JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
30 November 2005 *

In Case T-250/02,

Autosalone Ispra Snc, established in Ispra (Italy), represented by B. Casu, lawyer,

applicant,

v

European Atomic Energy Community, represented by the Commission of the European Communities, represented in turn by E. de March, acting as Agent, assisted by A. Dal Ferro, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that the European Atomic Energy Community has incurred non-contractual liability, within the meaning of the second paragraph of Article 188 EA, for damage suffered as a result of a drain overflowing and, consequently, for an order requiring that Community to pay compensation for that damage,

* Language of the case: Italian.

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

composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 October 2004,

gives the following

Judgment

Legal context

1 Article 151 EA provides:

'The Court of Justice shall have jurisdiction in disputes relating to the compensation for damage provided for in the second paragraph of Article 188 [EA].'

2 The second paragraph of Article 188 EA provides:

'In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.'

3 Article 1 of the Agreement between the Italian Republic and the Commission of the European Atomic Energy Community concerning the establishment of a Joint Nuclear Research Centre with general powers ('the Centre'), concluded in Rome on 22 July 1959 ('the JRC Agreement'), implemented in Italy by Law No 906 of 1 August 1960 (GURI (Official Journal of the Italian Republic) No 212 of 31 August 1960, p. 3330), provides:

'The Italian Government shall make available to the European Atomic Energy Community the Ispra nuclear studies centre and the land of approximately 160 hectares on which it is built for a period of 99 years from the date on which this agreement enters into force, at a symbolic annual rent of 1 (one) unit of account of the European Monetary Agreement (EMA).'

4 Article 1 of Annex F to the JRC Agreement provides:

'1. The Centre shall be inviolable, exempt from search, requisition, confiscation or expropriation and shall enjoy immunity from any administrative or legal measure of constraint without authorisation by the Court of Justice of the European Communities ...'.

5 Article 3 of Annex F to the JRC Agreement states:

'1. The competent Italian authorities shall make use, at the request of the Commission, of their relevant powers in order to ensure that the Centre receives all necessary public utility services. If the supply of one of those services is interrupted, the Italian authorities shall do their best to meet the needs of the Centre, so as to prevent any adverse effect on its functioning.

2. Where services are supplied by the Italian authorities or by bodies under their control, the Centre shall enjoy special tariffs ... Where those services are supplied by private companies or organisations, the Italian authorities shall provide their good offices to ensure that those services are offered on the most favourable terms.

3. The Commission shall take all appropriate measures to ensure that qualified representatives of the relevant public utility services, duly approved by it, may inspect, repair and maintain the installations connected with those services within the Centre.'

6 Article 16(1) of Annex F to the JRC Agreement states in particular:

'The Government may request ... that it be kept informed of safety and protection of public health measures taken in the Centre as regards fire prevention and dangers arising from ionising radiations.'

7 Article 9(3) of Commission Decision 96/282/Euratom of 10 April 1996 on the reorganisation of the Joint Research Centre (OJ 1996 L 107, p. 12) states:

'The Director-General [of the Centre] shall, on behalf of the Commission, take all measures necessary to ensure the safety of persons and installations for which he is responsible.'

Background to the dispute

8 It is clear from the file that the applicant's property is situated on land belonging to the municipality of Ispra and that it is bordered by a drain consisting, at that spot, of two pipes 80 cm in diameter buried in the ground under the public road ('the first section of the drain').

9 After running alongside the applicant's property, the drain continues through an area of land belonging to the Ferrovie dello Stato (the Italian State Railway Company). That section of the drain ('the second section of the drain') consists of an arched underground passage into which water from the first section flows, as is apparent from the diagram of the vertical section of the drain ('the diagram'), which is annexed to the applicant's application; the Commission has not disputed that, in outline, the diagram accurately portrays the reality. It is also apparent from the diagram that that second section is separated from the public road under which the first section runs only by a grill.

10 It is further apparent from the diagram that, after the second section, the drain continues through the land made available to the Commission pursuant to Article 1 of the JRC Agreement ('the third section of the drain') and that it consists, on that land, of a pipe 100 cm in diameter.

11 The diagram also illustrates that the land made available to the Centre slopes gently down towards the land belonging to the Ferrovie dello Stato on which the second section of the drain is situated. That is also apparent from the contours on a map of the area, annexed both to the Commission's and to the applicant's pleadings.

12 However, at the hearing, the Commission's expert stated, in essence, that the relief of the ground had no bearing on the general slope of the drain since it was buried under the ground. The expert also stated that water in the drain flowed from the first section towards the second section and from the second towards the third section. The applicant itself corroborated that claim, submitting explicitly at the hearing that, in its opinion, the third section had insufficient capacity to absorb all the water from the second section of the drain. It is therefore common ground between the parties that the first section is upstream of the second section which is itself upstream of the third section.

13 It is also common ground between the parties that, until 1990, the year in which the technical services of the Centre carried out work on the third section of the drain, that section had consisted, in its upper part, of an open pipe ('the first segment of the third section of the drain') and, in its lower part, of a closed pipe 100 cm in diameter ('the second segment of the third section of the drain'). During the work carried out in 1990 the open pipe in the first segment of the third section was replaced by a closed pipe 100 cm in diameter. Consequently, since that work, the third section of the drain consists entirely of a closed pipe 100 cm in diameter.

14 The drain in question collects some of the waste water from the sewers of the town of Ispra and from the land on which the Centre is situated.

15 In June 1992, the town of Ispra was affected by a violent thunderstorm which caused widespread flooding, including, inter alia, to the applicant's property.

16 In 1992, the municipality of Ispra changed the drainage system on its land. Thus, it is clear from a letter of 7 October 1992, addressed by the Mayor of Ispra to the infrastructure department of the Centre, that the municipal administration of Ispra decided to allow some of the waste water from the municipal land to run into the drain in question. In order to carry out the work on the land on which the Centre is built, the municipality of Ispra requested that department to provide it with an excavator and an operator. In that letter, the Mayor of Ispra stated that that work was an independent initiative of the municipal administration, which assumed all liability for it.

17 On 3 May 2002, the town of Ispra was affected by a violent storm accompanied by torrential rain and the applicant's establishment was flooded as a result of the drain overflowing. The same day, members of the State police from the Angera station, several officials from the technical services of the municipality of Ispra and officials from the Centre, including its director, visited the site and ascertained the scope and extent of the flooding and the visible damage caused by it.

18 By letter of 19 May 2002, the applicant requested the municipal administration of Ispra, the Ferrovie dello Stato and the Commission to carry out an on-site visit and/or an expert's report with the aim of establishing, on an amicable basis, the causes of the flooding on 3 May 2002 and liability for it. In reply to that letter, the Commission's lawyer sent a letter dated 17 June 2002 to the applicant's lawyer, in which it advised that the Commission disputed the liability of the Community and that it refused any inspection on the land of the Centre.

Procedure and forms of order sought

19 By application lodged at the Registry of the Court of First Instance on 20 August 2002, the applicant brought the present action.

20 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Second Chamber) decided to open the oral procedure and, by way of measures of organisation of procedure as laid down in Article 64 of the Rules of Procedure of the Court of First Instance, requested the parties to reply to written questions before the hearing. The parties replied to those questions within the prescribed time-limits.

21 The parties presented oral argument and replied to the Court's questions at the hearing on 26 October 2004.

22 At the hearing, the Court of First Instance requested the Commission to produce any document which might establish the identity of the entity at whose request the technical services of the Centre carried out work on the first segment of the third section in 1990. The Commission produced certain documents within the prescribed time-limits. On being requested by the Court to submit any observations it might have on those documents, the applicant lodged its observations within the prescribed time-limits.

23 The oral procedure was closed on 19 April 2005.

24 The applicant claims that the Court should:

— find that the European Atomic Energy Community is solely and/or jointly and/or severally non-contractually liable;

— order that Community to pay compensation for the damage suffered and to be suffered, the amount of which will be determined in the course of proceedings and will in any event be equitable;

— order the following measures of inquiry:

  — that information be obtained from the Director and staff of the Centre and, possibly, from the Italian authorities which intervened there;

  — that witness evidence be obtained, subject to the express condition that the names of the witnesses be indicated at a later stage;

  — an on-site visit and/or an expert's report and any other measure of inquiry deemed necessary to ascertain whether the applicant's claims are true, including all the damages claimed, pecuniary or non-pecuniary, suffered or to be suffered as a result of the facts at issue;

  — order the defendant to pay the costs.

25 The Commission contends that the Court should:

— dismiss the applicant's requests as regards the measures of inquiry;

— dismiss the application as inadmissible or unfounded;

— order the applicant to pay the costs.

26 In answer to a question by the Court, the applicant stated at the hearing that, by its first head of claim, it was in reality intending to seek a declaration from the Court that the Community alone has incurred non-contractual liability.

Admissibility

Arguments of the parties

27 Without raising an objection of inadmissibility by separate document, the Commission contests the admissibility of the action on the ground that the application did not satisfy the requirements laid down in Article 44(1) of the Rules of Procedure, according to which an application must, inter alia, state the subject-matter of the dispute and give a summary of the pleas advanced.

28 According to the Commission, it follows from the case-law that the information contained in the application must be sufficiently clear and precise to enable the defendant to prepare its defence and the Court to rule on the action, if necessary without any other supporting information. The case-law also states that for an action to be admissible, the basic legal and factual particulars relied on must be indicated, at least in summary form, coherently and intelligibly in the text of the application itself (see the order of the Court of First Instance in Case T-53/96 *Syndicat des producteurs de viande bovine and Others* v *Commission* [1996] ECR II-1579, paragraph 21, and the case-law cited). In order to satisfy those requirements, an application seeking compensation for damage allegedly caused by a Community institution must state the evidence from which the conduct alleged against the institution can be identified, the reasons for which the applicant considers that there is a causal link between the conduct and the damage allegedly suffered, and the nature and extent of that damage (see Joined Cases T-79/96, T-260/97 and T-117/98 *Camar and Tico* v *Commission and Council* [2000] ECR II-2193, paragraph 181, and the case-law cited).

29 In the present case, the Commission submits that the requisite clarity and precision are completely lacking in the applicant's pleadings. In that respect, the Commission asserts that it is unable to infer from the applicant's pleadings the conduct alleged against the Centre. That lack of precision and those lacunae make it impossible for the Commission to prepare its defence thoroughly, and for the Court to rule on the facts of the case.

30 Moreover, the Commission submits, in essence, that the applicant's pleadings contain no evidence that the alleged damage was actually sustained, nor even a provisional assessment of that damage.

31 Finally, the applicant merely draws a general link between the flooding of its building and the overflow of the drain in question without giving any explanation as to how that event occurred and without supplying any information on the reasons which lead it to locate the origin of the overflow precisely in the third section of the drain.

32 The Commission adds that the measures of inquiry requested by the applicant cannot remedy the lack of precision of the latter's pleadings.

33 The applicant submits, in essence, that the subject-matter of the proceedings and the summary of the pleas in law were duly stated in its pleadings and that, consequently, the action satisfies the conditions laid down by Article 44(1)(c) of the Rules of Procedure. It adds that it was not obliged to supply technical explanations concerning the event by which it was adversely affected. Moreover, the applicant asserts, in essence, that the request made to the Court for measures of inquiry will make it possible to ascertain whether its claims are true.

Findings of the Court

34 Under Article 44(1)(c) of the Rules of Procedure, every application must state the subject-matter of the proceedings and contain a summary of the pleas in law on which it is based.

35 That requirement was made clear by the case-law relied on by the Commission in paragraph 28 above.

36 In the present case, it is sufficiently clear from the application that the applicant alleges, in essence, first, that the Commission refused to grant it access to the third section of the drain to assess its condition and to ascertain why the drain overflowed and, second, that it failed to carry out maintenance and work on the third section of the drain in order to prevent or avert overflows.

37 However, as regards, first, the refusal of access to the third section of the drain, in the absence of any claim for damage or any claim for compensation arising from that refusal, the complaint based on that refusal should be treated in the same way as the request for measures of inquiry relating to an on-site visit. That claim must therefore be considered in connection with the examination of the measures of inquiry (see paragraphs 99 and 100 below).

38 As regards, second, the alleged failure to maintain and carry out work on the third section of the drain, the applicant states in its application that that failure caused flooding to its property and it seeks compensation for the damage caused to various parts of its establishment and to goods which it summarily identifies in the application. It must therefore be considered that, as regards the evidence of the damage allegedly caused by the failure to carry out maintenance and work on the third section of the drain, the action satisfies the requirements of Article 44(1)(c) of the Rules of Procedure.

39 The applicant also seeks compensation for pecuniary damage to be suffered and for non-pecuniary damage suffered or to be suffered, without providing any evidence whatsoever which would make it possible to assess their nature and extent. That evidence of the damage does not therefore satisfy the requirement laid down by Article 44(1)(c) of the Rules of Procedure, as made clear by the case-law referred to in paragraph 28 above.

40 In those circumstances, the action must be held to be admissible in so far as it seeks compensation for the damage allegedly caused to the various goods, which are summarily identified in the application, by the alleged failure to carry out maintenance and work on the third section of the drain.

Substance

Preliminary observations

41 It must be recalled that, as follows from the case-law, the Community's non-contractual liability under the second paragraph of Article 188 EA and the exercise of the right to compensation for damage suffered are subject to a set of conditions as regards the unlawfulness of the conduct alleged against the Community institution, the fact of damage and the existence of a causal link between the conduct and the damage complained of (see Case C-308/87 *Grifoni* v *EAEC* [1990] ECR I-1203, paragraph 6, and the case-law cited).

42 In that respect, only measures or conduct attributable to a Community institution or body may give rise to liability on the part of the Community (see, to that effect, Case 118/83 *CMC and Others* v *Commission* [1985] ECR 2325, paragraph 31, and Case C-234/02 P *Ombudsman* v *Lamberts* [2004] ECR I-2803, paragraph 59).

43 If any one of those conditions is not satisfied, the action must be dismissed in its entirety and it is unnecessary to consider the other conditions (see Case T-170/00 *Förde-Reederei* v *Council and Commission* [2002] ECR II-515, paragraph 37, and the case-law cited).

44 It is in the light of those considerations that the parties' arguments as to whether the Commission has incurred liability must be examined.

Arguments of the parties

45 The applicant complains that the Commission and/or the Centre failed to carry out the necessary maintenance and/or work on the third section of the drain in order to prevent or avert repeated overflowing of the drain in question, despite the clear danger that it posed owing to its insufficient drainage capacity, which the Commission had been aware of since the drain overflowed in 1992. The applicant's damage is attributable to the fact that the third section of the drain has insufficient capacity to absorb all the water from the second section (see paragraph 12 above).

46 Several factors demonstrate that that conduct may be imputed to the Commission and/or the Centre.

47 First of all, the third section of the drain situated on the land on which the Centre is built is at the sole disposal of the latter and is inaccessible to third parties on the ground that, under Article 1 of Annex F to the JRC Agreement, that land is inviolable, exempt from search and confiscation, and free from any administrative or legal measure of constraint.

48 Moreover, it is clear that the Centre, through its officials and its technicians, has always been responsible for the maintenance of the distribution facilities and for repair of damage to the section of the drain situated on the land of the Centre, and it is for the Commission to establish the contrary.

49 Finally, the applicant relies on a statement by the head of the Ufficio tecnico comunale (Municipal Technical Department, 'the UTC of Ispra'), dated 16 March 1999, according to which the municipal administration is not responsible for the maintenance and management of the third section of the drain, as it is situated on the property of the Centre.

50 First, the unlawfulness of the conduct alleged is based on the fact that it constitutes an infringement of the obligation laid down by Article 9(3) of Decision 96/282, according to which the Director-General of the Centre, on behalf of the Commission, is to take all measures necessary to ensure the safety of persons and installations for which he is responsible. Despite what the Commission asserts, that provision applies to this case, since the Centre's waste water discharge installations are connected with the infrastructure placed under its exclusive control and, therefore, with the performance of its institutional function and of its activities. Moreover, the Community has already been found liable for failure to fulfil its obligations under Article 10(3) of Commission Decision 71/57/Euratom of 13 January 1971 on the reorganisation of the Centre (OJ 1971 L 16, p. 14), the content of which is analogous to that of Article 9(3) of Decision 96/282 (Case C-308/87 *Grifoni* v *EAEC* [1994] ECR I-341).

51 Second, the unlawfulness of the conduct at issue stems from its inconsistency with the JRC Agreement, which is intended, in particular, to preserve and safeguard the public safety of the population in the vicinity of the Centre's installations.

52 Third, the unlawfulness of the conduct alleged stems from Articles 2043 and 2051 of the Italian Civil Code which applies in the present case, since the second paragraph of Article 188 EA, despite its reference to the general principles common to the laws of the Member States, does not rule out the possibility of relying on infringement of specific rules of Italian law (see, to that effect, the Opinion of Advocate General Tesauro in *Grifoni*, paragraph 41 above, [1990] ECR I-1212, point 17).

53 Thus, on the one hand, Article 2043 of the Italian Civil Code lays down the principle of *neminem laedere* (inflict no damage on another), which is common to the laws of the Member States and should apply in this case because of the infringement by the Commission and/or the Centre of the general principle of prudence and due diligence.

54 On the other hand, the conduct alleged renders the Commission liable under Article 2051 of the Italian Civil Code which lays down a simple presumption of wrongful conduct on the part of the person who has care of an object. In this case, the Centre has care of the third section of the drain on the ground that it is at its sole disposal since it is ancillary to a piece of land which it owns and which enjoys immunity.

55 The applicant adds that the case-law of the Corte suprema di cassazione (the Italian Supreme Court of Cassation) states that Article 2051 of the Italian Civil Code applies to the public administration in respect of State property or assets which are not generally and directly used by the local authority — as is the case here with the drain — which make possible, on account of their limited territorial extent, supervision and monitoring by the body appointed for that purpose.

56 The Commission submits, first, that the Centre does not exercise any responsibility whatsoever over the third section of the drain and that, consequently, the failure to carry out maintenance or work on that third section is not attributable to the Commission or to the Centre.

57 In that respect, the Commission submits that Article 3 of Annex F to the JRC Agreement states that the Italian authorities are to make use, at the request of the Commission, of their relevant powers in order to ensure that the Centre receives all necessary public utility services. That article further states that the Commission is to take all appropriate measures to ensure that qualified representatives of the relevant public utility services, duly approved by it, may inspect, repair and maintain the installations connected with those services within the Centre. It is to be inferred from that article that the 'extraterritoriality of the land (on which the Centre is established) is disregarded' so as to enable approved technicians to maintain and repair the installations supplying the public utility services.

58 According to the Commission, those provisions of the JRC Agreement are not 'overruled', revoked or amended by the content of the statement of the head of the UTC of Ispra, which asserts that the municipal administration is not responsible for the maintenance or management of the drain situated on the land on which the Centre is built. First of all, that statement goes beyond the powers of the head of the UTC of Ispra, who is not empowered to determine the civil liability of the municipal administration of which he is a part. Furthermore, that statement is blatantly inconsistent with the content of the letter of 7 October 1992 referred to in paragraph 16 above, which states that the work carried out by the municipality was an independent initiative for which the municipal administration assumed all liability. Finally, the statement of the head of the UTC of Ispra is not capable of making the Centre responsible for the maintenance of the drain.

59 The relevant provisions of the JRC Agreement cannot further be called in question by the fact that the Centre has sometimes deemed it appropriate to carry out certain work on the installations itself, since that work has always been carried out at the request of the local administration. As regards more specifically the work on the section of the drain situated on the land of the Centre in 1990, that was carried out following a request by the Ferrovie dello Stato and the municipal administration of Ispra.

60 As regards, second, the alleged unlawfulness of the failure to maintain or carry out work on the third section, the Commission asserts that the application merely alleges that failure without specifying either what work or maintenance should have been carried out in the applicant's view, or, consequently, the nature of the unlawful conduct on the part of the Commission.

61 It adds that none of the provisions relied on by the applicant has been infringed.

62 First of all, it submits that, contrary to the interpretation of Article 9 of Decision 96/282 put forward by the applicant, the obligation of the Director of the Centre provided for by that article to take all measures necessary to ensure the safety of persons and installations for which he is responsible must be limited to the activities specific to the Centre whereby the Community contributes towards carrying out Community research programmes. The management and maintenance of drains situated on the land of the Centre are not part of those specific activities. It does not accept that it is apparent from the judgments in *Grifoni* v *EAEC*, paragraphs 41 and 50 above, that the EAEC was found liable under Article 10 of Decision 71/57, which is identical to Article 9 of Decision 96/282.

63 The Commission then asserts that, even if Article 16 of Annex F to the JRC Agreement requires it to adopt specific measures concerning safety and protection of public health, that provision, read in the light of the preamble and the other provisions of the JRC Agreement, concerns specifically the risk of fire and dangers arising from ionising radiations which are not involved in this case.

64 Moreover, it submits that, since no Community institution or body is required to supervise the drain, the Commission cannot be found liable on the basis that its institutions or bodies infringed the most elementary rules of ordinary prudence. In that respect, the Court has already held that an institution cannot be found non-contractually liable in the absence of unlawful conduct (Case T-213/97 *Eurocoton and Others* v *Council* [2000] ECR II-3727).

65 According to the Commission, the reliance by the applicant on provisions of Italian civil law is inappropriate. The second paragraph of Article 188 EA refers solely to the general principles common to the laws of the Member States and not to the specific provisions of the various national legal systems (*Grifoni* v *EAEC*, paragraph 50 above, paragraph 8). The arguments put forward by the applicant to argue the contrary find no support in the Opinion of Advocate General Tesauro in *Grifoni* v

EAEC, paragraph 52 above. In any event, both the judgment of 3 February 1994 in *Grifoni* v *EAEC*, cited above, and the Opinion of Advocate General Tesauro in that judgment (ECR I-343) expressly excluded the possibility of damage suffered being determined and compensated in accordance solely with the Italian legislation on non-contractual liability.

66 It denies that the rule laid down in Article 2051 of the Italian Civil Code, according to which 'persons are liable for damage caused by objects in their care, unless it can be shown that the damage was caused accidentally', has been accepted in the framework of Community legislation and case-law. On the contrary, that provision, which makes it possible for a person who is not the immediate cause of the damage to incur liability, is incompatible with the requirements currently imposed by the case-law for the institutions to incur non-contractual liability.

67 In any event, the conditions laid down by Article 2051 of the Italian Civil Code are not satisfied in the present case. First, no Community institution has care of the drain and therefore the Community cannot be called to account for any damage caused by it. Second, the applicant does not establish any causal link between the object which is allegedly in the Community's care and the damage. It has not been demonstrated that the flooding of the applicant's establishment was actually caused by the overflow of the particular section of the drain situated on the land of the Centre.

Findings of the Court

68 It must first be examined whether, in accordance with the case-law recalled in paragraph 42 above, the conduct alleged, namely the failure to carry out work and/or maintenance on the third section of the drain, is attributable to a Community institution or body.

69 In that respect, it should first be pointed out that, contrary to what the applicant asserts (see paragraph 47 above), it does not follow from the JRC Agreement that the third section of the drain falls within the responsibility of the Community.

70 First of all, the argument that the third section of the drain falls within the responsibility of the Community on account of the fact that it follows from the JRC Agreement that no third party may access that section of the drain is unfounded.

71 It is true, as the applicant states, that, according to Article 1 of Annex F to the JRC Agreement, the Centre and the land on which it is built are inviolable, exempt from search, requisition, confiscation or expropriation, and enjoy immunity from any administrative or legal measure of constraint. However, it follows from Article 3 of Annex F that, notwithstanding that status of immunity, the Commission must allow qualified representatives of the relevant public utility services, duly approved by it, to inspect, repair and maintain the installations connected with those services within the Centre.

72 It is common ground between the parties that the waste water collection service supplied to the Centre through the drain at issue is a public utility service for the purposes of Article 3 of Annex F to the JRC Agreement. In that respect, it must be pointed out that, in response to a written question from the Court of First Instance, the Commission asserted in writing, without being contradicted on that point by the applicant, that the municipality of Ispra was the body responsible for supplying the public utility service of waste water collection to the Centre. Consequently, for the purposes of the present proceedings, it must be considered that responsibility for the inspection, repair and maintenance of the third section of the drain lies with the municipal administration of Ispra, whose qualified representatives, approved by the Commission, may access that section of the drain.

73 Next, it must be pointed out that no other provision of the JRC Agreement could serve as a basis for attributing the conduct alleged to the Community. It is true that Article 1 of the JRC Agreement, which is not even relied on by the applicant, provides, in essence, that the Italian Government is to make available to the Community the Centre and the land on which it is built in return for an annual rent. However, the supply envisaged by that article does not imply that responsibility for the third section of the drain is transferred to the Community. That article must be read in conjunction with the other provisions of the JRC Agreement and, in particular, with Article 3 of Annex F thereto, from which it follows, as was noted at paragraph 72 above, that responsibility for the inspection, repair and maintenance of the third section of the drain lies with the body responsible for supplying the waste water collection service. In those circumstances, Article 1 of the JRC Agreement may not be interpreted as implying that responsibility for the third section of the drain is transferred to the Community.

74 The JRC Agreement cannot therefore serve as a basis for attributing the conduct alleged to the Centre or to any other Community institution or body.

75 Secondly, contrary to what the applicant summarily asserts (see paragraph 47 above), the imputability of the conduct alleged may not be inferred from the fact that the third section of the drain is at the sole disposal of the Centre. The fact remains, as was noted in paragraphs 12 and 14 above, that, overall, the drain, including the third section, collects waste water both from the land of the municipality of Ispra and from the land on which the Centre is built. Moreover, it is evident from the comments in paragraph 72 above that responsibility for carrying out work on the third section of the drain lies with the municipal administration of Ispra. Since the third section of the drain is not at the sole disposal of the Centre, the sole disposal argument pleaded cannot serve as a basis for attributing the conduct alleged to the Community.

76 Third, it is necessary to ascertain whether, as in essence the applicant claims, the alleged failure to carry out maintenance or work on the third section of the drain is attributable to the Community because of the clear conduct of the officials and technicians of the Centre.

77 In that regard, it must be noted that it is common ground that in 1990 the Centre replaced an open pipe with a pipe 100 cm in diameter on the first segment of the third section of the drain.

78 The Commission asserts that the Centre carried out that work at the request of the Ferrovie dello Stato or the municipal administration of Ispra. However, when requested by the Court of First Instance to produce any document capable of establishing that the alleged requests had been made, the Commission failed to do so. In those circumstances, for the purposes of the present proceedings, it must be considered that the Centre carried out work on the first segment of the third section of the drain on its own initiative.

79 Furthermore, at the hearing, the Commission's expert stated that the services of the Centre inspected the third section of the drain with a degree of regularity.

80 That work carried out by the technical services of the Centre is done so spontaneously and does not constitute an obligation for the Community institutions or bodies under the JRC Agreement. As was noted in paragraph 72 above, under the JRC Agreement, responsibility for the inspection, repair and maintenance of the third section of the drain lies with the body entrusted with supplying the waste water collection service to the Centre. It must therefore be considered that, by carrying out that work, the Centre took upon itself the management of the affairs of another party.

81 However, the fact that the technical services of the Centre managed the affairs of another party by working on its own initiative on various occasions on the third section of the drain in no way implies that any failure to carry out work or maintenance on that section of the drain is henceforth attributable to the Centre and, consequently, to the Community.

82 Such interference has the effect only of requiring the Centre to carry out efficiently the management tasks which it has taken upon itself. Thus, the management which the Centre took upon itself by installing a closed pipe on the first segment of the third section of the drain in 1990 does not extend to performing the work necessary to ensure that, in 2002, the third section of the drain had sufficient discharge capacity, particularly because, as the Commission pointed out at the hearing without being contradicted by the applicant, the Community has no control over the quantity of waste water discharged into that third section.

83 Furthermore, the management which the Centre took upon itself by carrying out, on its own initiative, regular supervision and maintenance of the third section covers only the tasks actually performed by it and cannot extend to the alleged failure to supervise or carry out maintenance, which remains the responsibility of the body charged with supplying the waste water collection service to the Centre.

84 Moreover, in the present case, it is not established or even pleaded that the conduct alleged, namely the failure to carry out maintenance and/or work on the third section of the drain, amounts to improper performance of the management tasks which the Centre took upon itself.

85 Even if it is accepted that, by alleging that the drainage capacity of the third section of the drain was insufficient, the applicant implies that the work performed by the Centre in 1990 amounts to improper management by the Centre of the affairs of another party, it must none the less be considered that the installation of a closed pipe 100 cm in diameter on the first segment of the third section of the drain cannot be regarded as improper performance of the management which the Centre took upon itself.

86 The fact remains that the diameter of the pipe placed by the Centre in the first segment of the third section of the drain is exactly the same as the diameter of the

pre-existing closed pipe in the second segment of the third section of the drain. The work performed by the Centre in 1990 did not therefore affect the drainage capacity of the third section of the drain. In those circumstances, the allegedly insufficient drainage capacity of the third section of the drain is not, in any event, attributable to the Centre.

87 It follows from the foregoing that the imputability of the conduct alleged to the Commission cannot stem from the work carried out by the technical services of the Centre on its own initiative.

88 Fourth, it is necessary to ascertain whether the imputability of the conduct alleged to the Commission stems from the statement of the head of the UTC of Ispra by which the latter asserts that the municipal administration of which he is a part is not responsible for working on the third section of the drain.

89 In that regard, irrespective of whether the head of that municipal service is competent to decide on questions of liability concerning the administration of which he is a part, it must be pointed out that his statement deems the municipal administration not to be responsible for the third section of the drain on the sole ground that that section is situated on land belonging to the Community. However, it is clear from Article 1 of the JRC Agreement that the Community does not own the land in question. That article provides in particular that the Centre and the land on which it stands are made available to the Community by the Italian Government in return for an annual rent. Moreover, the applicant does not establish or allege that the statement of the head of the UTC of Ispra has amended the JRC Agreement. In those circumstances, it must be held that that statement is incapable of establishing that the conduct alleged is attributable to a Community institution or body.

90 Fifth, it is also necessary to consider whether the conduct alleged is attributable to the Community on account of provisions which the applicant alleges have been infringed.

91 In that respect, it must first be pointed out that Article 9(3) of Decision 96/282, alleged to have been infringed, merely states that the Director-General of the Centre is required to take all measures necessary to ensure the safety of installations for which he is responsible. That provision cannot therefore of itself serve as a basis for attributing the alleged failure to carry out work and/or maintenance on the third section of the drain without it being established that the section in question is an installation for which the Director-General of the Centre is responsible. The applicant fails to adduce any evidence which makes it possible to consider that the third section of the drain is an installation which falls within the responsibility of the Director of the Centre. On the contrary, as noted in paragraph 72 above, it follows from Article 3 of Annex F to the JRC Agreement that the municipality of Ispra is responsible for supplying a waste water collection service to the Centre, so that the third section of the drain cannot be treated in the same way as an installation falling within the responsibility of the Centre. In those circumstances, Article 9(3) of Decision 96/282 cannot serve as a basis for attributing the conduct alleged to the Commission.

92 The applicant then alleges infringement of the JRC Agreement which provides, in its opinion, that the Centre is required to preserve and safeguard public safety. As the Commission correctly asserts, Article 16(1) of Annex F to the JRC Agreement is the only provision of that agreement which deals with the safety and protection of public health. However, in the area of safety and protection of public health, that provision is relevant only as regards fire prevention and dangers arising from ionising radiations. In this case, the applicant has not put forward any argument whatsoever that could lead the Court to consider that the conduct alleged relates to fire prevention or dangers arising from ionising radiations. Accordingly, it must be concluded that the imputability of the conduct alleged to the Commission cannot stem from the Centre's obligation to supervise the protection of safety and public health, as laid down in Article 16(1) of Annex F to the JRC Agreement.

93 Finally, the applicant pleads that the conduct alleged renders the Community non-contractually liable on the basis of the provisions laid down in Articles 2043 and 2051 of the Italian Civil Code.

94 As regards Article 2043 of the Italian Civil Code, even if one accepts the applicant's assertion that that provision enshrines the principle of *neminem laedere*, that that principle is common to the laws of the Member States and that it should apply here because of an infringement by the Commission and/or the Centre of a general principle of prudence and due diligence, the fact remains that the applicant does not put forward any argument whatsoever to show why the Commission and/or the Centre are bound by an obligation of prudence and due diligence as regards the third section of the drain. In those circumstances, it must be held that the provision relied on is not sufficient to attribute the conduct alleged to the Community.

95 As regards Article 2051 of the Italian Civil Code, even if it is accepted that that provision of Italian law constitutes a principle common to the laws of the Member States, the applicant fails to establish that the third section of the drain is in the care of a Community institution or body. Contrary to what the applicant submits, care of the drain by a Community institution or body cannot stem from ownership of the land on which the Centre is built since, as stated in paragraph 89 above, no Community institution or body owns that land. Therefore, even if it is accepted that the third section of the drain is an accessory of the land on which it is situated, it by no means follows that it belongs to the Community. That argument must therefore be rejected.

96 The argument that the third section of the drain is in the care of the Commission or the Centre because, according to Article 1 of Annex F to the JRC Agreement, third parties are unable to access the Centre must also be rejected. As was noted in paragraph 71 above, the Commission is required, under Article 3 of Annex F to the JRC Agreement, to waive the immunity provided for in Article 1 of Annex F to the JRC Agreement to enable the public utility services to inspect, repair and maintain

the installations connected with those services within the Centre. In those circumstances, the alleged immunity of the land on which the Centre is established cannot be successfully relied on in order to establish that the third section of the drain is in the care of the Commission and/or the Centre.

97 Nor does care of the third section of the drain lie with the Commission and/or the Centre on the ground that that section is at the sole disposal of the Centre. In addition to the observation made in the previous paragraph, since the drain, including the third section, collects waste water from the municipality of Ispra and from the Centre, the third section cannot be regarded as being at the sole disposal of the Commission and/or the Centre (as was noted in paragraph 75 above).

98 It follows from all the foregoing that the alleged failure to carry out maintenance and/or work on the third section of the drain is not attributable to a Community institution or body. In those circumstances, and in so far as it is admissible, the action must be dismissed as unfounded, without there being any need to examine whether the other conditions for establishing the Community's non-contractual liability have been satisfied in the present case.

The requests for measures of inquiry

99 The applicant asks the Court to order certain measures of inquiry in order to substantiate its claims. More specifically, the applicant asserts that information should be obtained from the Director and staff of the Centre, and from the Italian authorities which intervened on the spot at the time of the flooding. It submits that witness evidence should be allowed and, in that respect, it reserves the right to indicate at a later stage the names of the witnesses to be heard. Finally, the applicant asserts that, in order to substantiate the facts alleged, including the damage allegedly suffered or to be suffered, an on-site visit and/or an expert's report should be carried out.

100 In that respect, it must be observed that the applicant does not identify either the precise facts which those measures are supposed to substantiate, or how those measures could serve to establish the imputability of the conduct alleged to a Community body or institution. In those circumstances, the requests for measures of inquiry must be rejected.

Costs

101 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.

102 Since the applicant has been unsuccessful, and the Commission has applied for costs, the applicant must pay the costs incurred by the Commission in addition to its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Second Chamber)

hereby:

1. **Declares that the action is inadmissible in so far as it concerns an application for compensation for undefined pecuniary damages to be suffered and undefined non-pecuniary damages suffered or to be suffered;**

2. **Dismisses the rest of the action as unfounded;**

3. **Dismisses the requests for measures of inquiry;**

4. **Orders the applicant to pay the costs incurred by the Commission in addition to its own costs.**

Pirrung Meij Pelikánová

Delivered in open court in Luxembourg on 30 November 2005.

E. Coulon — Registrar

J. Pirrung — President