ORDER OF THE COURT
4 JULY 1984 [1]

Metalgoi SpA
v Commission of the European Communities

Case 82/84

In Case 82/84

METALGOI SPA,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES,

defendant.

By application lodged at the Court Registry on 26 March 1984, Metalgoi SpA, Brescia, brought an action under the second paragraph of Article 33 of the Treaty establishing the European Coal and Steel Community to have declared void the Commission's decision of 26 January 1984 imposing upon the applicant a fine for exceeding the production quotas allocated for the fourth quarter of 1981 and the first quarter of 1982, by virtue of Commission Decision No 1831/81 of 24 June 1981 establishing for undertakings in the iron and steel industry a monitoring system and a new system of production quotas in respect of certain products (Official Journal 1981, L 180, p. 1).

By an application for a decision on a procedural issue submitted pursuant to Article 91 of the Rules of Procedure, the Commission raised an objection of inadmissibility and asked the Court to give a decision thereon without considering the substance of the case, on the ground that the application had been lodged out of time.

The Commission states, in that regard, that the contested decision was notified to the applicant on 3 February 1984, as is shown by the receipt for the registered letter by which that decision was notified. Since the time-limit within which legal proceedings must be instituted is fixed as one month by Article 39 of the Protocol on the Statute of the Court (ECSC), the pre-

1 — Language of the Case: Italian.

scribed period, including the allowances for distance, expired on 14 March 1984, so that the action, which was not brought until 26 March 1984, is out of time.

The applicant states that the contested decision was addressed to the "Società in nome collettivo" Metalgoi, a non-existent entity, since that undertaking ceased to exist on 31 August 1979 when Metalgoi "Società per Azioni" was constituted. It contends that since the notification must therefore be considered irregular, the only certain date for calculation of the time-limit is the publication of the contested decision in the Official Journal of 9 February 1984 (Official Journal C 34), as provided in Article 81 (1) of the Rules of Procedure, by virtue of which the periods prescribed for the institution of proceedings, in the absence of notification, commence, "where the measure is published, from the fifteenth day after publication thereof in the Official Journal of the European Communities". In those circumstances, according to the applicant, the application was lodged within the prescribed period.

The applicant's argument in that regard cannot be accepted. It is true that both the letter and the post office receipt indicate the addressee as "Metalgoi SNC" instead of "Metalgoi SpA". Nevertheless, it is established that despite that purely formal error the contested decision actually reached the undertaking to which it was addressed on the date indicated on the acknowledgement of receipt and that the undertaking realized that it was the addressee. This finding is confirmed by the fact that the applicant attached a copy of the original decision to its application.

Since the file contains all the information necessary for a decision to be given on the objection raised by the Commission, it was considered unnecessary to hear the views of the parties.

It must therefore be held, pursuant to Article 39 of the Protocol on the Statute of the Court (ECSC) and Article 91 of the Rules of Procedure, that the application was lodged out of time and is therefore inadmissible.

On those grounds,

After hearing the report of the Judge-Rapporteur and the views of the Advocate General,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco, O. Due, U. Everling, C. Kakouris and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

makes the following

ORDER

1. **The application is dismissed as inadmissible;**

2. **The applicant is ordered to pay the costs, including those in respect of the application for the adoption of an interim measure (82/84 R).**

Luxembourg, 4 July 1984

J. A. Pompe
Deputy Registrar

A. J. Mackenzie Stuart
President