2. Orders the applicant to pay the whole of the costs.

Kutscher Mertens de Wilmars Mackenzie Stuart

Delivered in open court in Luxembourg on 5 June 1980.

J. A. Pompe
Deputy Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL MAYRAS DELIVERED ON 24 APRIL 1980 [1]

Mr President,
Members of the Court,

The opinion which I deliver in this case will be extremely short, because Mr Belfiore's application appears to me to be manifestly inadmissible since it was lodged out of time.

Whereas the express decision of the Commission rejecting the applicant's complaint is dated 12 February 1979 the application now before the Court was not lodged until 4 July 1979. It is therefore well outside the time-limit of three months prescribed by Article 91 of the Staff Regulations.

It is true that Mr Belfiore maintains that he did not receive the decision of 12 February until 5 April and that he attributes that delay solely to the negligence of the defendant institution. The latter sent it to him at his former address even though, according to Mr Belfiore, it was or ought to have been aware that he had changed his residence.

Having regard to the facts of this case this assertion appears to be very much open to question. Mr Belfiore only informed the Commission officially of his change of address by a letter of 5 February 1979 registered by the administration on 13 February 1979, that is to say the day after that on which the decision rejecting his complaint was sent to him. Consequently that letter cannot be taken into consideration.

Before that the applicant, according to his own statements, merely wrote his new address on the back of the envelopes containing his letters of 11 September 1978 and 23 October 1978.

1 — Translated from the French.

Since the letter of 23 October appears to have been lost I have only been able to confirm that his statement is correct in the case of the letter of 11 September. Is that single endorsement sufficient to prevent the application from being inadmissible?

In order to come to that conclusion the Commission would have to be regarded as being negligent in not making a note of the applicant's new address endorsed on one of the envelopes or perhaps on both. Such a conclusion would seem to me to be excessively strict towards the Commission, especially in view of the amount of mail which its officers have to deal with each day.

On the other hand I do not feel that it would impose an inordinately onerous burden on an official or former official, who knows that he will still be in correspondence with the institution in question, to hold him liable for not having officially notified the latter as quickly as possible of his new address. It does not even appear from a sight of the file that Mr Belfiore took the elementary precaution of arranging to have his post redirected.

For this reason alone I should already be inclined to accept that the application is inadmissible.

My conviction on the other hand is confirmed by the importance which the Court's case-law rightly attaches to compliance with time-limits, especially in staff cases.

The attention paid by the Court to this question is shown first by the prime importance which it attaches to an objection of inadmissibility on this ground. The Court has held (judgments of 7 July 1971 in Case 79/70, *Helmut Müllers* v *Economic and Social Committee of the EEC and EAEC* [1971] ECR 689, and of 8 May 1973 in Case 33/72, *Monique Gunnella* v *Commission of the European Communities* [1973] ECR 475) that it was for the Court "even of its own motion, to examine whether the time-limits have been observed, these being a matter of public interest" (paragraph 4 of the Grounds of Judgment).

It seems to me that the Court was even more explicit in its judgment in the case of *Muller (née Collignon)* in which the Commission had stated that it did not want to "shelter behind" inadmissibility on the ground that the appeal was out of time, but to leave the Court free to raise the question of admissibility or not. The Court pointed out in particularly clear terms that "the periods prescribed for instituting proceedings are mandatory in nature and are not subject to the discretion of the parties or of the Court" (judgment of 12 December 1967 in Case 4/67, *Anne Muller (née Collignon)* v *Commission of the European Communities* [1967] ECR at p. 372).

This strictness is justified, as the Court has stressed, by the fact that "protection of the certainty of legal positions and relationships implies that the existence of decisions of Community authorities governing such positions and relationships cannot for ever be called in question, unless there are new and serious reasons for doing so", such as are not present in this case (judgment of 15 December 1966 in Case 34/65, *Hans Dieter Mosthaf* v *Commission of the EAEC* [1966] ECR at p. 531) and because the periods prescribed for lodging a complaint and then an application to the Court "are intended to ensure within the Community institutions the legal certainty indispensable to their proper functioning" (judgment of 14 April 1970 in Case 24/69, *Theo Nebe* v *Commission of the European Communities* [1970] ECR at p. 151).

In these circumstances, and without its being necessary to deal either with the objection of inadmissibility raised by the Commission or *a fortiori* with the substance of the dispute, I can only give my opinion that Mr Belfiore's application for the annulment of the Commission's decision dated 12 June 1978 requiring him to resign should be dismissed as inadmissible. Finally, as provided in Article 70 of the Rules of Procedure, I propose that the Commission should bear its own costs.