JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
7 February 2002 *

In Case T-199/94,

Hans-Walter Gosch, residing in Högersdorf (Germany), represented by D. Hansen and S. Vieregge, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by D. Booß and M. Niejahr, acting as Agents, and M. Núñez-Müller, lawyer, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

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 the applicant 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 (EEC) No 804/68 (OJ 1984 L 132, p. 11),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: P. Mengozzi, President, V. Tiili and R.M. Moura Ramos, Judges,

Registrar: D. Christensen, Administrator,

having regard to the written procedure and further to the hearing on 3 May 2001,

gives the following

Judgment

Legislative background

1 In 1977, faced with 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 entering into an undertaking not to market milk, or an undertaking to convert their herds, for a period of five years, in return for a premium.

2 Despite the fact that many producers entered into such undertakings, over-production 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 Federal Republic of Germany 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 (EEC) 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'). Those producers are also known as 'SLOM I producers'.

7 Allocation of a special reference quantity was subject to a number of conditions. Some of those conditions, in particular those dealing with the time when the non-marketing undertaking expired, were declared invalid by the Court of Justice, by judgments of 11 December 1990 in Case C-189/89 *Spagl* [1990] ECR I-4539 and Case C-217/89 *Pastätter* [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 granted a special reference quantity. Those producers are also known as 'SLOM II producers'.

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 entered into undertakings pursuant to 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.

11 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.

12 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 producers who obtained a definitive reference quantity, for an offer of flat-rate compensation for the damage sustained as a result of the application of the rules referred to in *Mulder II*.

13 By judgment of 27 January 2000 in Joined Cases C-104/89 and C-37/90 *Mulder and Others* v *Council and Commission* [2000] ECR I-203 the Court of Justice determined the amount of compensation claimed by the applicants.

Facts giving rise to the dispute

14 The applicant is a milk producer in Germany, who signed, in 1978, a non-marketing undertaking under Regulation No 1078/77.

15 It is apparent from the judgment of the Schleswig-Holsteinisches Verwaltungsgericht Schleswig (Schleswig-Holstein Administrative Court, Schleswig) of 7 January 1991 that the applicant applied to be allocated a provisional special reference quantity after the entry into force of Regulation No 764/89, and that this was refused by decision of the competent national authorities on the ground that he did not satisfy the conditions laid down for the grant of a quota and, in particular, that his non-marketing undertaking had expired on a date prior to 31 December 1983. The action brought by the applicant against that decision was dismissed.

16 The applicant appealed against that decision to the Schleswig-Holsteinisches Oberverwaltungsgericht (Schleswig-Holstein Higher Administrative Court).

17 Following the entry into force of Regulation No 1639/91, the applicant again applied, by letter of 1 September 1991, to be granted a provisional special reference quantity. He was allocated such a quantity by decision of the national authorities of 18 November 1991.

18 The appeal proceedings before the Schleswig-Holsteinisches Oberverwaltungsgericht were therefore removed from the register.

19 By letter received at the Commission on 18 November 1991, the applicant applied to be compensated for losses allegedly sustained as a result of the application of Regulation No 857/84 and of the non-marketing undertaking entered into by him pursuant to Regulation No 1078/77. The Commission rejected that application by letter of 26 November 1991.

20 By letter of 1 May 1992, the applicant again applied to the Commission for compensation for his alleged losses.

21 By letter of 13 June 1992, the Commission replied to the applicant that it intended to establish the principles and conditions according to which applications for compensation would be dealt with. In addition, it informed the applicant that, in order to avoid the commencement by him of proceedings for compensation, it would not plead limitation as from the date of that letter until 17 September 1992 (that is, three months after publication of the *Mulder II* judgment in the *Official Journal of the European Communities*) in so far as the application for compensation was not already time-barred on 13 June 1992.

22 On 27 January 1994 the Bundesamt für Ernährung und Forstwirtschaft (German Federal Office for Food and Forestry, 'the BEF') made the applicant a compensation offer under Regulation No 2187/93. The applicant failed to accept that offer within the time-limit set.

Procedure and forms of order sought by the parties

23 By application lodged at the Registry of the Court of First Instance on 30 May 1994, the applicant initiated the present proceedings.

24 By order of 31 August 1994, the Court of First Instance stayed proceedings pending final judgment of the Court of Justice in Joined Cases C-104/89 (*Mulder and Others* v *Council and Commission*) and C-37/90 (*Heinemann* v *Council and Commission*).

25 The present proceedings were resumed after delivery of the judgment of the Court of Justice in the abovementioned cases.

26 By decision of the Court of First Instance of 6 June 2000, the case was assigned to a chamber of three Judges.

27 By decision of 13 March 2001, the Court of First Instance (Fourth Chamber) decided to open the oral procedure.

28 The parties presented oral argument and replied to the Court's oral questions at the hearing on 3 May 2001.

29 The applicant claims that the Court should order the defendant to pay him the sum of 324 405.76 German marks (DEM) together with interest.

30 The Commission contends that the Court should:

— dismiss the application;

— order the applicant to pay the costs.

Law

Arguments of the parties

31 The applicant claims that he is entitled to compensation for the damage which he sustained as a result of his being prevented from producing milk by virtue of Regulation No 857/84. The period for which he seeks to be compensated runs from 2 April 1984, that being the day following the entry into force of Regulation No 857/84, to 15 June 1991, that being the date of the entry into force of Regulation No 1639/91. He quantifies the damage at DEM 324 405.76.

32 The applicant submits that, contrary to what the Commission asserts, his non-marketing undertaking did not begin on 24 July 1978, but only six months after that date, that is to say in January 1979. He states that, in the absence of a declaration on his part to the competent authorities informing them that he was ceasing production, the non-marketing period began six months after the last delivery of milk, which in his case took place on 23 July 1978.

33 In order to prove the date of commencement of the non-marketing period, the applicant has produced copies of the written pleadings submitted before the Schleswig-Holsteinisches Verwaltungsgericht, Schleswig. He challenges the declaration by which the Bundesanstalt für Landwirtschaft und Ernährung (Federal Office for Agriculture and Food), which is the competent administrative authority for granting compensation under Regulation No 2187/93, determined the non-marketing period differently.

34 The applicant further states that, although he stated in the application that the non-marketing period began on 24 July 1978, that was in order not to complicate the facts and because he thought that the date of expiry of that period was of no importance for the settlement of the dispute.

35 The applicant maintains that, since, according to him, the non-marketing period expired in January 1984 and not on 24 July 1983, he must be regarded as a SLOM I producer.

36 He argues that he intended to resume milk production when that period expired. However, he first had to modernise his cowshed and, in particular, build a slurry pit in conformity with the requirements of the national legislation on environmental protection. To that end, as a tenant, he needed the consent of

his father, who owned the holding. He only obtained that consent later. In 1984, following the entry into force of the milk quota scheme, it transpired that the applicant could not resume milk production. The applicant built the slurry pit in 1985 and put bulls in the cowshed.

37 The applicant states that, in any event, regardless of the date from which he succeeded in obtaining a quota under the Community rules, the fact that he was granted such a quota means that he is entitled to compensation for the losses sustained.

38 The applicant argues, in this connection, that the defendant's position is contradictory. Whereas the grant of milk quotas to SLOM II producers was provided for by Regulation No 1639/91 in order to take account of the legitimate expectations of those producers, the Commission is refusing to compensate those same producers for the damage sustained by them before the entry into force of that regulation, even though it is always the same legitimate expectations which are involved.

39 The Commission contends that the Community is not liable to the applicant and that, in any event, any rights which the applicant may have had to compensation are time-barred.

Findings of the Court

40 As a preliminary point, in the present case, before the limitation period can be examined, it must first be determined whether the liability of the Community under the second paragraph of Article 215 of the EC Treaty (now the second paragraph of Article 288 EC) is susceptible of being incurred and, if so, until what date.

41 The non-contractual liability of the Community for damage caused by the institutions, provided for in the second paragraph of Article 215 of the Treaty, 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).

42 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). That liability is based on infringement of the principle of protection of legitimate expectations.

43 However, that principle may be relied on in order to challenge Community rules only to the extent that the Community itself has previously created a situation which can give rise to a legitimate expectation (Case C-177/90 *Kühn* v *Landwirtschaftskammer Weser-Ems* [1992] ECR I-35, paragraph 14).

44 Thus, where an economic operator has been encouraged by a Community measure to suspend marketing of milk for a limited period in the general interest and against payment of a premium he may legitimately expect not to be subject, upon the expiry of his undertaking, to restrictions which specifically affect him precisely because he has availed himself of the possibilities offered by the Community provisions (*Mulder I*, paragraph 24, and *Von Deetzen*, paragraph 13). On the other hand, the principle of the 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 or has marketed only a reduced quantity of milk during a period prior to the entry into force of that scheme, in consequence of a decision which he freely took without being encouraged to do so by a Community measure (*Kühn*, paragraph 15).

45 Furthermore, it follows from *Spagl* that the Community could not, without infringing the principle of protection of legitimate expectations, automatically preclude from the grant of quotas all producers whose non-marketing or conversion undertakings had expired in 1983, in particular those who, like Mr Spagl, had been unable to resume production for reasons connected with their undertaking. The Court of Justice thus held in paragraph 13 of that judgment:

'[t]he Community legislature was able validly to set a cut-off date by reference to the expiry of the period of non-marketing or conversion of the persons concerned, with a view to excluding from the benefit [of the provisions on the allocation of a special reference quantity] those producers who had not delivered milk during the whole or part of the reference year for reasons unconnected with the undertaking as to non-marketing or conversion. On the other hand, by virtue of the principle of the protection of legitimate expectations, as interpreted in the cases cited above, the cut-off date cannot be set in such a way that it has the effect of also excluding from the benefit [of those provisions] producers whose failure to deliver milk for the whole or part of the reference year derives from the fulfilment of an undertaking given under Regulation No 1078/77.'

46 That judgment can be read only in the light of the facts of the case before the national court. Mr Spagl was a farmer who, upon expiry of his undertaking on 31 March 1983, was not in a position to resume milk production immediately because he lacked capital to buy a new dairy herd. Instead, he bought dairy calves and raised them himself, resuming production with 12 cows in May or June 1984 (see the Opinion of Advocate General Jacobs in *Spagl*, at [1990] ECR I-4554,

paragraph 2). Furthermore, it is clear from the Report for the Hearing that while milk production was suspended he carried out maintenance work on the buildings and machinery used for milk production ([1990] ECR I-4541, point I 2).

47 It is therefore a reasonable inference from that judgment that producers whose undertaking expired in 1983 can validly base their actions for compensation on infringement of the principle of the protection of legitimate expectations only where they show that their reasons for not resuming milk production during the reference year are connected with the fact that they stopped production for a certain time and that they were unable, for reasons to do with the organisation of that production, to resume production immediately.

48 Furthermore, it follows from *Mulder II*, and more specifically from paragraph 23, that Community liability is subject to the condition that the producers clearly manifested their intention to resume milk production upon expiry of their non-marketing undertaking. In order for the illegality which led the Court of Justice to declare the regulations giving rise to the situation of the SLOM producers invalid to entitle those producers to damages, the producers must have been prevented from resuming milk production. That means that the producers whose undertaking expired before the entry into force of Regulation No 857/84 resumed production or at least took steps to do so, such as making investments or repairs, or maintaining the equipment necessary for such production (see on that subject the Opinion of Advocate General Van Gerven in *Mulder II* at [1992] ECR I-3094, point 30).

49 If a producer has not manifested that intention he cannot claim to have had a legitimate expectation in the possibility of resuming milk production at some unspecified future date. In those circumstances, his position is no different from that of economic operators who did not produce milk and who, after the introduction of the milk quota scheme in 1984, were prevented from commencing such production. It is settled case-law that, 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, in that regard, Joined Cases 424/85 and 425/85 *Frico and Others* v *Voedselvoorzienings In- en Verkoopbureau* [1987] ECR 2755, paragraph 33, *Mulder I*, paragraph 23, and *Von Deetzen*, paragraph 12).

50 In the present case, the parties disagree about the date on which the non-marketing undertaking entered into by the applicant began and, in so far as that undertaking was for a period of five years, about the date on which it expired. The applicant claims that the undertaking began to produce its legal effects only in January 1979, that is, six months after the last delivery of milk, which in his case took place on 24 July 1978. The Commission, on the other hand, maintains that the undertaking began on 24 July 1978, the date on which the applicant actually ceased milk production.

51 In view of that situation, it must be held that, since the non-marketing undertaking expired, in any event, before the entry into force of the milk quota scheme on 1 April 1984, the onus, under the case-law cited above, is on the applicant to demonstrate, in order to establish his entitlement to compensation, that he intended to resume milk production when his non-marketing undertaking expired.

52 Nevertheless, since the assessment of the probative value of the evidence put forward to that effect by the applicant must be made having regard to the time he had available to him between the date of expiry of his non-marketing undertaking and the date of entry into force of the milk quota scheme, it is necessary to establish the date of expiry of that undertaking.

53 It follows that it must first be determined on what date the applicant's non-marketing undertaking began to produce its effects and, therefore, on what date it expired.

54 In that regard, it must be pointed out that the final subparagraph of Article 2(2) of Regulation No 1078/77 states that '[t]he non-marketing period shall span five years and shall begin at the latest at the end of the sixth month following the date on which the application was approved'. Moreover, Article 5(3) of Commission Regulation (EEC) No 1391/78 of 23 June 1978 laying down amended rules for the application of the system of premiums for the non-marketing of milk and milk products and for the conversion of dairy herds (OJ 1978 L 167, p. 45) provides that '[t]he producer shall notify the competent authority, before the beginning of the non-marketing or conversion period, of the date of its commencement, and this date shall be recorded on each identity card [issued for each animal marked and registered]'.

55 Furthermore, the decision approving his application, taken by the national authorities on 25 July 1978 ('the decision granting approval'), states as follows:

'1. You are hereby granted, with effect from 19 July 1978, from the funds of the European Agricultural Guidance and Guarantee Fund, a non-marketing premium in a total amount of DEM 70 843.18.

...

6. The non-marketing period... shall begin, at the latest, six months following the acceptance of your application, namely on 18 January 1979. In so far as you

commence non-marketing... on an earlier date and duly declare this, the earlier date shall be the operative date.'

56 The applicant submits that, since he made no declaration to that effect to the national authorities, the non-marketing period began on 18 January 1979.

57 As regards the existence of such a declaration, it is apparent from the documents before the Court that the national authorities received, on 18 August 1978, a certificate issued by the dairy to which the applicant sold milk, establishing that he had no longer delivered milk since 24 July 1978. It is also apparent from the decision given on a complaint by the Amt für Land- und Wasserwirtschaft Itzehoe (Itzehoe Office for Agriculture and Water Management) on 21 February 1990, and from that body's written pleading of 8 June 1990 before the Schleswig-Holsteinisches Verwaltungsgericht that, in practice, those certificates were issued by dairies at the request of producers. However, the applicant denies having asked the dairy to issue such a certificate and claims not to understand how the dairy could have issued it on its own initiative. Since the particulars shown in the documents before the Court concerning the author of that declaration are contradictory, and since neither of the parties has been able to produce a copy of that declaration to the Court, it must be concluded that it is impossible to establish the date of expiry of the non-marketing undertaking on that basis.

58 However, the file contains other information which tends to show that the applicant's non-marketing undertaking began to produce its effects, contrary to what the applicant claims, from 25 July 1978 onwards.

59 The file shows, first, that the applicant discontinued milk production from 24 July 1978 onwards since, on that date, he had sold practically all of his dairy herd and, in those circumstances, was no longer in a position to produce milk for commercial purposes.

60 Second, the file shows that the opening date of the non-marketing period, recorded by the applicant in accordance with Article 5(3) of Regulation No 1391/78 on most of the identity cards referred to in Article 7 of that regulation, was 20 July 1978. The applicant cannot claim to be unaware of the importance of such a record since, on the one hand, the decision granting approval identified the provisions governing the system of non-marketing premiums the benefit of which he had applied to receive and, on the other, that decision expressly made it clear that failure to comply with the undertakings entered into by the producer would entail the repayment of all premiums paid out.

61 It follows that, between 20 and 25 July 1978, the applicant took the steps necessary to comply with the non-marketing undertaking into which he had entered.

62 Moreover, it is common ground that the applicant received payment, on 1 September 1978, of the first instalment of the non-marketing premium, which, under Article 4 of Regulation No 1078/77, was payable only during the first three months of the non-marketing period, as was also pointed out in the decision granting approval.

63 Furthermore, the applicant stated on a number of occasions, and in particular in the application initiating these proceedings, that he had undertaken not to produce milk between 24 July 1978 and 24 July 1983.

64 In view of those factors, it must be concluded that his non-marketing undertaking, which was for a period of five years, expired, at the latest, on 25 July 1983.

65 In those circumstances, and in view of the fact that the applicant did not resume milk production between the date of expiry of his non-marketing undertaking, that is, 25 July 1983 at the latest, and the date of entry into force of the quota scheme, 1 April 1984, he must prove, in order for his compensation claim to be well founded, that he intended to resume milk production on the expiry of his non-marketing undertaking and that he was unable to do so owing to the entry into force of Regulation No 857/84. That requirement of proof is all the more imperative since more than eight months elapsed between the two dates in question.

66 The applicant states that he did not resume milk production at that time because he needed to carry out work in his cowshed and, in particular, to build a slurry pit, works for which he needed his father's authorisation, which he obtained only later. The applicant produces a letter from his sister in support of that version of events.

67 In the light of the reasons put forward by the applicant, it must be observed that the evidence of any intention on his part to resume milk production following the expiry of his non-marketing undertaking is not based on any objective factors but only on his own statements and those of his sister, and this despite the fact that he had eight months in which to take tangible steps for the purposes of such a resumption. Even regardless of that consideration, it must be held that the reasons which prevented the applicant from resuming milk production in 1983 and which, therefore, determined his exclusion from the allocation of milk quotas following the entry into force of Regulation No 857/84, are not connected with the non-marketing undertaking, but with the fact that he was unable to reach agreement with his father on the future of the holding.

68 Consequently, the damage for which the applicant claims compensation cannot be attributed to the Community legislation.

69 Moreover, the fact that the applicant received an offer of compensation under Regulation No 2187/93 cannot constitute proof of fulfilment of the conditions necessary for establishing the liability of the Community for the damage alleged in this case, as set out in the case-law cited in paragraph 41 of this judgment. As the Court of First Instance has already held, that regulation was in the nature of a proposal by way of settlement addressed to certain producers, acceptance of which was optional, and constituted an alternative to judicial resolution of the dispute. In the event that a producer did not accept the offer, he retained the right to bring an action for damages under the second paragraph of Article 215 of the Treaty (see Case T-554/93 *Saint and Murray* v *Council and Commission* [1997] ECR II-563, paragraphs 39 to 41).

70 It follows that the applicant, by rejecting the offer made to him under Regulation No 2187/93, placed himself outside the framework established by that regulation. Accordingly, the onus is on him to show that the conditions necessary for the establishment of Community liability are fulfilled.

71 However, as has been held in paragraph 67 above, the applicant has not established a causal link between Regulation No 857/84 and the damage alleged. It must therefore be concluded that the Community cannot be held liable to the applicant as a result of the application of Regulation No 857/84, and it is unnecessary to determine whether the other conditions for such liability are satisfied.

72 In those circumstances, it is also unnecessary to consider whether the application in this case was made out of time.

73 The application must accordingly be dismissed.

Costs

74 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 applicant has been unsuccessful, he must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. **Dismisses the application;**

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

Mengozzi Tiili Moura Ramos

Delivered in open court in Luxembourg on 7 February 2002.

H. Jung
Registrar

P. Mengozzi
President