JUDGMENT OF THE COURT
OF 5 APRIL 1979 [1]

Azienda Laminazione Acciaio — A.L.A., S.p.A. and Azienda Laminazione Ferro — A.L.F.E.R., S.p.A. v Commission of the European Communities

Joined Cases 220 and 221/78

1. *Proceedings — Time-limits — Expiration — Result — Barring (Statute of the Court of Justice of the ECSC, Art. 39)*

2. *Procedure — Application — Conditions — Disregard — Putting in order — Limits (Rules of Procedure, Art. 38 (7))*

1. It follows from the last paragraph of Article 39 of the Statute of the Court of Justice of the ECSC that, apart from the existence of unforeseeable circumstances or of *force majeure*, disregard of the time-limits for bringing proceedings results in the right of action's being barred.

2. There is no possibility of putting an application in order as provided for in Article 38 (7) of the Rules of Procedure where the application is already out of time.

In Joined Cases 220 and 221/78,

AZIENDA LAMINAZIONE ACCIAIO — A.L.A., S.P.A.,

and

AZIENDA LAMINAZIONE FERRO — A.L.F.E.R., S.P.A.,

companies whose registered office is at Pisogna (Brescia), represented by their managing director Antonio Giordani, assisted by Cesare Castelli of the Brescia Bar, with an address for service ir Luxembourg at the Chambers of Guy Thomas, Advocate, 11a, Boulevard Joseph II,

applicants,

v

1 — Language of the Case: Italian.

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION, at the present stage of the proceedings, by the defendant for a declaration of inadmissibility on the ground that the actions are out of time and irregular,

THE COURT,

composed of: J. Mertens de Wilmars, President of Chamber, acting as President, Lord Mackenzie Stuart (President of Chamber), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco and A. Touffait, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case and the course of the procedure may be summarized as follows:

I — Facts and procedure

On 30 May 1978, the Commission imposed penalties on the companies A.L.A. and A.L.F.E.R. for disregard of Decision No 14/64 of the High Authority of the ECSC and of Commission Decision No 962/77/ ECSC relating to mandatory minimum prices for certain concrete reinforcement bars. Notice of the penalties was given to the companies on 5 June 1978.

By registered letters received at the Court on 20 July 1978 the said

companies lodged an application for the annulment of the decisions. By letter dated 21 July 1978 the Registrar of the Court, confirming a previous telephone message, returned the applications enclosing a copy of the Rules of Procedure of the Court of Justice in order that the applicants might "comply with the provisions of Articles 37 and 38".

On 2 October 1978 Applications 220 and 221/78 dated 21 September and signed by C. Castelli, of the Brescia Bar, were registered at the Court.

The Commission objected under Article 91 (1) of the Rules of Procedure that the proceedings were inadmissible and the Court, after hearing the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry. It also decided, after hearing the Advocate General and consulting the parties, to join the two cases for the purposes of the oral procedure and judgment.

II — Conclusions of the parties

The *Commission* claims that the Court should

"— Declare the claim(s) inadmissible;

— Order the applicant(s) to pay the costs."

The *applicants* ask the Court to consider whether their applications are admissible and if the Court should take the view that they are inadmissible, to order each party "to bear its own costs".

III — Summary of the submissions and arguments of the parties

In the applications registered on 2 October 1978 the *applicants* attempted in a "preamble" to forestall the objection of inadmissibility as follows:

"As a preliminary it is fitting to point out that this application must be regarded as being made in good time although the time-limit for bringing proceedings has expired. By an application sent from Brescia on 15 July 1978 ... the applicant objected in due time against the above-mentioned measure even though the application itself was returned by the Court Registry on 21 July 1978 ..., with a request to comply with the provisions of Articles 37 and 38 of the Rules of Procedure.

Article 38 (7) must therefore be regarded as having been observed even though the date appointed for putting the application in order was not mentioned. This pleading is intended to put in order the applicant's previous application, which is now complete."

The applications further contained instructions to Cesare Castelli of the Brescia Bar to act on the applicants' behalf.

The *Commission* stressed that the first applications of 20 July, which were returned by the Court Registry, were out of time (more than a month and 10 days after notice of the contested decision) and were not signed by a lawyer. The latter point results in complete nullity not capable of being put in order within the meaning of Article 38 (7) of the Rules of Procedure, since putting in order is possible only in the instances referred to in paragraphs (2) to (6) of the same

article and not where Article 20 of the Statute of the Court of Justice of the ECSC (mandatory assistance by a lawyer) or Article 37 (1) of the Rules of Procedure (signature of pleadings by a lawyer) has not been complied with.

The applicants observed that there is no provision in the Rules of Procedure barring an action because of a defect in the application. Only Article 38 (7) provides that the Registrar shall prescribe a reasonable period within which the applicant is to comply. It is for the Court alone, and for this purpose it has full discretionary power, to rule on alleged irregularities in the procedure in order to decide, in the complete absence of provisions prescribing penalties for the said irregularities, whether or not the application is admissible.

By reason of delay and the fact that there was no lawyer the objections have become otiose because the period for bringing proceedings has started to run afresh as a result of the letter of 21 July 1978 from the Registrar of the Court returning the applications "in order that you may comply with the provisions of Articles 37 and 38".

As regards the ground of delay alleged in support of the objection to admissibility the applicants observe that the application was sent from Italy on 15 July 1978, that is to say within the 40 days laid down, and they consider they are able to rely on the doctrine of *force majeure,* especially as Article 37 (3), in providing that, in various cases, the date of receipt and not that of despatch is the criterion, is contrary to the general principle of Italian law on the subject.

As regards the fact that the application was not signed by a lawyer, the subsequent lodging of a supplemental application duly signed by a lawyer is sufficient to correct the defect in the original pleading.

Finally, if the Court does consider the application inadmissible the applicants claim that each party should bear its own costs in view of the fact that they relied in good faith on the letter from the Registry of 21 July 1978 asking them to comply with the provisions of Articles 37 and 38 and thus encouraging them to think that they had been allowed a fresh period for bringing proceedings.

IV — Oral procedure

The hearing took place on 7 March 1979.

The Commission summarized the arguments in its written observations and stated that it would be "very moderate" regarding costs in the event of the application's being found to be inadmissible and would be satisfied with a more or less nominal amount.

The Advocate General delivered his opinion at the hearing on 14 March 1979.

Decision

1 By decisions of 30 May 1978 the Commission imposed penalties on the companies A.L.A. and A.L.F.E.R. for disregard of Decisions Nos 14/64 and 962/77/ECSC on mandatory minimum prices for certain concrete reinforcement bars (Official Journal L 114 of 5 May 1977).

2 Notice of the decisions was given to the companies, whose registered office is at Pisogna (Brescia), on 5 June 1978.

3 By registered letters received at the Court on 20 July 1978 the companies lodged an application against the decisions.

4 The letters, which arrived out of time and were not signed by a lawyer, were returned by the Court Registry so that the applicants might "comply with the provisions of Articles 37 and 38 of the Rules of Procedure".

5 On 2 October 1978 applications signed by a lawyer and dated 21 September 1978 were registered at the Court Registry.

6 The Commission has claimed that the applications were inadmissible for disregard of the time-limit for bringing proceedings as laid down by Article 39 of the Statute of the Court of Justice of the ECSC and Article 81 (2) of the Rules of Procedure as supplemented by Article 1 of Annex II to the said rules and because the first applications were not signed by a lawyer as required by Article 37 (1) of the rules.

7 Article 37 (3) of the Rules of Procedure provides that in the reckoning of time-limits for taking steps in proceedings, the only relevant date shall be that of lodgment at the Registry.

8 Regarding the original applications, comparison of the date of notification of the penalties with that of the receipt of the first applications at the Court

Registry shows that they were lodged after the expiry of the time-limit of one month for bringing proceedings as extended by the time granted on account of distance, in this case ten days.

9 It follows from the last paragraph of Article 39 of the Statute of the Court of Justice of the ECSC that apart from the existence of unforeseeable circumstances or of *force majeure*, which is not seriously claimed in this case, disregard of the time-limits for bringing proceedings results in the right of action's being barred.

10 There is no possibility of putting an application in order as provided for in Article 38 (7) of the Rules of Procedure where the application is already out of time.

11 Without its being necessary to consider the objection that the original applications were inadmissible since they were not signed by a lawyer or to consider the applications subsequently signed by a lawyer and registered at the Court Registry on 2 October 1978, which were thus obviously out of time, the applications of companies A.L.A. and A.L.F.E.R. must be declared inadmissible.

Costs

12 Article 69 (2) of the Rules of Procedure provides that the unsuccessful party shall be ordered to pay the costs if they have been asked for in the successful party's pleading.

13 The Commission has asked for costs, whilst stating that it would be satisfied "with a more or less nominal amount".

14 Article 69 (3) provides that where the circumstances are exceptional, the Court may order that the parties bear their own costs in whole or in part.

15 It is right to consider the circumstances of the present case as such in view of the statements made by the Commission.

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.