OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 18 November 1986 *

Mr President,
Members of the Court,

1. When does the prescribed period for bringing an action before the Court of Justice expire? And, in general terms, how is the time allowed to an individual to bring proceedings calculated under Community law? The Advocate General — some might say — wishes to send the other Members of the Court back to their university lecture rooms. However, the answers to those questions are not to be taken for granted. Let us consider why.

On 18 February 1985 Rudolf Misset, a translator in the Council Language Directorate, learned that the Secretary-General of the Council had, by a measure adopted on that date, rejected a complaint made by him. Three months are allowed for an official to bring an action under the Staff Regulations; since the date of notification does not count — Mr Misset must have thought — the period expired on 19 May 1985. The two days granted under Annex II to the Rules of Procedure to persons residing in Belgium are to be added, which brings the date to 21 May, which is the day on which the Court in fact received the application submitted by the applicant.

The Council entered a defence in which it claimed in the first place that the application was inadmissible on the ground that the application should have been lodged no later than 20 May. Since the Staff Regulations provide that appeals 'shall be filed within three months', there is no doubt that the final day is not included in the calculation of that period. In Mr Misset's case, therefore, the period in question began to run on 19 February 1985, that is to say on the day following notification of the contested measure, and expired on 18 May. 18 plus 2 equals 20: therefore the application should have arrived at the Registry by 20 May.

The applicant disagrees completely, arguing that the *dies ad quem* must be taken into account, in its entirety. Reference must be made to Regulation No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time-limits (Official Journal, English Special Edition 1971 (II), p. 354): 'A period expressed in . . . months', states Article 3 (2) (c), 'shall start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last . . . month . . . is the same day of the week, or falls on the same date, as the day from which the period runs'. Since by virtue of Article 3 (1) 'the day during which [the] event occurs or [an] action takes place shall not be considered as falling within the period in question', it is clear that for Mr Misset the period of three months began to run on 19 February 1985 (*dies a quo*) and expired on 19 May inclusive (*dies ad quem*).

Regulation No 1182/71 may, Mr Misset conceded, be limited in scope because it refers only to 'acts of the Council or the Commission which have been or will be passed' pursuant to the EEC and EAEC Treaties, whereas the Staff Regulations and the Rules of Procedure were also adopted by virtue of the ECSC Treaty. But the Staff Regulations and the Rules of Procedure include no provision regarding the *dies ad*

* Translated from the Italian.

quem; and it cannot but be inferred from that fact that the rules of Regulation No 1182/71 apply by analogy, thus ensuring that time-limits of all sorts are subject to uniform rules under Community law.

2. By order of 27 February 1986, the Second Chamber referred the case to the full Court for a decision on the objection of inadmissibility, prior to consideration of the substance. At the same time the Court invited the Council, the Commission and the European Parliament to give details of their practice in calculating the time-limit for complaints through administrative channels and to state their views on the scope of Regulation No 1182/71 with respect to the time-limit for instituting proceedings.

Their answers are not a little surprising. The Commission told us that it attaches no importance to the time-limit for complaints; in other words, it would reply even after the expiry of the prescribed period. On the other hand, the Council and the Parliament follow the Staff Regulations to the letter, in compliance with the principles laid down by the Court in its judgment of 26 November 1981 in Case 195/80 *Michel* v *Parliament* [1981] ECR 2861. As regards the scope of the regulation, the views of the three institutions could not be more divergent. The Council says that it cannot be applied directly or by analogy to the time-limits laid down in the Treaties, the Staff Regulations and the Rules of Procedure. The Commission takes the opposite view, whereas the Parliament lets it be understood that in proceedings involving Community officials the provisions of the Staff Regulations take precedence in any event. In short, a complete muddle.

3. It is therefore necessary to begin at the very beginning. I should point out in the first place that the Community rules concerning complaints are drawn up in the same terms: proceedings — it is prescribed in each case — shall be instituted *within* x months. The period shall begin *as from* the date of publication or notification of the measure. That form of words in itself contains two of the three items of information required for timely action: (a) the period of time allowed (one, two or three months); and (b) the day from which the period starts to run. In order to determine the exact expiry of the period, it therefore remains to establish how the length of the period thus provided for is calculated.

Let me give an example to clarify the position. Imagine that a Commission decision is notified to a steel undertaking on 1 September 1986; according to Article 33 of the ECSC Treaty, an action must be brought within one month from that date. If the calculation criteria are disregarded for a moment, it is clear that this period runs from 1 September 1986 (*dies a quo*) to 1 October 1986 (*dies ad quem*). For lawyers, however, a delimitation of that kind is not enough: the lawyer must establish whether, *for the valid exercise of the right to bring an action*, either the first or the last days of that period, or both of them, are to be regarded as included. In other words, it is necessary to calculate the period of time which must separate the two acts, the measure to be challenged and the act of challenging it.

Here the Rules of Procedure of the Court are of assistance. Article 81 (1) provides that 'the period of time allowed for commencing proceedings against a measure adopted by an institution shall run from the day following the receipt by the person concerned of notification of the measure'. Article 80 (1) lays down a similar rule regarding procedural time-limits in general. The two provisions do not — of course — fix the day on which the period starts or the duration thereof, because that is covered by specific provisions such as Article 33 of the ECSC Treaty to which I referred earlier; by contrast, those provisions adopt the traditional principle whereby *dies a quo non computatur in*

termino. The rationale of this rule is well known. Where a period is expressed in days or months, it would not be fair to take account of the moment at which a measure is notified; the *dies a quo* is therefore to be taken into consideration as from the time at which it ends. Here, incidentally, lies Mr Misset's error: by distorting the sense of the principle, he in fact treats the day following the *dies a quo* not as the day on which the period starts to run but as the day which fixes the timing of that period.

So much for the *dies a quo*. And the *dies ad quem*? The reply, it seems to me, is clear. If, by virtue of the rule to which I have just referred, it is presumed that the right to bring an action may be exercised only with effect from the day following the day marking the commencement of the prescribed period, it is obvious that the time remaining for the exercise of that right also includes, in its entirety, the final day (*dies ad quem computatur in termino*).

However, it is not strictly necessary to adopt a specific rule to reflect that logical consequence; in fact only the national legislatures mentioned in Part 5 of this Opinion deal with the matter specifically (by contrast, the Belgian, Spanish, Italian and Portuguese Codes of Civil Procedure do not do so). Indeed, once the first of the two limits of a period is fixed — and in Community law this is done by Articles 80 and 81 of the Rules of Procedure — the other limit is left open and is determined arithmetically according to the length of the period which is to be added to the day of commencement.

The method of calculation having been thus clarified, everything becomes simple. Before I apply it to the hypothesis which I took as a starting point, it is appropriate to emphasize that the principle laid down in the Rules of Procedure is of a general nature: in other words, it must be applied uniformly to any procedural time-limit or prescribed period for an action, whether it is defined in terms of months, weeks, or days. Having said that, I shall turn to the present case where, as will be remembered, the Commission's measure was notified on the first day of September. September, of course, has *30* days. Article 33 of the ECSC Treaty specifies a period of one month for proceedings to be instituted. If what I have just said is true, the same result should be obtained irrespective of whether the period allowed for instituting proceedings is calculated according to the number of days or on the basis of one month.

Let us verify this proposition by calculating the period first as if it were defined as 30 days. The *dies a quo* is 1 September 1986 and is not counted. 2 September is therefore the first of the days available to the steel undertaking; continuing the calculation in this way by counting the days we arrive at 1 October 1986, that is to say the date coinciding with the 30th day of the period and the last day which the undertaking can use.

Let us now make the calculation on the basis of one month. In this case, since it is impossible to count the days one after the other (a month is a unit of time of variable duration), we must necessarily proceed on the basis of the number of the day and accordingly go forward to the day in the month in which the period ends that bears the same number as the starting day: therefore, if 1 September is the *dies a quo* — and, once more, if that day is excluded from the calculation — the *dies ad quem* of the period allowed to the undertaking cannot be 1 October. This verification, it seems to me, leaves no room for doubt. It follows that, in the reckoning of any period of time for Community

purposes, 'the day of the event from which the period is to run shall be excluded' (Article 80 (1) of the Rules of Procedure) whereas the final day is always included in the period. Indeed, the general form of words 'within a period of x months' must be construed as meaning that an action may be validly brought at any time up to midnight on the day which, in the last month of the prescribed period, bears the same number as the day on which the contested measure was notified to the applicant.

Let us now apply this conclusion to the case before the Court. Account being taken of the two days granted in respect of the distance between Brussels and Luxembourg, Mr Misset's right of action ceased to exist at midnight on 20 May 1985. Since his application arrived the following day, it is thus inadmissible. The Council, which in rejecting the applicant's incorrect calculation maintains that the *dies ad quem* is not to be taken into account, has not properly set out the reasons for its objection; but there is no doubt that its objection hits the mark.

4. However, let us suppose — for argument's sake, as the English say — that the Rules of Procedure are in fact incomplete regarding determination of the final day. In those circumstances, could the Court follow Mr Misset's suggestion that the rules of Regulation No 1182/71 should be applied by analogy? I think not.

I should point out in the first place that that regulation is needed in order to remedy a notorious and inescapable problem: Community laws operate in the context of systems which often have divergent rules regarding the timing according to which provisions operate. Uniform criteria were therefore established for determining 'times and periods of entry into force, taking effect, ... [and] cessation of application of acts of the Council or the Commission' (see Article 4 and Report of the Parliament Legal Committee on the draft regulation, Doc. 11/70 of 8 April 1970, paragraphs 8 and 9). Moreover, those criteria are applicable to legislation which covers the widest variety of subject-matter and may impose the most disparate expiry dates; that prompted the Community legislature not to make them mandatory in character. They apply 'save as otherwise provided' (Article 1).

Quite the opposite applies to time-limits for bringing an action, which are periods allowed for the valid exercise of a *fundamental right*: a person's right to institute legal proceedings to protect his interests. It is obvious that, as such, the time-limits must be regarded as a matter of public policy, be mandatory and not capable of extension (see judgment of 12 July 1984 in Case 227/83 *Moussis* v *Commission* [1984] ECR 3133).

This difference, it seems to me, is so great in scope that Mr Misset's argument is deprived of any foundation. Contrary to his contention (with which the Commission concurs), I consider that the criteria laid down in Regulation No 1182/71 are themselves to be interpreted in the light of the rules set out in Part 3 of this Opinion and therefore give results no different from those at which I arrived there. Here, on the other hand, verification is even easier because those procedures also cover time-limits expressed in weeks, that is to say

periods which comprise the same number of days (7). To take a simple example, a week beginning on Monday 1 September 1986 ends on Monday the 8th, that is to say the seventh day following the *dies a quo*.

The correctness of that interpretation is also confirmed by the text of the regulation. Article 3 of the French text, which is without doubt the clearest, provides that: 'Si un délai exprimé ... en semaines ... est à compter *à partir* du moment où ... s'effectue un acte, le jour au cours duquel ... s'effectue cet acte n'est pas compté ... (et le délai) prend fin à l'expiration de la dernière heure du jour qui, dans la dernière semaine ..., porte la même dénomination ... que le jour *du départ*' (emphasis added).

5. That having been said, the fact remains that the application by analogy proposed by Mr Misset is impossible: hence an (alleged) lacuna which can be supplied only by establishing whether there exists in that regard a general principle common to the laws of the Member States. A survey of comparative law, which is not too difficult, shows that, except in France and Ireland, the method of calculating time-limits for bringing actions within the various national legal systems coincides exactly with that contained in this Court's Rules of Procedure. These are the criteria for time-limits expressed in months: (a) the *dies a quo* is the day on which the measure is notified or communicated; (b) for the exercise of the right to challenge the measure, that day is not taken into account; (c) the *dies ad quem* is included in the period and coincides with the day which, in the last month of the prescribed period, bears the same number as the *dies a quo*. In the result, in Belgium, Denmark, the Federal Republic of Germany, Spain, Greece, Italy, Luxembourg, the Netherlands, Portugal and the United Kingdom, a prescribed period of three months allowed for an action to be brought against a measure notified on 18 February 1985 expires at midnight on 18 May 1985.

Moreover, on close examination, even the two exceptions to which I have referred prove to be more apparent than real; that is to say in substance they are in conformity with the rationale of the method of calculation prevailing in the Community. Thus, in Ireland, the first day is taken into account in calculating the period, whereas the final day is excluded. In other words, Ireland departs from the rule *dies a quo non computatur in termino*; but — and this is what is important here — it leaves unchanged the *distantia temporis* between the two limits of the period.

In the case of France, no problems arise in civil proceedings. In fact, in confirmation of a principle which applies in all Member States except Ireland, Article 641 (1) of the new Code (1975) provides that 'lorsqu'un délai est exprimé en jours, celui de l'acte, de l'événement, de la décision ou de la notification qui le fait courir ne compte pas'. As regards time-limits expressed in months, for which the exclusion of the *dies a quo* also applies for the reasons considered in Part 3 of this Opinion, the legislature sought to eliminate any interpretative doubt at the outset by specifying the last day of the period. Thus, Article 641 (2) provides that 'lorsqu'un délai est exprimé en mois ... ce délai expire le jour du dernier mois ... qui porte le même quantième que le jour ... qui fait courir le délai' (Paragraphs 187 and 188 of the German Civil Code and Article 243 of the Greek Civil Code and Article 145 (2)

of the Greek Code of Civil Procedure provide exactly the same). In short, the *dies ad quem* is included in the prescribed period and the 'European' rule may be said to be complied with.

The position is more complex in administrative law. Here also, in fact, 'les délais de recours exprimés en mois se calculent de quantième en quantième, quel que soit le nombre de jours composant les mois compris dans le délai'; in particular, 'le délai ne commence à courir qu'à 0 heure le lendemain du jour du fait générateur (*dies a quo*) . . . [et] il expire à 24 heures le *dies ad quem*' (Odent, Contentieux Administratif, Paris, 1976-81, p. 1060 *et seq.*). However — and this is the important point — 'comme les secrétariats des juridictions administratives ferment bien avant 24 heures, . . . les pourvois enrégistrés seulement le lendemain du *dies ad quem* sont encore recevables', so as to avoid the risk that the provision might 'priver les justiciables de quelques heures du délai auquel ils ont droit'. Thus, 'pour une décision notifiée le 16 février, le délai de recours . . . commence à courir le 17 février a 0 heure, [et] il expire le 16 avril à 24 heures; un recours introduit le 17 avril aurait encore été recevable; introduit le 18 avril, il est tardif' (see Conseil d'État, 8 June 1951, *per* Bordenave, Recueil, p. 798).

What can be said of such a system? Since the period of two months expires on the day corresponding to the *dies a quo*, which is not taken into account, the principle remains intact. However, the practice runs counter to the principle. In order to ensure maximum protection of the plaintiff's rights, the fact has been forgotten — or rather, deliberately disregarded — that the period in question 'ne commence a courir qu'à 0 heure le lendemain du *dies a quo*'.

However, in the Community system the problem which prompted the French courts to extend the lifetime of the right to bring an action does not exist. In this Court, 'outside the opening hours of the Registry procedural documents may be validly lodged with the janitor, who shall record the date and time of such lodging' (second subparagraph of Article 1 (1) of the Instructions to the Registrar adopted pursuant to the Rules of Procedure). In short, both certainty of time-limits and protection of the individual are fully safeguarded at the same time.

I believe therefore that I can conclude by stating that the Community system of calculating time-limits does not contain lacunae and in any event is based on principles no different from those underlying all the national laws. The period within which an action must be brought starts on the day on which the measure being challenged is notified or communicated to the addressee. The time allowed for bringing an action is always calculated as from the day following the day on which the period commenced; consequently, the right is extinguished at midnight on the day which, in the last month of the period, bears the same number as the *dies a quo*.

6. In the light of the foregoing considerations and by virtue of Article 91 (3) of the Staff Regulations and Article 81 (1) of the Rules of Procedure of the Court, I propose that the Court should declare the action brought by Mr Rudolf Misset against the Council of the European Communities inadmissible.

As regards the costs, since the problem brought before the Court breaks new ground, I venture to suggest that the second subparagraph of Article 69 (3) of the Rules of Procedure should be applied, instead of the provisions of Article 70 thereof.