Justice of the ECSC prescribes for bringing proceedings and which was extended by ten days in the present case in accordance with Article 81 of the Rules of Procedure of the Court and Article 1 of Annex II thereto. Since the applicant was notified of the contested decision on 21 July 1983, the period for bringing proceedings expired on 1 September 1983, whereas the application did not actually arrive at the Court until 19 September 1983. In the Commission's view, failure to observe the period prescribed for bringing proceedings bars the applicant's right of action.

5 The applicant, on the other hand, submits that the application is wholly admissible as far as the time-limit is concerned. It contends first of all that Article 36 of the ECSC Treaty does not lay down any fixed period for bringing proceedings and that the reference in that provision to Article 33 concerns only the "conditions" laid down in the first paragraph of that article, that is to say the rules relating to actions and not the time-limit laid down in the third paragraph. In this case, the period for bringing proceedings is two months, which is the period fixed in the decision itself for payment of the fine and which is also laid down by the EEC Treaty.

6 In the alternative, the applicant submits that, even if it did fail to observe the period prescribed for bringing proceedings, its right of action cannot be prejudiced in consequence of the expiry of that period because a case of *force majeure,* within the meaning of the third paragraph of Article 39 of the Statute of the Court of Justice of the ECSC, existed.

7 In that regard, it contends that it was in fact impossible for it to bring an action within the prescribed period of one month because the Commission decision was notified to it shortly before the beginning of the summer vacation when work at the Italian Bar and in Italian undertakings stops completely.

8 It refers in this regard to Italian Law No 742 of 7 October 1969 on the suspension of procedural time-limits during the summer vacation (Gazzetta Ufficiale No 281 of 6. 11. 1969). Under that law, the procedural time-limits applied in ordinary and administrative courts are suspended between 1 August and 15 September every year.

9 Although that law is a national law, it created a situation in which the applicant was in fact prevented from acting, so that at the beginning of the Italian judicial vacation it found it impossible to find a lawyer in its area with sufficient experience of Community law to act on its behalf.

10 As regards the time-limit for bringing proceedings applicable in this case, the first point which the Court must make is that it is perfectly clear from the

first paragraph of Article 39 of the Statute of the Court of Justice of the ECSC that the appeal provided for in Article 36 of the ECSC Treaty must be lodged within the one-month period laid down in the last paragraph of Article 33 of that Treaty.

11 Consequently, the applicant's first argument must be rejected.

12 As regards the applicant's second argument, it must be pointed out that time-limits for instituting proceedings before the Court are governed exclusively by Community law and that, consequently, they are not subject to the national rules of the Member States regarding the time-limits for instituting proceedings before their own courts.

13 As the Commission has rightly pointed out, Article 80 (l) of the Rules of Procedure expressly provides that the period of time prescribed for the taking of any procedural step is to continue to run during vacations.

14 The Court considers that the strict application of Community rules on procedural time-limits meets the requirement of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. It is only if the party concerned proves the existence of unforeseeable circumstances or *force majeure,* as required by the third paragraph of Article 39 of the Statute on the Court of Justice of the ECSC, that its right of action is not prejudiced in consequence of the expiry of a time-limit.

15 However, the applicant claims that the circumstances of the present case fall squarely within the concept of *force majeure;* in its view, the Court's interpretation of that concept where procedural questions, rather than questions of substance, are concerned should be based on equitable considerations, since rigid time-limits would effectively exclude all possibility of obtaining a remedy and would thus result in a breach of the fundamental rights of the individual.

16 Consequently, in the applicant's view, the test for deciding whether *force majeure* exists should be whether the person concerned showed a normal degree of prudence, as the Court held in its judgment of 20 February 1975 in Case 64/74, *Reich* v *Hauptzollamt Landau,* [1975] ECR 261, that is to say whether or not he showed the care and attention required to meet unforeseeable situations.

17 In that regard, the applicant also refers to the fact that in Italian law the test of the exercise of due diligence is used to determine whether *force majeure* exists and Italian courts may evaluate the circumstances pleaded by the parties with a view to relaxing time-limits. (Articles 650, 668 and 663 of the Italian Code of Civil Procedure and Article 183 bis of the Code of Criminal Procedure.

18 As far as the facts of this case are concerned, the applicant considers that it could not have overcome this situation by exercising a normal degree of care or by making every reasonable effort. It states that, after drawing up the documents needed to conduct the case it tried, unsuccessfully, at the beginning of August to find a sufficiently well-qualified lawyer in its area. The lawyer who used to advise it in ECSC cases was on holiday throughout the period in which time-limits were suspended.

19 Furthermore, throughout that period, the law library of the Brescia Bar was closed and the central law library in Rome was open for only two hours a day, which made it impossible for the lawyer who was eventually instructed to familiarize himself with Community law.

20 To support its case, the applicant has submitted statements by the President of the Italian Bar and by the President of the Brescia Bar Association and also a statement by its usual lawyer in ECSC cases.

21 The applicant's arguments cannot be accepted. The Court has consistently held that, apart from the special features of the specific areas in which it is used, the concept of *force majeure* essentially covers unusual circumstances which make it impossible for the relevant action to be carried out. Even though it does not presuppose absolute impossibility, it nevertheless requires abnormal difficulties, independent of the will of the person concerned and apparently inevitable, even if all due care is taken (see the judgment of 9. 2. 1984 in Case 284/82, *Busseni* v *Commission*, [1984] ECR 557).

22 Consequently, the concept of *force majeure* does not apply to a situation in which, objectively, a diligent and prudent person would have been able to take the necessary steps before the expiry of the period prescribed for instituting proceedings.

23 In that regard, it must be stated that the applicant did not show the necessary degree of diligence, since on receipt of the contested decision it still had ten days before the beginning of the summer holidays to make contact with its usual lawyer or to find a sufficiently well-qualified lawyer to act on its behalf.

24 It is clear from the applicant's own statements at the hearing that in the time between its receiving the contested decision and the beginning of the summer holidays it simply prepared a file and did not first seek a lawyer to act on its behalf. It was not until 8 August, at the earliest, that the applicant made contact with the lawyer who has actually taken charge of the case.

25 Finally, it should be noted that the applicant could have availed itself of Article 38 (7) of the Rules of Procedure which allows an application to be lodged even if it does not comply with the formal requirements, provided that it is put in order within a reasonable period prescribed by the Registrar.

26 Consequently, it must be stated that in this case there were no abnormal, insurmountable difficulties which could have justified the delay in seeking a lawyer to act on the applicant's behalf if it had taken all the necessary steps in time.

27 It follows from the foregoing that the delay in bringing the action was not due to *force majeure* and that the action is inadmissible.

Costs

28 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. **Dismisses the application as inadmissible;**

2. **Orders the applicant to pay the costs.**

Bahlmann Pescatore Due

Delivered in open court in Luxembourg on 12 July 1984.

For the Registrar

H. A. Rühl
Principal Administrator

K. Bahlmann
President of the Second Chamber

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 30 MAY 1984 [1]

Mr President,
Members of the Court,

1. Introduction

1.1. The basic facts of the case

The basic facts of this case are simple. The Applicant, Ferriera Vasabbia SpA, is challenging a Commission decision of 14 July 1983. By that decision it was fined LIT 284 240 000 for infringements of Article 60 of the ECSC Treaty established almost two years earlier (in the course of an inspection carried out between 14 September and 2 October 1981). Owing to the extension of the

1 — Translated from the Dutch.