ORDER OF THE COURT (First Chamber)
19 February 2004 *

In Case C-369/03 P,

Forum des migrants de l'Union européenne, represented by N. Crama, lawyer,

appellant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber) of 9 April 2003 in Case T-217/01 *Forum des migrants* v *Commission* [2003] ECR II-1563, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities,

defendant at first instance

* Language of the case: French.

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, A. Rosas, A. La Pergola, R. Silva de Lapuerta and K. Schiemann, Judges,

Advocate General: J. Kokott,
Registrar: R. Grass,

after hearing the views of the Advocate General,

makes the following

Order

1 By electronic mail received at the Registry of the Court on 9 July 2003, the Forum des migrants de l'Union européenne sent a copy of the application by which it sought to bring an appeal, pursuant to Article 56 of the Statute of the Court of Justice, against the judgment of the Court of First Instance of 9 April 2003 in Case T-217/01 *Forum des migrants* v *Commission* [2003] ECR II-1563 ('the contested judgment'). The signed original of the appeal application was lodged at the Court Registry on 21 July 2003.

2 By the contested judgment, the Court of First Instance dismissed the annulment action brought by the present appellant against the Commission decision of 11 July 2001 to terminate the financial support granted to it under Article A0-3040 of the Community budget.

3 The appeal states that the contested judgment was served on 12 April 2004 on the appellant's legal representative.

4 It is clear from the file sent by the Registry of the Court of First Instance to the Registry of the Court of Justice that the appellant did not have an address for service in Luxembourg. According to the receipt notification in the file, the contested judgment was served on the appellant's legal representative by registered letter, posted in Luxembourg on 10 April 2003. That notification does not indicate the date on which it was received.

5 By letter of 28 July 2003, the Court Registry drew the appellant's attention to the fact that the appeal had been lodged outside the prescribed period and requested it to indicate whether it could prove the existence of unforeseeable circumstances or *force majeure*, which would justify extending the time-limit.

6 By letter of 11 August 2003, the appellant's legal representative replied that the appropriateness of bringing an appeal depended, essentially, on the action to be taken by the Commission pursuant to paragraph 39 of the contested judgment, in which the Court of First Instance held that the decision at issue concerned only the year 2000. By letter of 14 April 2003, the appellant requested the Commission to state its intentions regarding the grant of financial aid for the years 2001 and 2002. The Commission, which only responded by letter of 19 June 2003, stated that retrospective financing was impossible. That letter was

conclusive for the decision to lodge an appeal. Since the appellant's directors are dispersed geographically, drafting an authority for the lawyer could not have been undertaken more rapidly.

7 Under Article 119 of the Court's Rules of Procedure, where an appeal is, in whole or in part, clearly inadmissible or clearly unfounded, the Court may at any time, acting on a report from the Judge-Rapporteur and after hearing the Advocate General, dismiss the appeal in whole or in part by way of reasoned order.

8 In accordance with Article 56 of the Statute of the Court of Justice, the time-limit within which an appeal may be brought is two months from the date of notification of the decision appealed against.

9 Under Article 81(2) of the Court's Rules of Procedure, that time-limit may be extended on account of distance by a single period of 10 days.

10 As the appellant did not have an address for service in Luxembourg for the purposes of the proceedings before the Court of First Instance, proper service of the contested judgment, under Article 44(2) of the Rules of Procedure of the Court of First Instance, must be deemed to have been effected by the lodging of the registered letter at the post office in Luxembourg on 10 April 2003.

11 It follows that the period for bringing an appeal against the contested judgment expired 2 months and 10 days after that date, that is, on Friday, 20 June 2003.

12 A copy of the appeal was sent to the Court Registry by electronic mail on 9 July 2003, and thus after that date.

13 Moreover, in accordance with Article 37(6) of the Court's Rules of Procedure, the date on which a copy of the signed original of a pleading arrives at the Registry by any technical means of communication available to the Court will be taken into account for the purposes of compliance with the time-limits for taking steps in proceedings only on condition that the signed original of the pleading, accompanied by the annexes and copies requested, is lodged at the Registry no later than 10 days thereafter.

14 In the present case, the signed original of the appeal application arrived at the Court Registry only on 21 July 2003, more than 10 days after the electronic mail. In those circumstances, even assuming that the electronic mail had arrived at the Court within the prescribed time-limit, it is irrelevant, since it is the date on which the original was lodged, that is, 21 July 2003, which must be regarded as being the date on which the appeal was lodged.

15 The appeal was therefore clearly lodged out of time.

16 According to settled case-law, no derogation from the application of the Community rules on procedural time-limits may be made save where the circumstances are quite exceptional, in the sense of being unforeseeable or amounting to *force majeure*, in accordance with the second paragraph of Article 45 of the Statute of the Court of Justice, since the strict application of those rules serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice (see, in particular, the order in Case C-239/97 *Ireland* v *Commission* [1998] ECR I-2655, paragraph 7).

17 The fact relied on in the present case by the appellant that the appropriateness, or otherwise, of bringing an appeal depended on the action to be taken by the Commission in subsequent years in response to the finding, made in paragraph 39 of the contested judgment, that the decision challenged only concerned the year 2000, cannot constitute unforeseeable circumstances or *force majeure*.

18 If time-limits for bringing proceedings are to serve any purpose, the fact that one party takes the view that it does not have all the relevant information to assess whether or not it is appropriate to bring an appeal cannot by itself justify bringing an appeal out of time.

19 Therefore, whatever the clarifications that the appellant wished to have available regarding the grant of financial aid for years other than the year concerned in the contested judgment, that fact could not justify the disregard of the mandatory nature of the time-limits for bringing proceedings and the level of diligence and prudence required in that regard.

20 It follows that the appeal must be declared to be clearly inadmissible.

Costs

21 Pursuant to Article 69 of the Rules of Procedure of the Court, the appellant must bear its own costs.

On those grounds,

THE COURT (First Chamber),

hereby orders:

1) The appeal is dismissed.

2) The Forum des migrants de l'Union européenne shall bear its own costs.

Luxembourg, 19 February 2004

R. Grass
Registrar

P. Jann
President of the First Chamber