

The
Court of Justice
of the
European Communities



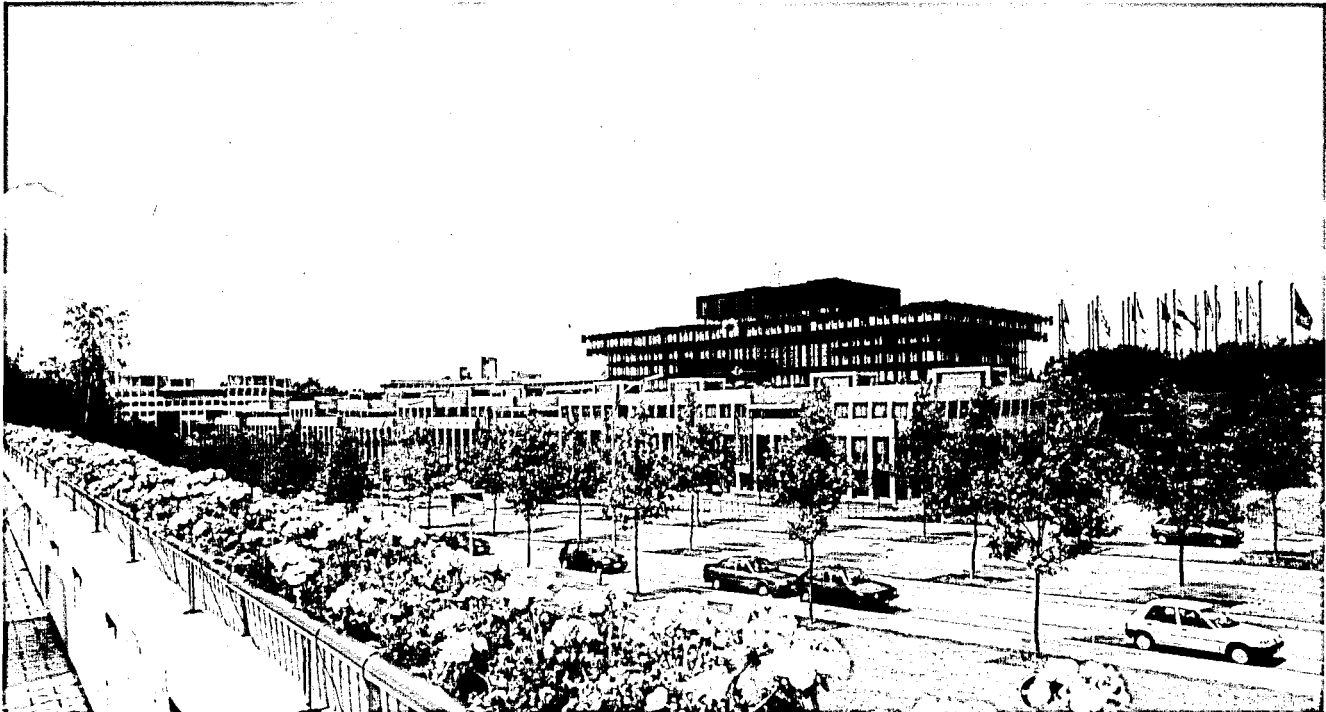
Cover page: Justice and Peace (Giacomo Manzù)



Gil Carlos Rodríguez Iglesias,
President of the Court of Justice of the European Communities

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General view of the buildings



What is the European Community?



Member States

Fifteen democratic States — 365 million citizens — voluntarily joined by a political desire to present a united front to the great challenges of our age.

Objectives

To promote European unity;

To improve living and working conditions for citizens;

To foster economic development, balanced trade and fair competition;

To reduce economic disparities between regions;

To help developing countries;

To preserve peace and freedom.

Resources

Community legislation, uniformly applicable in the 15 Member States;

The budget, financed by the Community's own resources;

The administrative and technical staff employed by the Community institutions.

Institutions and bodies

The European Parliament, directly elected by universal suffrage, represents the peoples of the Community. It takes part in the lawmaking and budgetary processes and has limited, but increasing, powers of control.

The Council, composed of 15 members (one minister from each government), takes decisions and adopts Community legislation. Its membership depends on the subject under consideration (it may be made up of the 15 Ministers for Foreign Affairs, Agriculture, Transport, Finance, etc.).

The Commission, composed of 20 independent members, proposes Community legislation, monitors compliance with legislation and with the Treaties, and administers common policies.

The Court of Justice, based from the outset in Luxembourg, together with the Court of First Instance, ensures that the law is observed in the process of Community integration.

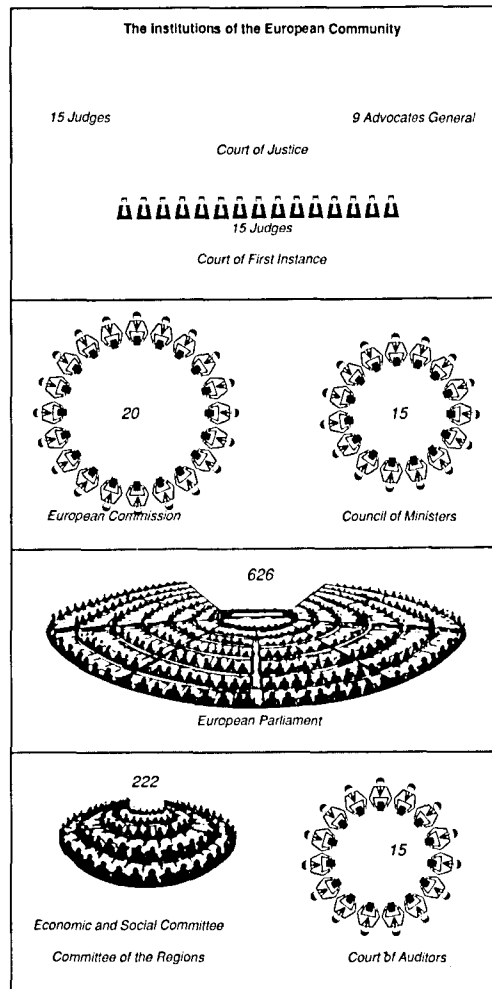
The Court of Auditors monitors the implementation of the Community budget.

Alongside those institutions, the Economic and Social Committee, a consultative body, involves representatives of trade unions and social and professional

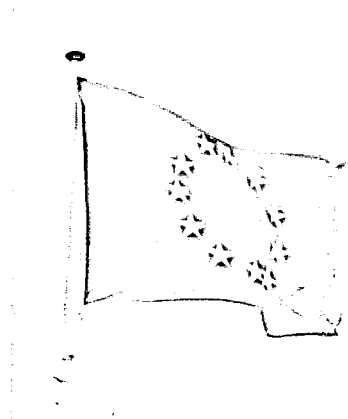
groups in the process of drafting Community legislation.

Another body ancillary to the Council and the Commission, the Committee of the Regions, introduces representation for regional and local bodies in the Community institutional system and has advisory functions.

Finally, the role of the European Investment Bank is to contribute on a financial level to the balanced development of the Community.



A court for Europe



The great innovation of the European Communities in comparison with previous attempts at European unification lies in the fact that the Community uses only the rule of law to achieve that end.

The six founding Member States, aware that unification, if it was to have any chance of lasting success, must be achieved and maintained through legal means, determined that the European Communities should be conceived in a legal instrument — the Treaties of Paris and Rome.

Not only is the Community a creature of the law, but it pursues its aims exclusively through a new body of law, Community law, which is independent, uniform in all the Member States of the Community, separate from yet superior to national law, and many of whose provisions are directly applicable in all the Member States.

Like any true legal system, the Community legal system needs an effective system of judicial safeguards when Community law is challenged or must be applied.

The Court of Justice, as the judicial institution of the Community, is the backbone of that system of safeguards. Its Judges must ensure that Community law is not interpreted and applied differently in

each Member State, that as a shared legal system it remains a Community system and that it is always identical for all in all circumstances.

In order to fulfil that role, the Court of Justice has jurisdiction to hear disputes to which the Member States, the Community institutions, undertakings and individuals may be parties.

The development of the Court of Justice

Since it was set up in 1952, more than 8 600 cases have been brought before the Court. There were already 200 new cases a year by 1978, and 1985 saw more than 400 cases brought.

To cope with that influx while still dealing with cases with reasonable despatch, the Court of Justice amended its Rules of Procedure to enable it to deal with cases more rapidly and requested the Council to set up a new judicial body.

The creation of the Court of First Instance

In response to that request, the Council set up a Court of First Instance.

The aim of the creation of the Court of First Instance in 1989 was to strengthen the judicial safeguards available to individuals by introducing a second tier of judicial authority and enabling the Court of Justice to concentrate on its essential task, the uniform interpretation of Community law.



Composition and organization

The Members of the Court of Justice



The members of the Court of Justice

The Court of Justice comprises 15 Judges and nine Advocates General.

The Judges and Advocates General are appointed by common accord of the governments of the Member States and hold office for a renewable term of six years. They are chosen from jurists whose independence is beyond doubt and who are of recognized competence.

The Judges select one of their number to be President of the Court for a renewable term of three years. The President directs the work of the Court and presides at hearings and deliberations.

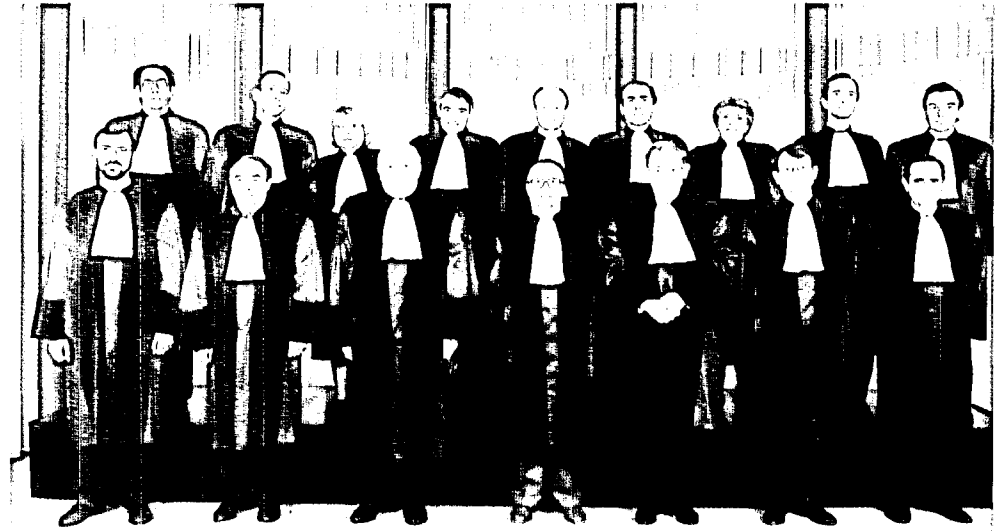
The Advocates General assist the Court in its task. They deliver, in open court and with complete impartiality and independence, opinions on the cases brought before the Court. Their duties should not be confused with those of a prosecutor or similar official — that is the role of the Commission, as guardian of the Community's interests.

The members of the Court of First Instance

The Court of First Instance is composed of 15 Judges, appointed by common accord of the governments of the Member States to hold office for a renewable term of six years. The members of the Court of First Instance select one of their number as President.

There are no permanent Advocates General in the Court of First Instance. The duties of Advocate General are performed, in a limited number of cases, by one of the Judges.

The members of the Court of First Instance



Plenary sessions and chambers

The Court of Justice may sit in plenary session or in chambers of three or five judges. It sits in plenary session when a Member State or a Community institution that is a party to the proceedings so requests, or in particularly complex or important cases. Other cases are heard by a chamber.

The Court of First Instance sits in chambers of three or five Judges. It too may sit in plenary session in certain particularly important cases.



The registries and the administration

The Registrar is appointed by the Court of Justice to hold office for a term of six years. He has the same court duties as the registrar or clerk of a national court, but he also acts as secretary-general of the institution.

The Court of Justice, as an independent and autonomous institution, possesses, in addition to the registry, its own administrative infrastructure, which includes a large translation and interpreting service since the Court has to use all the official languages of the Community in the course of its work.

The Court of First Instance appoints its own Registrar; for its administrative needs it relies on the services of the Court of Justice.

Court of First Instance, sitting of a Chamber



Jurisdiction

It is the responsibility of the Court of Justice to ensure that the law is observed in the interpretation and application of the Treaties establishing the European Communities and of the provisions laid down by the competent Community institutions.

To enable it to carry out that task, the Court has wide jurisdiction to hear various types of action and to give preliminary rulings.

The various forms of action

Proceedings for failure to fulfil an obligation

Such proceedings enable the Court of Justice to determine whether a Member State has fulfilled its obligations under Community law. An action may be brought by the Commission — as is practically always the case — or by another Member State. If the Court finds that the obligation has not been fulfilled, the Member State concerned must comply without delay.

However, if, after new proceedings are initiated by the Commission, the Court of Justice finds that the Member State concerned has not complied with its judgment, it may impose a fixed or a periodic penalty.

Proceedings for annulment

A Member State, the Council, the Commission and, in certain circumstances, the Parliament, may apply to the Court of Justice for the annulment of all or part of an item of Community legislation, and individuals may seek the annulment of a legal measure which is of direct and individual concern to them.

The Court may thus review the legality of the acts of the Community institutions.

If the action is well-founded, the contested measure is declared void.

Proceedings for failure to act

The Court of Justice may also review the legality of a failure to act by a Community institution, and penalize silence or inaction.

Actions for damages

In an action for damages, based on non-contractual liability, the Court of Justice rules on the liability of the Community for damage caused by its institutions or servants in the performance of their duties.

Appeals

Finally, the Court of Justice may hear appeals, on points of law only, against judgments given by the Court of First Instance in cases within its jurisdiction.

Preliminary rulings

The Court of Justice also has jurisdiction in another very important kind of procedure.

Although the Court is, by its very nature, the supreme guardian of Community legality, it is not the only judicial body empowered to apply Community law.

The courts of each of the Member States are also Community courts inasmuch as:

- they have jurisdiction to review the administrative implementation of Community law, for which the authorities of the Member States are essentially responsible; and

- many provisions of the Treaties and of secondary legislation — regulations, directives and decisions — directly confer individual rights on nationals of Member States, which national courts must uphold.

To ensure the effective application of Community law and to prevent differences between the rules of interpretation applicable in different national courts from leading to different interpretations of

Community law, the Treaties provided for a system of preliminary rulings which, while not setting up any hierarchical relationship, has institutionalized fruitful cooperation between the Court of Justice and the national courts.

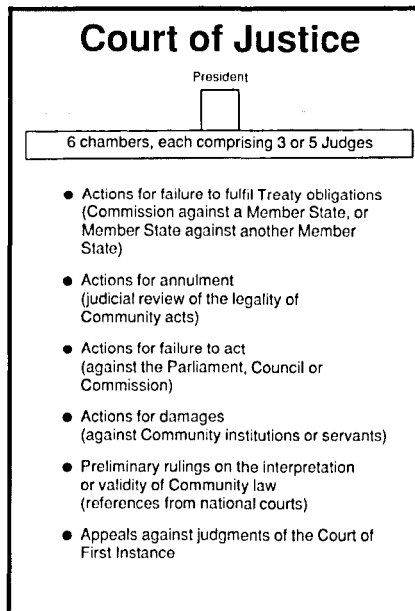
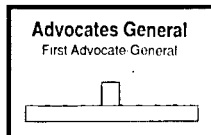
In cases involving Community law, national courts, if in doubt as to the interpretation or validity of that law, may, and in some cases must, seek a preliminary ruling from the Court of Justice on the relevant questions.

That system, the benefits of which have been amply demonstrated by the large number of questions referred to the Court since it was set up, ensures that Community law is interpreted and applied uniformly throughout the Community.

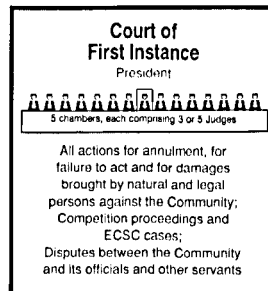
It is a procedure which, by ensuring permanent cooperation between national courts and the Court of Justice, clearly demonstrates that national courts too are the guardians of Community law.

A preliminary ruling is also the form of procedure by which any European citizen may seek clarification of the Community rules which concern him.

Although such a ruling may be sought only by a national court which alone has the power to decide that it is appropriate to do so, all the parties involved may take part in the proceedings before the Court of Justice.



The governments of the Member States appoint by common accord the 15 Judges and the 9 Advocates General for 6 years



The governments of the Member States appoint by common accord the 15 Judges for 6 years



Finally, it must not be forgotten that several important principles of Community law have been laid down in preliminary rulings, sometimes in answer to questions referred by courts of first instance against whose decisions an appeal would lie under national law.

What are the effects of a preliminary ruling by the Court of Justice?

The Court of Justice rules on the law, that is to say that it declares what the relevant Community law is. The national court to which that ruling is addressed must apply the law, as interpreted by the Court of Justice, without modification or distortion, to the dispute before it.

A ruling on interpretation by the Court also serves as a *guide* for other national courts dealing with a substantially similar problem or a question on which a preliminary ruling has already been given.

Jurisdiction of the Court of First Instance

The Court of First Instance currently has jurisdiction to rule at first instance on:

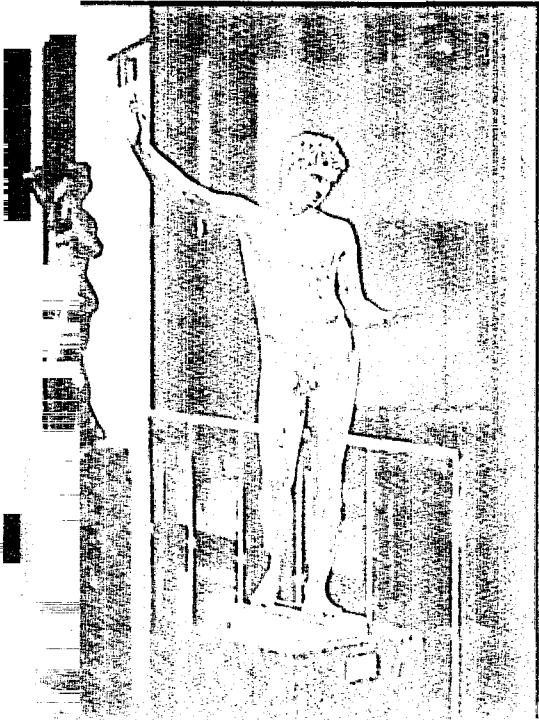
- all actions for annulment, for failure to act and for damages brought by natural or legal persons against the Community;
- actions brought against the Commission under the ECSC Treaty by under-

takings or associations of undertakings; and

- disputes between the Community and its officials and servants.

In the future, the Treaty on European Union will enable all other categories of cases except references for preliminary rulings to be transferred upon decision taken by the Council, to the Court of First Instance.

Procedure



Ephebus of Marathon (between 340 and 320 BC)

Procedure before the Court of Justice is based on that followed before national courts. Whatever the type of case, there is always a written stage and almost always an oral stage, which takes place in open court.

However, a distinction must be drawn between direct actions and requests for preliminary rulings.

Direct actions

Initiation of the proceedings

The action must be brought before the Court by a written application sent to the Registry.

As soon as it is received, the application is entered in the Court register. The Registrar publishes a notice of the action and of the applicant's claims in the *Official Journal of the European Communities*. A Judge-Rapporteur and an Advocate General, whose duty it is to follow closely the progress of the case, are then appointed. The application is also served on the other party, who has one month within which to lodge a defence. The applicant may submit a reply, and the defendant a rejoinder, the time allowed being one month in each case. The time-limits for lodging these documents must be strictly

adhered to unless an extension is specifically authorized by the President.

Preparatory inquiries and the Report for the Hearing

Once the written procedure is completed, it is decided, upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, whether any preparatory inquiry is necessary and whether the case should be dealt with by a Chamber or by the full Court. After the last pleading has been lodged, or on completion of the preparatory inquiry, if any, the President sets the date for the public hearing. In a Report for the Hearing, the Judge-Rapporteur summarizes the facts alleged and the arguments of the parties and the interveners, if any. That report is made public in the language of the case at the hearing.

The public hearing and the Opinion of the Advocate General

The case is then argued at a public hearing before the Judges and the Advocate General to whom the case has been assigned. They may put to the parties any questions they think fit.

Some weeks later, again in open court, the Advocate General delivers his Opin-

Flowchart of procedure before the Court of Justice

Written procedure

Direct actions and appeals

Written application

Service of the application on the defendant

Publication of the application in the Official Journal

Defence

Reply

Rejoinder

References for preliminary rulings

Order or judgment from the national court

Translation of the request for a preliminary ruling into all the Community languages and service on the parties, the Member States and the Community institutions

Publication of the request for a preliminary ruling in the Official Journal

Written observations of the parties, the Member States and the Community institutions

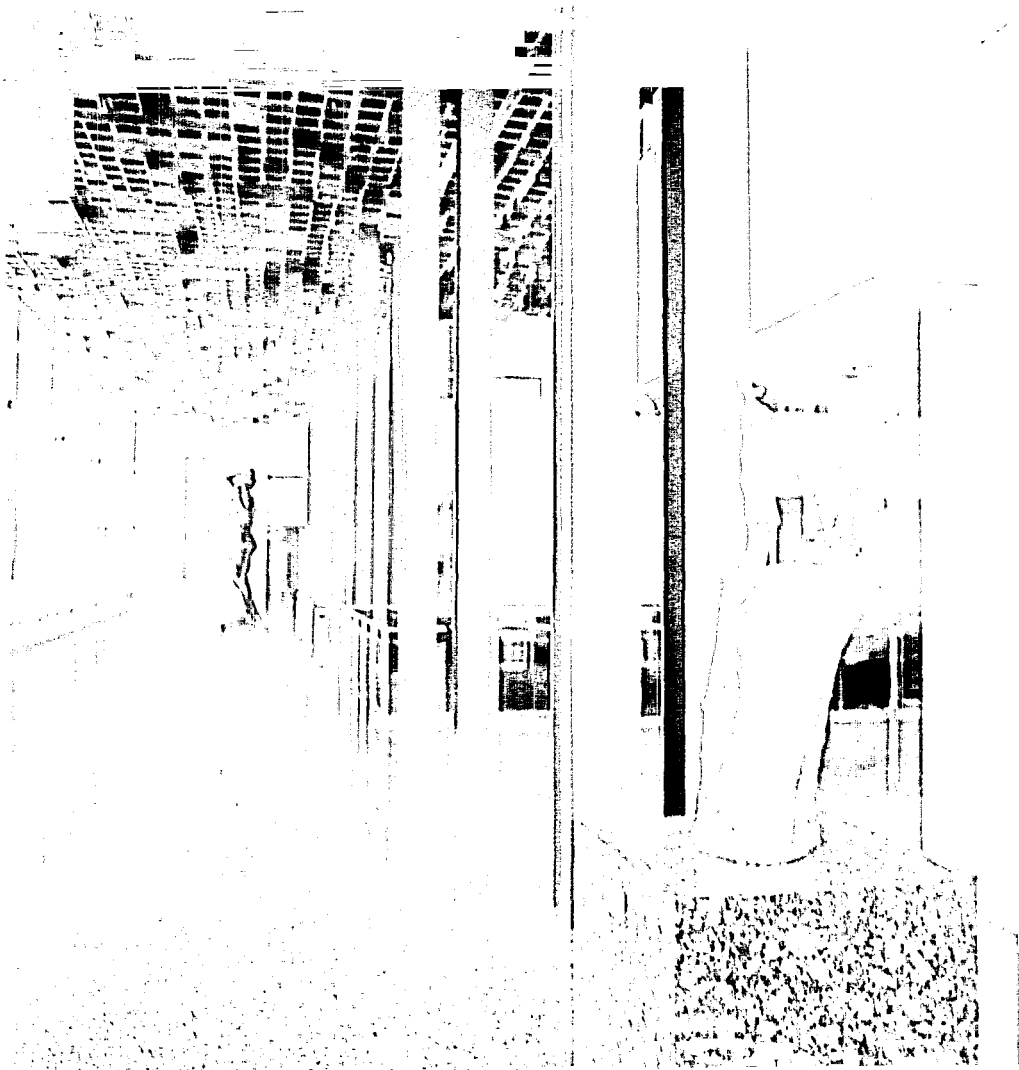
Oral Procedure

Hearing

Opinion of the Advocate General

Deliberation of the Court

Judgment



ion to the Court. He analyses the facts and above all the legal aspects of the case in detail, and proposes his solution to the problem. There the oral procedure ends.

Deliberation and judgment

Next, the Judges deliberate alone on the basis of a draft judgment drawn up by the Judge-Rapporteur. Each of the Judges may propose changes. When a final text has been agreed upon, judgment is given in open court.

Procedure in preliminary rulings

The national court submits questions concerning the interpretation or validity of a provision of Community law, generally in the form of a judicial decision in accordance with national procedural rules.

Court of Justice, main hall
Foreground
Bird nesting on flowering fingers
(Joan Miró)

The Registrar has that request translated into all the Community languages, then serves it not only on the parties to the original proceedings but also on the Member States, the Commission and, where appropriate, the Council. A notice is published in the Official Journal indicating the names of the parties involved and the tenor of the question.

The parties, the Member States and the Community institutions have two months within which to submit their written observations to the Court. The remainder of the procedure is identical to that followed in direct actions. All those entitled to submit written observations may present their arguments orally at the hearing. When the Advocate General has delivered his Opinion and once the Judges have deliberated, the judgment is read in open court and sent by the Registrar to the national court which sought the ruling.

Judgments

The judgments of the Court of Justice are reached by a majority vote. There are no dissenting opinions, and the judgments are signed by all the judges who took part in the deliberations and read in open court.

The judgments of the Court and Opinions of the Advocates General are published

in the *Reports of Cases before the Court of Justice and the Court of First Instance* in all the official languages of the Community.

The language of the case

The language of the case may be one of the 11 official languages of the Community, or Irish. In principle, the choice lies with the applicant. When the defendant is a Member State or a legal or natural person having the nationality of a Member State, the language of the case will be the official language of that Member State. If the State has more than one official language, the applicant chooses whichever suits him best.

Where a preliminary ruling has been requested, the language used is that of the national court which referred the question to the Court of Justice.

Legal aid

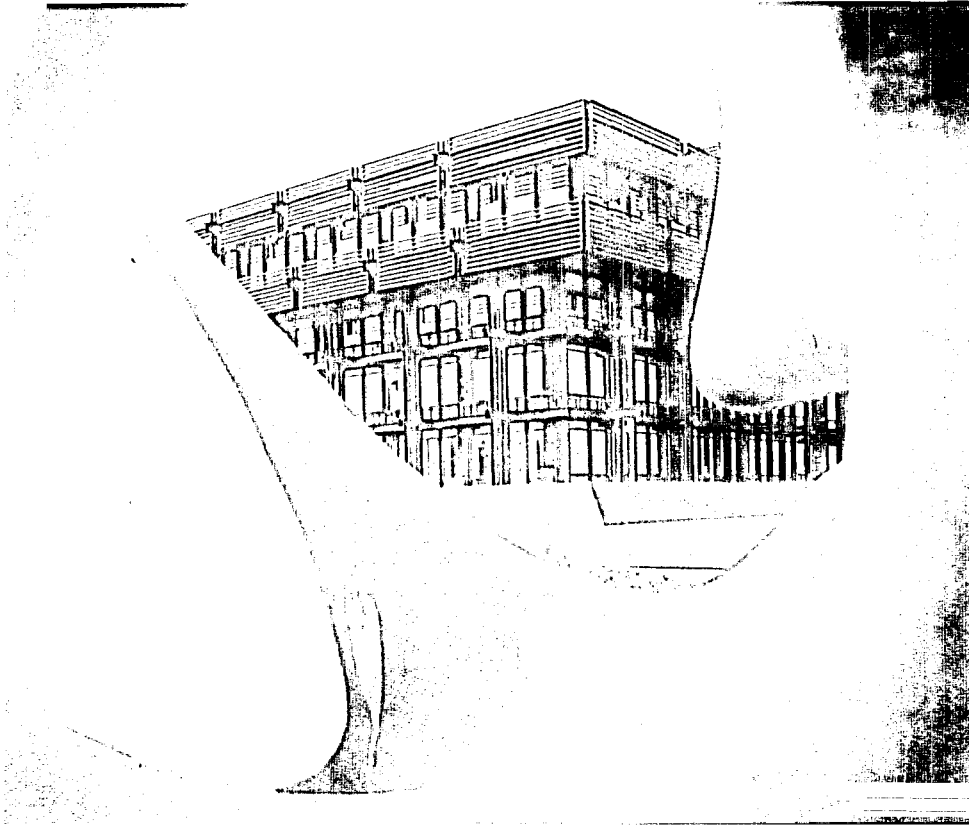
If a party is unable to meet all or part of the costs of the case, he may apply for legal aid. The application must include all supporting evidence. The Chamber to which the Judge-Rapporteur belongs decides whether or not to grant legal aid.

Court of Justice, main hall
Left, Bronze Age (August Rodin)
Background,
Synthetic Construction (Joost Baljeu)



Procedure before the Court of First Instance

Procedure before the Court of First Instance comprises two stages, written and oral, and is governed, essentially, by principles similar to those governing direct actions before the Court of Justice. However, the specific structure and jurisdiction of the Court, as a Court of First Instance, have made certain adaptations necessary, particularly with regard to preparatory inquiries.



Court of Justice building

The Court of Justice and European integration

The Court of Justice occupies a very important place in the system of institutions set up by the Treaties.

It is responsible for maintaining the balance, on the one hand, between the respective powers of the Community institutions and, on the other, between the powers transferred to the Community and those retained by the Member States.

In exercising its powers of judicial review, it is often called upon to settle questions of a constitutional nature and of major economic significance.

The Court's most important contribution in that regard has been in its decisions defining the two essential rules on which the European Community, as a community governed by the rule of law, is based:

- the direct effect of Community law in the Member States; and
- the primacy of Community law over national law.

Thanks to those decisions, of which the *van Gend en Loos*, *Costa v ENEL* and *Simmenthal* judgments (given in 1962,

1964 and 1978 respectively) are the most important, the citizens of Europe may now rely on the provisions of the Treaties and Community regulations and directives before their national courts, and may seek to have a national law disappplied if it is contrary to Community law.





On the basis of those principles, the decisions of the Court of Justice have made Community law a reality for the citizens of Europe.

The Court has often been asked to clarify Member States' obligations with regard to the free movement of goods and the establishment of a common market and to secure the removal of barriers protecting national markets and undertakings and, generally, of all hindrances to trade between Member States.

Thus, following the *Cassis de Dijon* judgment (1979), European consumers may buy in their own country any food product from a country in the Community — provided that it is lawfully produced and marketed in that country and that there are no serious grounds related, for example, to the protection of health or the environment for preventing its importation into the country of consumption.

Again in the course of the establishment of the common market, the decisions of the Court have also contributed to clarifying the nomenclature essential to identify the most diverse products, to enable them to be marketed and to apply the Common Customs Tariff uniformly.

In particular, the free movement of goods concerns not only professional traders but also consumers. In the *GB-INNO-BM* judgment (1990) the Court held that national legislation denying consumers ac-

cess to advertising lawfully available in the country of purchase was contrary to the principle of the free movement of goods.

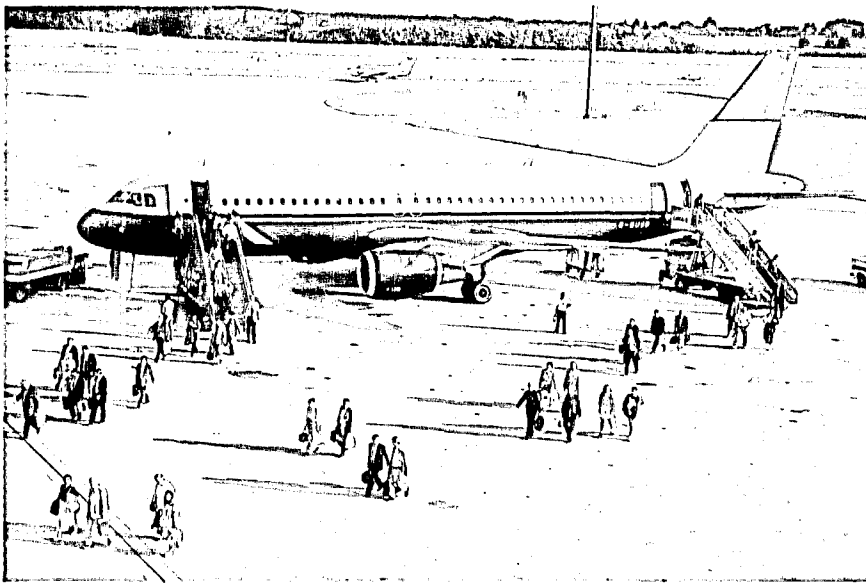
The Court has also had to give judgment on the general rules to be followed with regard to fair competition.

Following the judgment in the *Nouvelles Frontières* case (1986), in which the Court held that the rules governing competition contained in the Treaties applied to air transport, its decisions in this area have permitted the establishment of more favourable conditions for passengers as regards air fares.

Agriculture is undoubtedly the field in which Community integration has gone the furthest.

The Court's decisions in this spearhead sector of European integration have made it possible to endorse the fundamental principles of the common agricultural policy (unity of the market and Community preference) and ensure the proper operation of the various mechanisms set up to implement it.

The Court has also fostered integration on a human level, an essential factor not only in the establishment of the common market but also in an ever-closer union among the peoples of Europe. A European worker who decides to settle in



another Community country, and who may thus suffer direct or indirect discrimination, now enjoys the same rights and benefits as regards conditions of work and employment as those given to national workers.

In that connection, the Court has held that a social benefit guaranteeing minimum means of subsistence or a special old-age allowance guaranteeing a minimum income for old people are social advantages to which migrant workers are entitled under the same conditions as national workers.

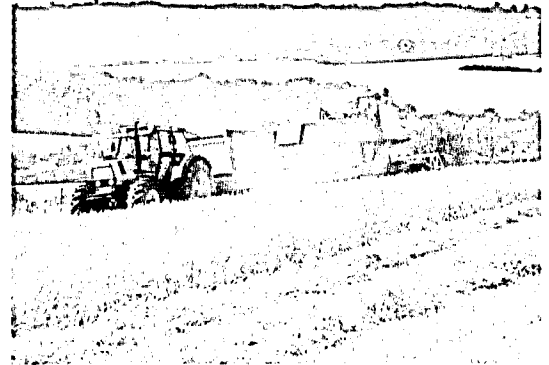
The Court has also defined in a number of judgments the extent of the right of the spouse and children of a migrant worker to settle with him, and has stressed that children must not only be admitted to courses of general education and occupational training, but are also entitled to the same assistance as the children of citizens of the State of residence, such as interest-free loans, scholarships, assistance for the rehabilitation of the handicapped, etc.

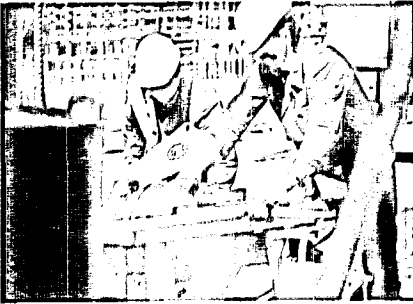
Another problem examined by the Court in the context of numerous requests for

preliminary rulings has been equal pay for men and women.

Since the Treaty of Rome contains a specific provision dealing with that question, in the *Defrenne* case (1971) the Court held that no Community or national measure was needed for the direct application of that provision in the Treaty, and that it was the duty of the national courts to ensure that all European citizens enjoyed the benefit of that principle.

The Court has also had to settle important issues in the fields of freedom to provide services and freedom of establishment.





Under the Treaty of Rome, all restrictions in those fields should have been abolished by the end of the 1960s, but the necessary steps had not always been taken within the prescribed period. In its judgments in the *van Binsbergen* and *Reyners* cases (1974), the Court swept away obstacles to the enjoyment of those freedoms by holding that the provisions of the Treaty had direct effect and could thus be relied upon in the national courts.

The Court of Justice has also had occasion to stress the importance of environmental protection, which it has held to be one of the essential objectives of the Community and, as such, capable of constituting grounds for certain restrictions on the principle of the free movement of goods. For example, the Court has accepted (1988) that it is lawful for Denmark to impose on distributors of beers and soft drinks an obligation to set up a deposit-and-return system for empty containers.

Finally, the role of protector of personal rights adopted by the Court of Justice within the essentially technical and economic framework of Community law must be emphasized.

Ever since its judgments in the *Stauder* and *Internationale Handelsgesellschaft* cases (1969 and 1970 respectively), it has been one of the Court's constant concerns to protect the fundamental rights of



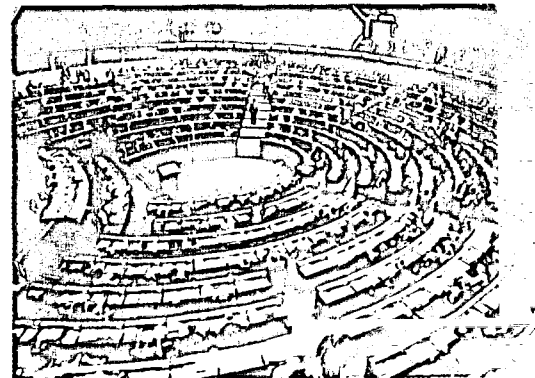
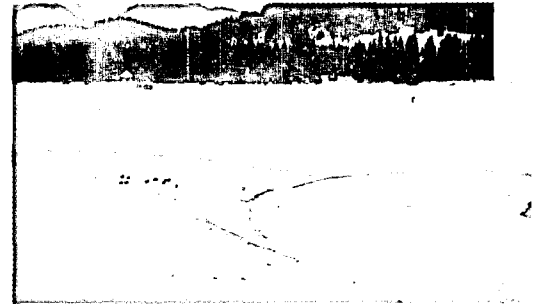
individuals without overstepping the limits of Community law.

In its judgment in the *Francovich* case (1991), the Court of Justice laid down the principle of the liability of the State for damage caused to individuals by infringements of Community law, as well as the obligation to compensate them.

The Court of Justice has ensured that Community law has remained adapted to changing circumstances.

In its judgment in the *ERTA* case (1971), for instance, the Court held that Member States were no longer entitled to enter into obligations with *non-member* countries affecting common rules, thus establishing the extremely important principle that the Community's powers in the field of external relations are evolutive.

When the European Parliament acquired new powers, the Court recognized that, before the Maastricht Treaty made express provision for it, certain acts of the Parliament could be challenged before the Court and, conversely, the Parliament could challenge acts of the other institutions if they encroached on its own prerogatives.



The future

The Europe of the Communities, born more than four decades ago, is now poised to enter into its period of maturity. Having become a frontier-free area in 1993, it is now moving towards political union following the adoption of the Maastricht Treaty. Having welcomed the accession of Austria, Finland and Sweden in 1995, it is preparing to strengthen its bonds with new partners from Central and Eastern Europe.

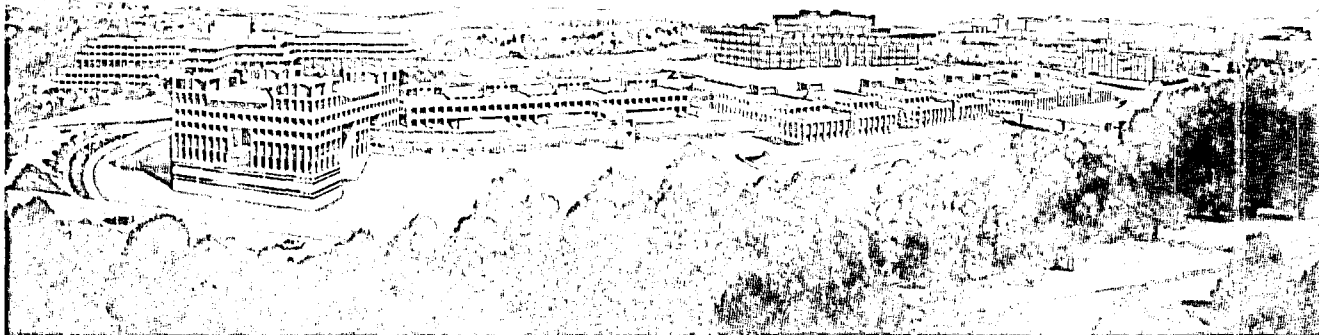
What, then, is the shape of things to come for the Community's judicial body?

An increase in workload is to be expected, but so too is ever greater influence for the case-law which has built up over the four decades.

Whatever the future holds in store, the Court of Justice will continue to ensure that the law is observed in the interpretation and application of the Treaties, and its judgments will thus be respected by all who strive for a Europe of strength and solidarity in peace and unity.

General view of the seat of the Court of Justice

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Design: EUR-OP

Luxembourg: Office for Official Publications of the European Communities, 1995

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Printed in Luxembourg



OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg