On those grounds,

THE COURT

hereby:

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

2. **Orders each party to bear its own costs.**

Mertens de Wilmars Mackenzie Stuart Pescatore

Sørensen O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 5 April 1979.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President of the First Chamber
acting as President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 14 MARCH 1979 [1]

Mr President,
Members of the Court,

1. The question of admissibility in both the present cases arises on two grounds: the first because the prescribed period for bringing proceedings was not observed and the second because there was no lawyer. I shall consider them in that order.

Regarding the *first ground* it must be noted that the decisions of the Commission imposing penalties on the

1 — Translated from the Italian.

two companies for infraction of the ECSC rules regarding mandatory minimum prices were notified on 5 June 1978. Article 39 of the Statute of the Court (ECSC) provides that proceedings must be instituted within a month of notification.

Having regard to Article 81 of the Rules of Procedure and Article 1 of Annex II thereto the time-limits were extended by 10 days and thus expired on 15 July 1978. The applications had to be lodged at the Registry before that date: Article 37 (3) of the Rules of Procedure provides "In the reckoning of time-limits for taking steps in proceedings, the only relevant date shall be that of lodgment at the Registry." The two original applications, however, sent from Brescia on 15 July 1978 arrived at the Court on 20 July. There was therefore no doubt that the time-limit provided by the said rule was not respected.

What consequences follow from the applicant's conduct? They have stated that there is no provision in the Rules of Procedure relating to the consequences of defects in the application. I note however that the time-limits in question in the present cases are laid down in the Statute of the Court (ECSC), which clearly indicates in the last paragraph of Article 39, albeit by implication, that if the time-limits are not respected the rights of the party concerned lapse. Article 39 states "No right shall be prejudiced in consequence of the expiry of a time-limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure.*" I think it is proper to infer from these words that, outside the two exceptions referred to, the expiry of the time-limits causes the right to bring the applications provided for in Articles 36 and 37 of the ECSC Treaty (to which the said Article 39 refers) to lapse. As to the Rules of Procedure it is worth stressing that there is a possibility of extending the time-limits only where they are "prescribed pursuant to these rules" (Article 82) and it thus follows that there is no such possibility in the case of time-limits established by the Statute of the Court (this is logical since the rules are subordinate to the Statute).

The applicants rely on *force majeure* for two reasons: that the application was sent from Italy within the period of 40 days and that the Community rule to the effect that the criterion is the date of lodging in the Registry is contrary to a general principle of Italian law. It is obvious that such considerations have nothing to do with *force majeure.* Even supposing that the first implies a reference to postal difficulties, it is not possible to see how a registered letter sent from Brescia on 15 July 1978 could arrive the same day in Luxembourg! The applicants are conscious of having infringed Article 37 (3) of the Rules of Procedure and seek to overcome this obstacle by citing an alleged general principle of Italian law to the effect that the date of dispatch of an application is the criterion as regards time-limits. It is, however, obvious that here only Community law applies.

2. The significance of the matters which occurred after dispatch of the applications on 15 July 1978 remains to

be determined. It is clear that following a telephone call on 20 July, the content of which is unknown, the Deputy Registrar of the Court, by letter dated 21 July, returned the two applications to the companies concerned together with a copy of the Rules of Procedure "afin que vous puissiez vous conformer aux dispositions des articles 37 et 38". The applicants interpreted this letter as an exercise of the power which the Registrar has under Article 38 (7) of the rules and considered that in this way they were "brought within the time-limits". Fresh applications with a similar content but this time signed by a lawyer were dispatched on 21 September 1978 and received at the Registry on 2 October.

The above-mentioned Article 38 (which refers *inter alia* to Article 22 of the ECSC Statute) lays down what applications must contain and what documents must accompany them: paragraph (7) provides: "If an application does not comply with the requirements set out in paragraphs (2) to (6) of this article, the Registrar shall prescribe a reasonable period within which the applicant is to comply with them whether by putting the application itself in order or by producing any of the above-mentioned documents. If the applicant fails to put the application in order or to produce the required documents within the time prescribed, the Court shall, after hearing the Advocate General, decide whether to reject the application on the ground of want of form."

We have seen that the defect in the applications with which we are concerned lies in the disregard of the time-limit laid down in Article 39 of the ECSC Statute. Article 38 of the Rules, however, is concerned with the formal requirements of applications and not the time-limits within which they must be made. The result is that the power conferred on the Registrar by paragraph (7) of that article does not concern the matter of time-limits; in these circumstances there is no way "to put the application in order" and the Court therefore has no discretionary power to declare admissible an application which is not in order. Further in the present case the Deputy Registrar prescribed no time-limit within which the application was to be put in order: he confined himself to reminding the parties of the necessity to comply with Articles 37 and 38 of the Rules of Procedure (which in fact could only concern any subsequent applications for a different purpose).

That is why the letter from the Registry of 21 July 1978 could in no circumstances make good the defect caused by the failure to comply with the time-limit for the application or justify the lodging of fresh applications which were even more out of time.

3. The *second reason* giving rise to the question of the admissibility of the applications by A.L.A. and A.L.F.E.R. lies in the fact that the original applications where not signed by lawyers but by the legal representatives of the two companies. The second paragraph of Article 20 of the Statute of the Court (ECSC) provides: "Undertakings and all other natural or legal persons must be assisted by a lawyer entitled to practise before a court of a Member State." Article 37 (1) of the Rules of Procedure in turn provides "The original of every pleading shall be signed by the party's

agent or lawyer." Article 38 (3) provides that the lawyer acting for a party must lodge at the Registry a certificate that he is entitled te practise before a court of a Member State.

The companies in question claim that the subsequent lodging of supplemental applications duly signed by lawyers remedies the defect of lack of signature. This claim has no substance. Even if fresh applications signed by lawyers were lodged before the expiry of the time-limit fixed by the said Article 39 of the ECSC Statute they would be admissible not as curing a defect in previous pleadings but in their own right. It has however been seen that the said supplemental applications were lodged out of time.

In support of their point of view the applicants once again cite the letter of 21 July 1978 from the Court Registry and they consider this letter as amounting to an invitation to put the matter in order and thus opening the way to curing the defect. The legal basis of this claim too is based on Article 38 (7) of the Rules of Procedure. It would suffice to observe that the content of the letter lends no credibility at all to the applicant's claim. It is however appropriate to stress in general terms that the procedure provided for in the said Article 38 (7) could apply within the scope of formal defects of the application appertaining to legal representation only where the lawyer has not lodged a certificate that he is entitled to practise before a court of a Member State (Article 38 (3)). The procedure in question can certainly not apply if by reason of the lack of representation by a lawyer the Statute of the Court has been infringed. This infringement cannot be made good and leads to the inadmissibility of applications having such a defect.

4. I therefore conclude by proposing that the Court should uphold the objections made by the Commission and declare the applications made by the companies A.L.A. and A.L.F.E.R. inadmissible.

As to the costs I think account should be taken of the fact that the letter from the Registry of 21 July 1978 might give rise to ambiguity since there was no reason to ask the two companies to comply with Articles 37 and 38 of the Rules of Procedure in a case where the opportunity for making admissible applications to challenge the decisions of the Commission of 5 June 1978 was henceforth completely barred. I therefore propose that the parties should bear their own costs.