OPINION OF MR ADVOCATE GENERAL MANCINI
delivered on 21 May 1985 *

Mr President,
Members of the Court,

1. The application of 11 September 1984 which commenced these proceedings is composed of a series of claims brought against the Commission by Angelo Valentini, an employee of that institution, seeking the annulment of three decisions concerning grading on establishment. For present purposes, however, the Court must limit itself to deciding whether the defendant's objection that the action is inadmissible is well founded; it is therefore with that problem that I shall deal in this opinion.

Mr Valentini, at present an official in Grade A 6, was appointed a probationary official by a decision of 10 March 1975, following an open competition for assistant translators; he was assigned to Grade L/A 8, Step 2. Later, he was successful in an internal competition and was appointed an administrator in Grade A 7, Step 1, with effect from 1 February 1978. In March 1981 the 'Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment', adopted by the Commission on 6 June 1973, was published. Mr Valentini thereupon requested the administration (on 4 June 1981) to reconsider whether or not the two grading decisions in his regard were based on an inadequate assessment of his relevant experience.

On 3 November 1981 the Secretary of the Grading Committee informed the official that, after thorough consideration, the Committee had concluded that it could not change the opinion it had previously delivered as to his grading. Mr Valentini was not satisfied and, on 1 February 1982, asked the Committee to supply a more detailed statement of the reasons for its decision. In a memorandum of 12 May 1982 Mr Morel, the Director General for Personnel and Administration, explained to him the criteria observed by the Committee on both occasions on which it had graded him, and repeated that the relevant decisions were consistent with the regulations in force, so that there were no grounds for amending them.

Almost a year later, on 22 March 1983, Mr Valentini once again approached the Committee, asking for another review of the decisions mentioned above. However, in a memorandum of 28 April 1983, the Director replied that, after the Committee's opinion of 14 April 1983, he considered it his duty, as the appointing authority, to uphold the contested gradings. Another six months went by and Mr Valentini returned to the charge, on two occasions (25 November and 6 December 1983) criticizing the Committee's replies to his questions, and requesting a review of his position. Mr Morel, however, did not change his point of view, and in a memorandum of 6 January 1984 confirmed his previous note of 28 April 1983.

At that point (5 April 1984) Mr Valentini lodged a complaint under Article 90 (2) of the Staff Regulations. It stated that it was

* Translated from the Italian.

submitted 'further to the rejection on 6 January 1984 of the request for regrading presented . . . on 25 November 1983 pursuant to the second paragraph of the introductory text to the "Decision on the Criteria Applicable to Grade and Step Classification upon Recruitment', published in Administrative Notices No 420 of 21 October 1983. As with that request, the purpose of this complaint is to seek [an amendment of the] decision regarding my grade, ... which was taken . . . contrary to the decision . . . published in March 1981'.

In a memorandum of 21 June 1984 the Director replied to Mr Valentini, saying that the request submitted by him on 25 November 1983 had been considered in the light, not of Article 90 of the Staff Regulations, but of the introductory text referred to in the complaint; for the fourth time he reaffirmed the grounds for holding that any amendment of the initial grading was unjustified.

In response to the rejection of his complaint, Mr Valentini brought the present proceedings. As I mentioned earlier, the Commission immediately raised the objection under Article 91 of the Rules of Procedure that the application was inadmissible, and the Court decided to deal with that aspect separately from the substantive issues.

2. In support of its objection the Commission contends that the action was brought out of time. The official should — it claims — have contested the decisions assigning him to Grades L/A 8 and A 7, which go back to 1975 and 1978 respectively, within the periods laid down in the Staff Regulations; he cannot revive his right to challenge them, once it has lapsed, by pleading the memorandum of 21 October 1983, under which 'Exceptionally, any official graded under the . . . decision [of 6 June 1973] who feels that he has not been graded according to the criteria laid down by it has a final opportunity to apply for regrading within three months of the date of this publication.'

In the defendant's opinion, it was not the aim of that measure to extend the time-limits for bringing an action, which are indeed mandatory; it sought merely to enable those officials who had not challenged their grade as determined under the 1973 decision to call for an *ex gratia*, independent review of their position, so that any manifest errors could be corrected in the light of the documentary evidence. In other words, since it related to grading decisions which were no longer open to challenge, the applicant's memorandum dated 6 April 1984 could not be regarded as a complaint. It is not even arguable — the Commission continues — that the period allowed for bringing an action starts to run from the last reply given by the administration — that is, from the rejection of the complaint (21 June 1984). That rejection served merely to confirm the previous decisions of the Grading Committee, and, as the judgment of 8 May 1973 (Case 33/72, *Gunnella* v *Commission* [1973] ECR 475) establishes, cannot have the effect of reopening a period which has already expired.

In reply to those observations Mr Valentini maintains that, far from having the scope ascribed to it by the defendant, the circular of 21 October 1983 should be regarded as a new event of a substantial nature which

entitled him to put forward on 25 November 1983 a request for regrading. In support of his argument he relies on the judgment of 16 December 1964 (Joined Cases 109/63 and 13/64, *Muller* v *Commission* [1964] ECR 663). On the other hand, he argues that it was irrelevant to cite the Gunnella judgment, since in that case the applicant had not been able to avail himself of a provision such as the one contained in the decision of 21 October 1983.

3. As the Court is aware, it has jurisdiction under Article 91 of the Staff Regulations to settle any dispute between the Communities and their officials regarding the legality of an act adversely affecting such persons. An action may lie provided that the appointing authority has previously had a complaint submitted to it and that the complaint has been rejected by an express or implied decision. For the lodging of an application the permitted period is three months, commencing either from the date of notification of the decision taken in response to the complaint, or, where the action is brought against an implied decision rejecting such a complaint, from the expiry of the period prescribed for the reply. The case-law of the Court on the subject of time-limits is quite consistent. They have been held to be mandatory; their purpose is to ensure legal certainty and neither the parties nor the Court — which is obliged to enforce them of its own motion — may waive them (see judgments of 12 December 1967, Case 4/67, *Muller (née Collignon)*, [1967] ECR 365; 7 July 1971, Case 79/70 *Müllers*, [1971] ECR 689; 5 June 1980, Case 108/79, *Belfiore*, [1980] ECR 1769; and 19 February 1981, Joined Cases 122 and 123/79, *Schiavo*, [1981] ECR 473).

Having said that, I must point out that in the present instance the acts adversely affecting the applicant are the decisions by which the Commission assigned him to Grades L/A 8 (on 10 March 1975) and A 7 (on 1 February 1978). However, it is not by reference to those dates that the period for bringing an action may be seen to have expired. The publication in March 1981 of the decision of 6 June 1973 on the criteria for grading was considered by the Court to be capable of allowing an official to submit an application, which would otherwise have been out of time, for the reconsideration of his career bracket (judgment of 1 December 1983, Case 190/82, *Blomefield*, [1983] ECR 3981). It follows that for Mr Valentini the permitted period started to run on 12 May 1982, that is to say, the day on which he received from Mr Morel, the Director General, a reply to his application for a review, submitted on 4 June 1981. That is sufficient to support the conclusion that he failed to lodge either the complaint to the appointing authority or the application to the Court within the time-limits laid down by the Staff Regulations.

The application must therefore be declared inadmissible. It is no counter-argument to invoke the much-cited decision of 21 October 1983; despite its misleading formulation, it does no more than advertise the administration's readiness to conduct an *informal, anomalous and completely voluntary* review. However many expectations it may have aroused on the part of officials (and in that respect the Commission is certainly to blame), to construe it in any other way is not permissible. In particular, there can be no question of its amounting to 'a new event of a substantial nature', as the applicant maintains.

A genuinely new event was the publication of the grading criteria in March 1981,

because those criteria had previously been unknown, or rather, concealed; and, indeed, the *Blomefield* judgment established that publication legitimized the submission of requests to have career brackets reviewed. However, in the case of the communication at issue, which at most seeks to correct errors committed in implementing already familiar rules, the matter is quite different; consequently, to treat it as being comparable in its effects would be tantamount to overturning the principles which the Court has always upheld as regards time-limits — first and foremost, the principle that the Court is not empowered to waive them.

4. On the strength of all the foregoing considerations, I conclude by proposing that the Court should allow the preliminary objection raised by the Commission and consequently hold the action brought by Angelo Valentini on 11 September 1984 to be inadmissible on the ground that it was out of time.

I further consider that, in pursuance of Article 70 of the Rules of Procedure, the parties should bear their own costs.