Synopsis of the work of the Court of Justice of the European Communities in 1984 and 1985 and record of formal sittings in 1984 and 1985

Luxembourg 1986

Pages 6, 8, 14, 24, 104, 108, 116, 140, 142, 149, 152, 154, 162, 164, and 175 are blank and have been removed from the publication.

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This publication is also available in:

DA ISBN 92-829-0138-6
DE ISBN 92-829-0139-4
GR ISBN 92-829-0140-8
FR ISBN 92-829-0142-4
IT ISBN 92-829-0143-2
NL ISBN 92-829-0144-0

ISBN 92-829-0141-6

Catalogue number: DX-46-86-751-EN-C

Printed in the United Kingdom

Foreword

This synopsis of the work of the Court of Justice of the European Communities is intended for judges, lawyers and practitioners generally as well as teachers and students of Community law.

It is issued for information only, and obviously must not be cited as an official publication of the Court, whose judgments are published officially only in the *Reports of Cases before the Court* (ECR).

The synopsis is published in the official languages of the Communities (Danish, Dutch, English, French, German, Greek, Italian). It is obtainable free of charge on request (specifying the language required) from the Information Offices of the European Communities whose addresses are listed on page 102.

Contents

I – Proceedings of the Court of Justice of the European Communities

1. Case-law of the Court in 1984 and 1985

A — *Statistical information*

Judgments delivered

During 1985 the Court of Justice of the European Communities delivered 211 judgments and interlocutory orders (165 in 1984);

1984	*1985*	
57	63	were in direct actions (excluding actions brought by officials of the Communities);
77	109	were in cases referred to the Court for preliminary rulings by the national courts of the Member States;
30	38	were in cases concerning Community staff law;
1	1	concerned the revision of a judgment.
111	138	of the judgments were delivered by Chambers, of which:
53	83	were in cases referred to the Court for a preliminary ruling and assigned to the Chambers pursuant to Article 95(1) of the Rules of Procedure;
28	17	were in direct actions assigned to the Chambers pursuant to Article 95(1) and (2) of the Rules of Procedure;
29	37	were in Community staff cases;
1	1	concerned the revision of a judgment.

The Court made two orders relating to the adoption of interim measures.

The President of the Court, or the Presidents of Chambers, made 14 orders relating to the adoption of interim measures in 1984 and 17 in 1985.

Public sittings

In 1984 the Court held 119 public sittings. The Chambers held 234 public sittings.

In 1985 the Court held 159 public sittings. The Chambers held 240 public sittings.

Cases pending

Cases pending are divided up as follows:

	31 December 1984	31 December 1985
Full Court	282	376
Chambers		
Actions by officials of the Communities	699[1]	331[2]
Other actions	91	103
Total number before the Chambers	790[1]	434[2]
Total number of current cases	1 072[1]	810[2]

[1] Including 617 cases belonging to three large groups of related cases.
[2] Including 237 cases belonging to two large groups of related cases.

Length of proceedings

Proceedings lasted for the following periods:

In cases brought directly before the Court the average length was approximately 17 months for 1984 and 20 months for 1985 (the shortest being 6 months and 11 months respectively). In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length in 1984 and 1985 was some 14 months (including judicial vacations).

Cases brought in 1984 and 1985

In 1984 312 cases and in 1985 433 cases were brought before the Court of Justice. They concerned:

1. Actions by the Commission for a failure to fulfil an obligation brought against:

	1984	*1985*
Belgium	5	23
Denmark	1	2
Carried forward	6	25

	1984	1985
Brought forward	6	25
Federal Republic of Germany	7	9
Greece	4	10
France	15	14
Ireland	4	9
Italy	11	31
Luxembourg	3	6
Netherlands	2	5
United Kingdom	4	5
	= 56	= 114
2. Actions brought by the Member States against the Commission:		
Belgium	2	1
Denmark	–	3
Federal Republic of Germany	2	2
France	–	5
Ireland	1	2
Italy	2	5
Netherlands	–	4
United Kingdom	1	5
	= 8	= 27
3. Actions brought by a Member State against the European Parliament:		
France	–	1
4. Actions brought by natural or legal persons against:		
Commission	60	71
Council	5	11
Commission and Council	10	3
European Parliament	1	1
	= 76	= 86
5. Actions brought by the Commission against a natural or legal person	–	1
Carried forward	140	229

		1984		1985	
	Brought forward	140		229	
6.	Actions brought by officials of the Communities	43		65	
7.	References made to the Court of Justice by national courts for preliminary rulings on the interpretation or validity of provisions of Community law. Such references originated as follows:				
	Belgium . . . . . 13 2 in 1985 from the Court of Cassation 13 in 1984 and 11 in 1985 from courts of first instance or of appeal.	13		13	
	Denmark . . . . . 2 2 in 1984 from courts of first instance or of appeal	2		–	
	Federal Republic of Germany . . . . . 38 3 in 1984 and 1 in 1985 from the Bundesgerichtshof 1 in 1984 from the Bundesarbeitsgericht 1 in 1984 and 2 in 1985 from the Bundesverwaltungsgericht 5 in 1984 and 8 in 1985 from the Bundesfinanzhof 1 in 1984 and 3 in 1985 from the Bundes-sozialgericht 27 in 1984 and 26 in 1985 from courts of first instance or of appeal	38		40	
	France . . . . . 34 1 in 1984 and 6 in 1985 from the Cour de Cassation 33 in 1984 and 39 in 1985 from courts of first instance or of appeal	34		45	
	Ireland . . . . . 1 1 in 1985 from the Ard-Chuirt 1 in 1984 and 1 in 1985 from a court of appeal	1		2	
	Carried forward	88	183	100	294

		1984		1985	
	Brought forward	88	183	100	294
	Italy . . . . . 3 in 1984 from the Corte Suprema di Cassazione 7 in 1984 and 11 in 1985 from courts of first instance or of appeal	10		11	
	Luxembourg . . . . . 4 from the Conseil d'Etat 2 from courts of first instance or of appeal	–		6	
	Netherlands . . . . . 2 in 1984 and 1 in 1985 from the Raad van State 5 in 1984 and 2 in 1985 from the Hoge Raad 1 in 1984 and 1 in 1985 from the Centrale Raad van Beroep 5 in 1984 and 4 in 1985 from the College van Beroep voor het Bedrijfsleven 1 in 1984 from the Tariefcommissie 8 in 1984 and 6 in 1985 from courts of first instance or of appeal	22		14	
	United Kingdom . . . . . 2 in 1985 from the House of Lords 9 in 1984 and 6 in 1985 from courts of first instance or of appeal	9		8	
		=	129	=	139
8.	Applications for the adoption of interim measures .	17		22	
9.	Taxation of costs	1		5	
10.	Legal aid	5		4	
11.	Third party proceedings	–		1	
12.	Revisions	–		3	
		=	23	=	35
	Total		335		468

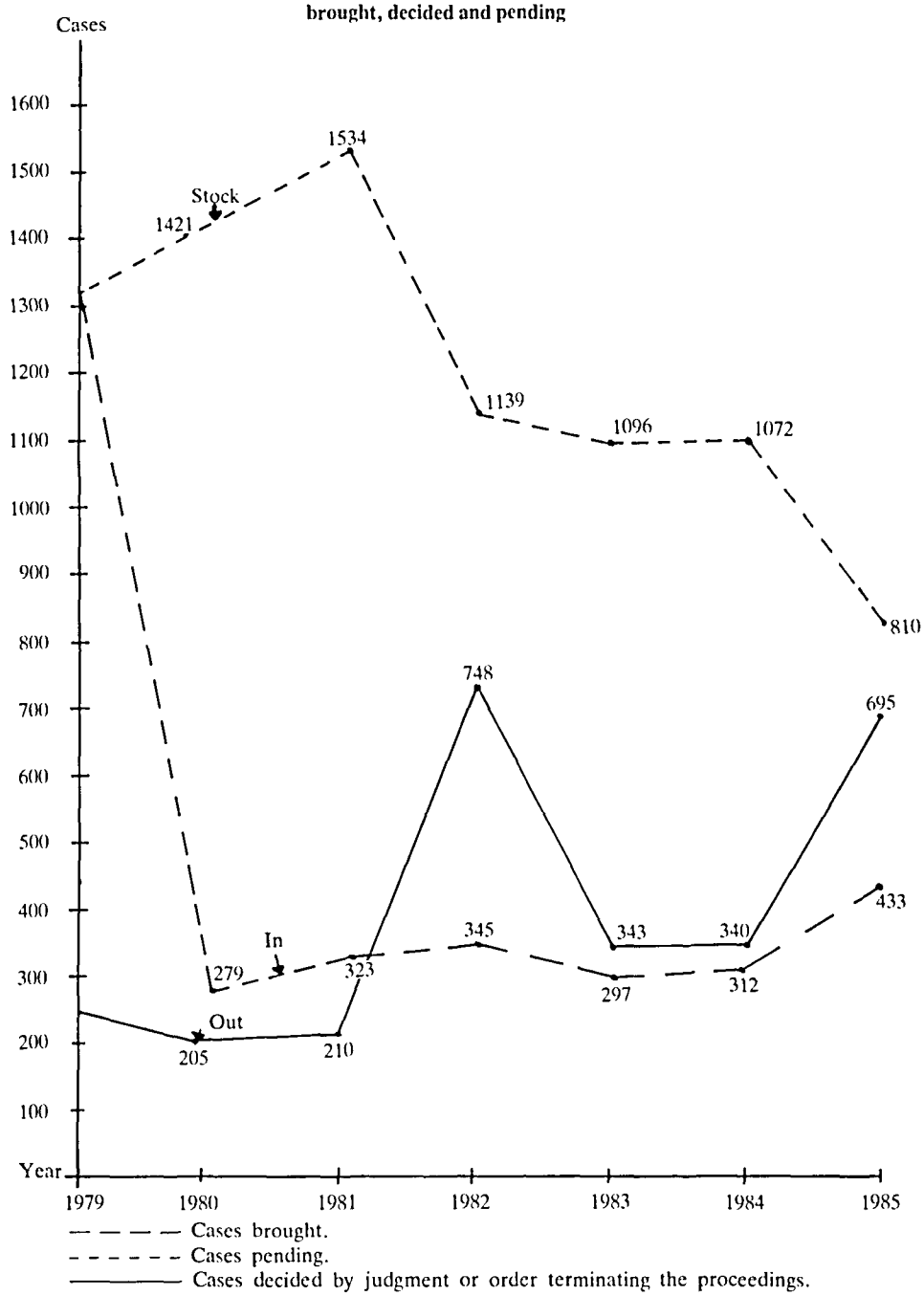
Lawyers

During the sittings held in 1984 and 1985 apart from the representatives or agents of the Council, the European Parliament, the Commission and the Member States the Court heard:

	1984	*1985*
lawyers from Belgium,	79	86
lawyers from Denmark,	5	8
lawyers from the Federal Republic of Germany,	42	44
lawyers from France,	20	38
lawyers from Greece,	7	2
lawyers from Ireland,	1	5
lawyers from Italy,	19	23
lawyers from Luxembourg,	26	12
lawyers from the Netherlands,	34	30
lawyers from the United Kingdom.	16	50

Graph No 1

General trend in the number of cases brought, decided and pending



— — — — Cases brought.

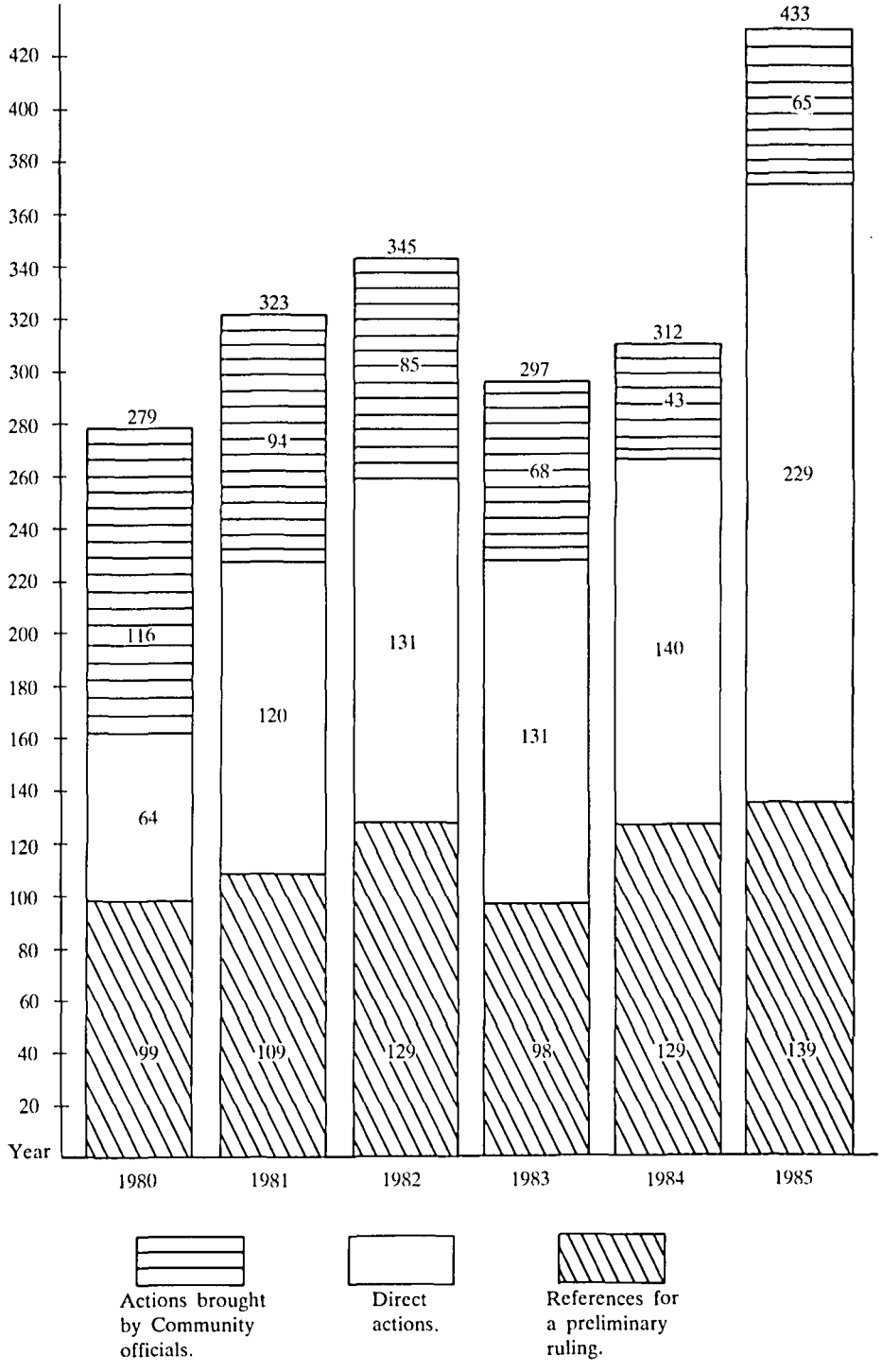
- - - - - - Cases pending.

——— Cases decided by judgment or order terminating the proceedings.

In 1980/81, 112 cases pending belonged to 10 groups of related cases.
In 1982, 691 cases pending belonged to 8 groups of related cases.
In 1983/84, 617 cases pending belonged to 3 groups of related cases.
In 1985, 237 cases pending belonged to 2 groups of related cases.

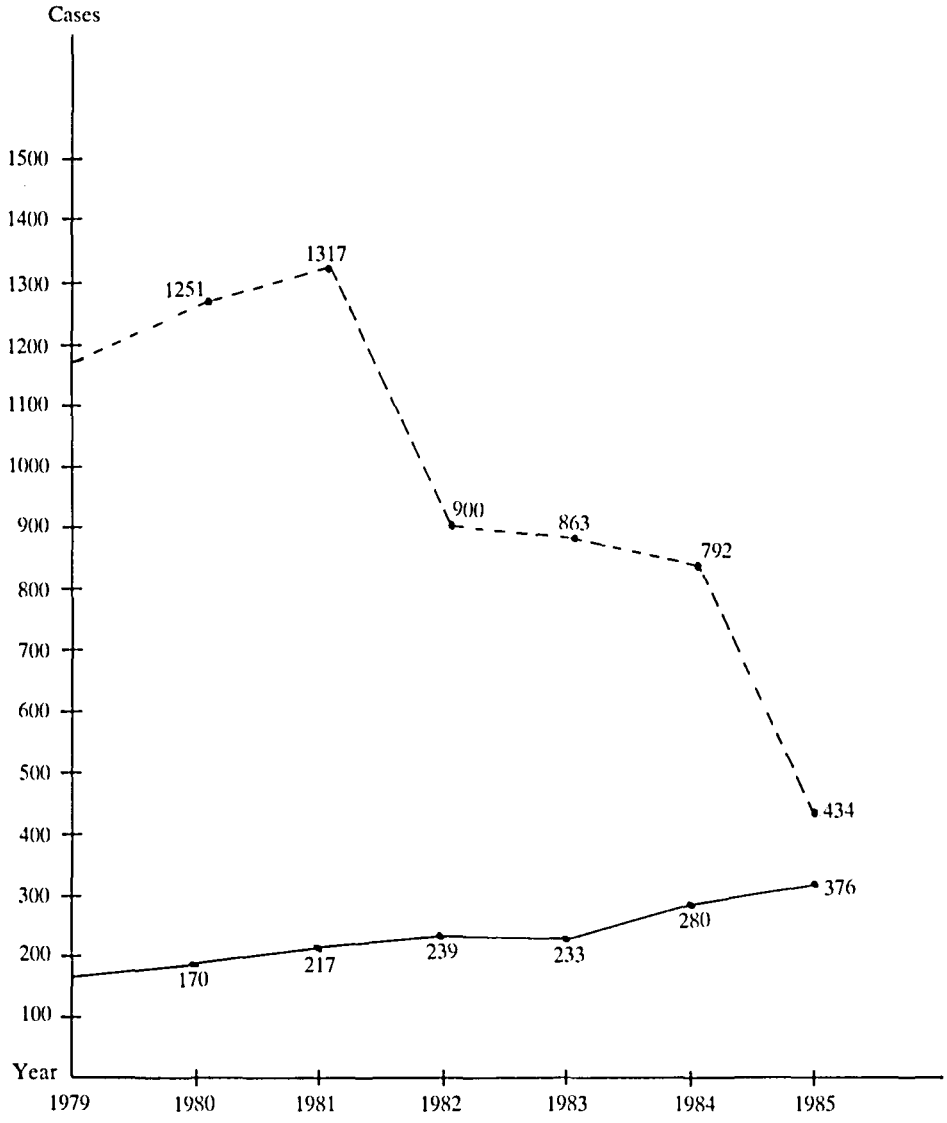
Graph No 2

Trend in the number of cases brought



Graph No 3

General trend in the number of cases pending before the Court and the Chambers



——— Cases pending before the Court.

– – – – – – – Cases pending before the Chambers.

Graph No 4

Trend in the number of judgments given by the Court and the Chambers

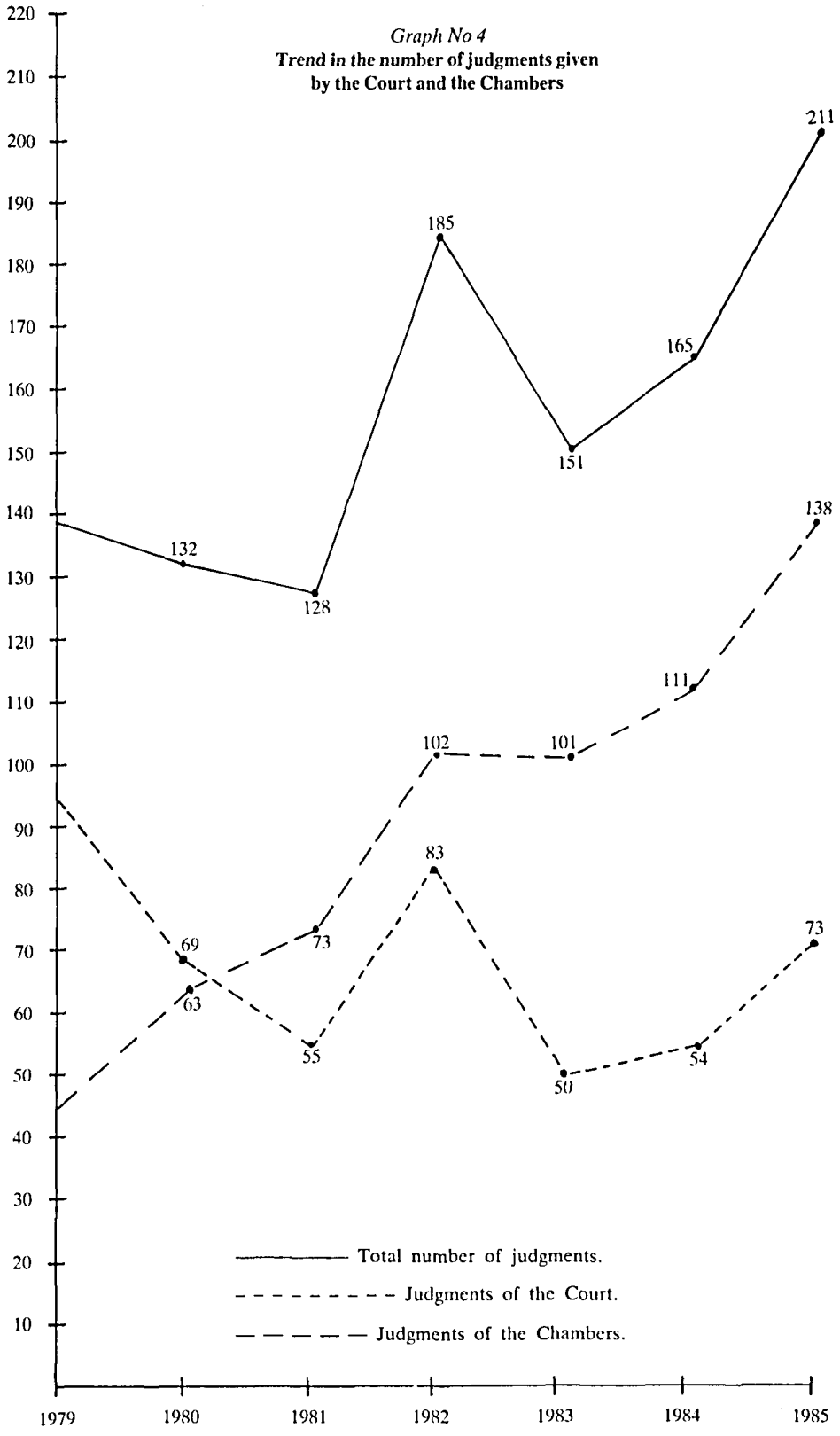


TABLE 1 – 1984

Cases brought since 1953 analysed by subject-matter[1]

Situation at 31 December 1984

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EEC and EAEC Treaties in 1958)

	Direct actions											
	ECSC				EEC							EAEC
Type of case	Scrap equalization	Transport	Competition	Other[2]	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers	Agricultural policy	Other	
Cases brought	167	35	27	205	115	25	40	177	9	221	312	10
	–	–	–	(34)	(26)	(9)	(8)	(6)	–	(18)	(34)	(5)
Cases removed from the Register	25	6	10	63	32	6	5	14	4	28	82	1
	–	–	–	(18)	(8)	(3)	(1)	–	–	(1)	(10)	–
Cases determined by judgment or order	142	29	17	106	51	5	25	145	4	155	166	3
	–	–	–	(23)	(8)	(1)	(4)	(7)	–	(11)	(19)	–
Cases pending	–	–	–	36	32	14	10	18	1	38	64	6

Note: The figures in brackets under the heading 'Cases brought' represent the cases brought during the year.
The figures in brackets under the other headings represent the cases dealt with by the Court during the year.

[1] Cases concerning several subjects are classified under the most important heading.
[2] Levies, investment declarations, tax charges, miners' bonuses.
[3] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels Convention').

					References for preliminary rulings						
Cases concerning Community staff law	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers	Agricultural policy	Transport	Convention, Article 220[1]	Privileges and immunities	Other	Total
2 090 (43)	314 (41)	33 (2)	62 (7)	57 (5)	244 (18)	383 (24)	28 (7)	50 (7)	8 –	126 (18)	4 738 (312)
741 (73)	13 (2)	1 –	2 –	4 –	14 –	20 –	3 –	2 –	1 –	6 (2)	1 083 (118)
649 (62)	255 (23)	29 (2)	52 (3)	46 (1)	208 (12)	334 (19)	18 (2)	41 (5)	7 –	96 (16)	2 583 (218)
700	46	3	8	7	22	29	7	7	–	24	1 072

TABLE 2 – 1984

Cases brought since 1958 analysed by type (EEC Treaty)[1]

Situation at 31 December 1984

(The Court of Justice took up its duties under the EEC Treaty in 1958)

Type of case	Proceedings brought under														
	Arts 169 and 93	Art. 170	Art. 171	Article 173				Art. 175	Article 177			Art. 181	Art. 215	Protocols conventions Art. 220	Grand total[2]
				By governments	Community institutions	By individuals	Total		Validity	Interpretation	Total				
Cases brought	304	2	5	54	8	311	373	30	184	1 064	1 248	7	203	50	2 222
Cases not resulting in a judgment	90	1	1	8	3	39	50	4	4	60	64	–	29	2	241
Cases decided	140	1	1	34	5	231	270	23	161	879	1 040	1	133	41	1 650
In favour of applicant[3]	127	1	1	9	2	64	75	2	–	–	–	1	12	–	219
Dismissed on the substance[4]	13	–	–	24	3	113	140	3	–	–	–	–	106	–	262
Dismissed as inadmissible	–	–	–	1	–	54	55	18	–	–	–	–	15	–	88
Cases pending	74	–	3	12	–	41	53	3	19	125	144	6	41	7	331

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).

[2] Totals may be smaller than the sum of individual items because some cases are based on more than one Treaty article.

[3] In respect of at least one of the applicant's main claims.

[4] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 3 – 1984

Cases brought since 1953 under the ECSC Treaty[1] and since 1958 under the EAEC Treaty[1]

Situation at 31 December 1984

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EAEC Treaty in 1958)

Type of case	Number of proceedings instituted									Total	
	By governments		By Community institutions		By individuals (undertakings)		Art. 41 ECSC	Art. 150 EAEC	Art. 153 EAEC		
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation		ECSC	EAEC
Cases brought	24	–	–	1	409	7	4	3	2	437	13
Cases not resulting in a judgment	9	–	–	–	95	–	–	–	1	104	1
Cases decided	14	–	–	1	279	1	2	3	1	295	6
In favour of applicants[2]	6	–	–	1	56	1	–	–	–	62	2
Dismissed on the substance[3]	8	–	–	–	166	–	–	–	1	174	1
Dismissed as inadmissible	–	–	–	–	57	–	–	–	–	57	–
Cases pending	1	–	–	–	35	6	2	–	–	38	6

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).

[2] In respect of at least one of the applicant's main claims.

[3] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a) – 1984

Cases dealt with by the full Court and the Chambers analysed according to the type of proceedings

Nature of proceedings	Cases brought in 1984	Cases dealt with in 1984			Judgments and interlocutory judgments	Opinions	Orders	Cases pending	
		(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	121	81	77	4	72	–	–	105	145
Art. 169 EEC Treaty	54	34	18	16	18	–	–	53	73
Art. 171 EEC Treaty	2	–	–	–	–	–	–	1	3
Art. 173 EEC Treaty	29	23	18	5	9	–	5	45	51
Arts 173 & 175 EEC Treaty	1	1	1	–	1	–	–	1	1
Arts 173 & 215 EEC Treaty	–	5	3	2	2	–	–	7	2
Art. 175 EEC Treaty	3	2	2	–	–	–	1	1	2
Arts 175 & 215 EEC Treaty	–	2	2	–	2	–	–	2	–
Art. 181 EEC Treaty	2	–	–	–	–	–	–	4	6
Arts 178 & 215 EEC Treaty	10	6	6	–	6	–	–	35	39
Protocol and Convention on Jurisdiction	7	5	5	–	4	–	1	5	7
Art. 33 ECSC Treaty	34	40	22	18	18	–	1	42	36
Art. 38 ECSC Treaty	–	1	1	–	1	–	–	1	–
Art. 41 ECSC Treaty	1	1	1	–	1	–	–	1	1
Arts 146 & 188 EAEC Treaty	5	–	–	–	–	–	–	1	6
Interim measures	17	16	16	–	–	–	16	–	1
Taxation of costs	1	2	2	–	–	–	2	1	–
Revisions	–	2	2	–	1	–	–	2	–
Legal aid	5	5	5	–	–	–	5	1	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	43	135	62	73	30	–	1	792	700
Total	335	361	243	118	165	–	32	1 100	1 074

TABLE 4(b) – 1984

Cases dealt with by the full Court analysed according to the type of proceedings

Nature of proceedings	Cases brought before the full Court in 1984	Cases brought before a Chamber and referred to the full Court in 1984	Cases dealt with in 1984			Judgments and inter-locutory judgments	Opinions	Orders	Cases assigned to a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register					31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	121	–	27	23	4	22	–	–	68	73	99
Art. 169 EEC Treaty	54	–	34	18	16	18	–	–	–	53	73
Art. 171 EEC Treaty	2	–	–	–	–	–	–	–	–	1	3
Art. 173 EEC Treaty	29	–	18	13	5	6	–	5	13	40	38
Arts 173 & 175 EEC Treaty	1	–	1	1	–	1	–	–	1	–	•1
Arts 173 & 215 EEC Treaty	–	–	2	2	–	1	–	–	2	4	–
Art. 175 EEC Treaty	3	–	2	2	–	–	–	1	–	1	2
Arts 175 and 215 EEC Treaty	–	–	–	–	–	–	–	–	1	1	–
Art. 181 EEC Treaty	2	–	–	–	–	–	–	–	1	1	2
Arts 178 & 215 EEC Treaty	10	–	1	1	–	1	–	–	3	25	31
Protocol and Convention on Jurisdiction	7	–	2	2	–	1	–	1	7	4	2
Art. 33 ECSC Treaty	34	–	15	5	10	1	–	1	19	24	24
Art. 38 ECSC Treaty	–	–	1	1	–	1	–	–	–	1	–
Art. 41 ECSC Treaty	1	–	1	1	–	1	–	–	1	1	–
Arts 146 & 188 EAEC Treaty	5	–	–	–	–	–	–	–	–	1	6
Interim measures	11	–	11	–	–	–	–	11	–	–	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	–	1	2	2	–	–	–	–	–	2	1
Total	280	1	117	82	35	54	–	19	115	233	282

TABLE 4(c) – 1984

Cases dealt with by the First Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the First Chamber in 1984	Cases brought before the full Court or Chamber and assigned to the First Chamber in 1984	Cases dealt with in 1984			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	–	13	20	20	–	19	–	–	15	8
Art. 173 EEC Treaty	–	2	2	2	–	1	–	–	1	1
Art. 181 EEC Treaty	–	–	–	–	–	–	–	–	3	3
Arts 175 & 215 EEC Treaty	–	1	2	2	–	2	–	–	1	–
Arts 178 & 215 EEC Treaty	–	1	2	2	–	2	–	–	1	–
Protocol and Convention on Jurisdiction	–	1	–	–	–	–	–	–	–	1
Art. 33 ECSC Treaty	–	2	5	4	1	4	–	–	4	1
Interim measures	2	–	1	1	–	–	1	–	–	1
Legal aid	2	–	2	2	–	–	2	–	–	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	15	–	39	32	7	11	–	2	673	647
Total	19	20	73	65	8	39	3	2	698	662

TABLE 4(d) – 1984

Cases dealt with by the Second Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Second Chamber in 1984	Cases brought before the full Court or Chamber and assigned to the Second Chamber in 1984	Cases dealt with in 1984			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	–	13	6	6	–	6	–	–	5	12
Art. 173 EEC Treaty	–	1	–	–	–	–	–	–	1	2
Arts 178 & 215 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Protocol and Convention on Jurisdiction	–	1	1	1	–	1	–	–	–	–
Art. 33 ECSC Treaty	–	5	6	6	–	6	–	–	3	2
Interim measures	1	–	1	1	–	–	1	–	–	–
Legal aid	2	–	3	3	–	–	3	–	1	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	14	1	73	9	64	8	–	–	90	32
Total	17	21	91	27	64	22	4	–	101	48

TABLE 4(e) 1984

Cases dealt with by the Third Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Third Chamber in 1984	Cases brought before the full Court or Chamber and assigned to the Third Chamber in 1984	Cases dealt with in 1984			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	–	11	10	10	–	9	–	–	4	5
Art. 33 EEC Treaty	–	2	1	1	–	1	–	–	–	1
Art. 41 ECSC Treaty	–	1	–	–	–	–	–	–	–	1
Interim measures	3	–	3	3	–	–	3	–	–	–
Taxation of costs	1	–	2	–	–	–	2	–	1	–
Revisions	–	–	2	2	–	1	–	–	2	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	14	–	21	19	2	10	1	–	27	20
Total	18	14	39	37	2	21	6	–	34	27

TABLE 4(f) – 1984

Cases dealt with by the Fourth Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Fourth Chamber in 1984	Cases brought before the full Court or Chamber and assigned to the Fourth Chamber in 1984	Cases dealt with in 1984			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	–	18	9	9	–	8	–	–	4	13
Art. 173 EEC Treaty	–	1	2	2	–	1	–	–	2	1
Arts 173 & 215 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Arts 178 & 215 EEC Treaty	–	2	–	–	–	–	–	–	–	2
Protocol and Convention on Jurisdiction	–	4	2	2	–	2	–	–	1	3
Art. 33 ECSC Treaty	–	1	10	3	7	3	–	–	10	1
Legal aid	1	–	–	–	–	–	–	–	–	1
Total	–	27	23	16	7	14	–	–	17	22

TABLE 4(g) - 1984

Cases dealt with by the Fifth Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Fifth Chamber in 1984	Cases brought before the full Court or Chamber and assigned to the Fifth Chamber in 1984	Cases dealt with in 1984			Judgments and inter-locutory judgments	Orders	Cases referred to the Court or a Chamber in 1984	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1983	31 Dec. 1984
Art. 177 EEC Treaty	–	13	9	9	–	8	–	–	4	8
Art. 173 EEC Treaty	–	9	1	1	–	1	–	–	1	9
Arts 173 & 215 EEC Treaty	–	1	3	1	2	1	–	–	3	1
Art. 181 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Arts 178 & 215 EEC Treaty	–	–	2	2	–	2	–	–	8	6
Protocol and Convention on Jurisdiction	–	1	–	–	–	–	–	–	–	1
Art. 33 ECSC Treaty	–	9	3	3	–	3	–	–	1	7
Total	–	34	18	16	2	15	–	–	17	33

TABLE 1 – 1985

Cases brought since 1953 analysed by subject-matter[1]

Situation at 31 December 1985

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EEC and EAEC Treaties in 1958)

	Direct actions											
	ECSC				EEC							EAEC
Type of case	Scrap equalization	Transport	Competition	Other[2]	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and free movement of workers	Agricultural policy	Other	
Cases brought	167	35	27	239	134	35	52	195	11	250	416	11
	–	–	–	(34)	(19)	(10)	(12)	(18)	(2)	(29)	(104)	(1)
Cases removed from the Register	25	6	10	83	43	11	8	15	4	31	89	1
	–	–	–	(20)	(11)	(5)	(3)	(1)	–	(3)	(8)	–
Cases determined by judgment or order	142	29	17	122	65	6	30	157	5	176	187	3
	–	–	–	(16)	(13)	(1)	(5)	(12)	(1)	(21)	(21)	–
Cases pending	–	–	–	34	26	18	14	23	2	43	140	7

Note: The figures in brackets under the heading 'Cases brought' represent the cases brought during the year.
The figures in brackets under the other headings represent the cases dealt with by the Court during the year.

[1] Cases concerning several subjects are classified under the most important heading.
[2] Levies, investment declarations, tax charges, miners' bonuses.
[3] Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the 'Brussels Convention').

References for preliminary rulings

Cases concerning Community staff law	Free movement of goods and customs union	Right of establishment, freedom to supply services	Tax cases	Competition	Social security and freedom of movement of workers	Agricultural policy	Transport	Convention, Article 220[1]	Privileges and immunities	Other	Total
2 155	341	40	88	61	265	410	29	55	9	146	5 171
(65)	(27)	(7)	(26)	(4)	(21)	(27)	(1)	(6)	(1)	(20)	(433)
1 120	18	1	2	5	16	20	4	3	1	7	1 523
(379)	(5)	–	–	(1)	(2)	–	(1)	(1)	–	(1)	(441)
698	294	32	58	53	220	359	20	48	7	110	2 838
(49)	(39)	(3)	(6)	(7)	(12)	(25)	(2)	(7)	–	(14)	(254)
337	29	7	28	3	29	31	5	4	1	29	810

TABLE 2 – 1985

Cases brought since 1958 analysed by type (EEC Treaty)[1]

Situation at 31 December 1985

(The Court of Justice took up its duties under the EEC Treaty in 1958)

Type of case	Proceedings brought under														
				Article 173				Art. 175	Article 177			Art. 181	Art. 215	Protocols conventions Art. 220	Grand total[2]
	Arts 169 and 93	Art. 170	Art. 171	By governments	By Community institutions	By individuals	Total		Validity	Interpretation	Total				
Cases brought	411	2	13	81	8	361	450	30	202	1 180	1 382	9	206	55	2 558
Cases not resulting in a judgment	113	1	3	9	3	42	54	5	5	69	74	3	29	3	285
Cases decided	165	1	3	39	5	253	297	24	175	971	1 146	3	152	48	1 839
In favour of applicant[3]	149	1	3	13	2	70	85	3	–	–	–	3	12	–	256
Dismissed on the substance[4]	15	–	–	25	3	125	153	3	–	–	–	–	124	–	295
Dismissed as inadmissible	1	–	–	1	–	58	59	18	–	–	–	–	16	–	94
Cases pending	133	–	7	33	–	66	99	1	22	140	162	3	25	4	434

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).

[2] Totals may be smaller than the sum of individual items because some cases are based on more than one Treaty article.

[3] In respect of at least one of the applicant's main claims.

[4] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 3 – 1985

Cases brought since 1953 under the ECSC Treaty[1] and since 1958 under the EAEC Treaty[1]

Situation at 31 December 1985

(The Court of Justice took up its duties under the ECSC Treaty in 1953 and under the EAEC Treaty in 1958)

Type of case	Number of proceedings instituted									Total	
	By governments		By Community institutions		By individuals (undertakings)		Art. 41 ECSC	Art. 150 EAEC	Art. 153 EAEC		
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation		ECSC	EAEC
Cases brought	25	–	–	1	442	8	4	3	2	471	14
Cases not resulting in a judgment	9	–	–	–	115	–	–	–	1	124	1
Cases decided	15	–	–	1	294	1	4	3	1	313	6
In favour of applicants[2]	6	–	–	1	62	1	–	–	–	68	2
Dismissed on the substance[3]	9	–	–	–	174	–	–	–	1	183	1
Dismissed as inadmissible	–	–	–	–	58	–	–	–	–	58	–
Cases pending	1	–	–	–	33	7	–	–	–	34	7

[1] Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities and of the Staff Regulations (see Table 1).

[2] In respect of at least one of the applicant's main claims.

[3] This also covers proceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a) – 1985

Cases dealt with by the full Court and the Chambers analysed according to the type of proceedings

Nature of proceedings	Cases brought in 1985	Cases dealt with in 1985			Judgments and interlocutory judgments	Opinions	Orders	Cases pending	
		(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	134	116	106	10	100	–	–	144	162
Art. 169 EEC Treaty	107	47	25	22	25	–	–	73	133
Art. 171 EEC Treaty	7	3	2	1	2	–	–	3	7
Art. 173 EEC Treaty	75	29	25	4	15	–	1	51	97
Arts 173 & 175 EEC Treaty	–	–	–	–	–	–	–	1	1
Arts 173 & 215 EEC Treaty	1	2	2	–	2	–	–	2	1
Art. 175 EEC Treaty	–	2	1	1	1	–	–	2	–
Arts 175 & 215 EEC Treaty	–	–	–	–	–	–	–	–	–
Art. 181 EEC Treaty	2	5	2	3	2	–	–	6	3
Arts 178 & 215 EEC Treaty	2	17	17	–	5	–	–	39	24
Protocol and Convention on Jurisdiction	5	8	7	1	7	–	–	7	4
Art. 33 ECSC Treaty	29	36	16	20	11	–	–	36	29
Art. 35 ECSC Treaty	5	–	–	–	–	–	–	–	5
Art. 41 ECSC Treaty	–	2	2	–	2	–	–	2	–
Arts 146 & 188 EAEC Treaty	1	–	–	–	–	–	–	6	7
Interim measures	22	23	20	3	–	–	17	1	–
Taxation of costs	5	5	5	–	–	–	5	–	–
Third party proceedings	1	–	–	–	–	–	–	–	1
Revisions	3	2	2	–	1	–	1	–	1
Legal aid	4	4	4	–	–	–	4	1	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	65	428	49	379	38	–	2	700	337
Total	468	729	285	444	211	–	30	1 074	813

TABLE 4(b) – 1985

Cases dealt with by the full Court analysed according to the type of proceedings

Nature of proceedings	Cases brought before the full Court in 1985	Cases brought before a Chamber and referred to the full Court in 1985	Cases dealt with in 1985			Judgments and inter-locutory judgments	Opinions	Orders	Cases assigned to a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register					31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	134	1	35	27	8	26	–	–	105	98	93
Art. 169 EEC Treaty	107	–	47	25	22	25	–	–	–	73	133
Art. 171 EEC Treaty	7	–	3	2	1	2	–	–	–	3	7
Art. 173 EEC Treaty	75	–	17	13	4	10	–	1	7	38	89
Arts 173 & 175 EEC Treaty	–	–	–	–	–	–	–	–	–	1	1
Arts 173 & 215 EEC Treaty	1	–	–	–	–	–	–	–	–	–	1
Art. 175 EEC Treaty	–	–	2	1	1	1	–	–	–	2	–
Arts 175 and 215 EEC Treaty	–	–	–	–	–	–	–	–	–	–	–
Art. 181 EEC Treaty	2	–	–	–	–	–	–	–	2	2	2
Arts 178 & 215 EEC Treaty	2	–	15	15	–	4	–	–	1	31	17
Protocol and Convention on Jurisdiction	5	–	1	–	1	–	–	–	3	2	3
Art. 33 ECSC Treaty	29	–	20	9	11	4	–	–	13	24	20
Art. 35 ECSC Treaty	5	–	–	–	–	–	–	–	1	–	4
Art. 41 ECSC Treaty	–	–	–	–	–	–	–	–	1	1	–
Arts 146 & 188 EAEC Treaty	1	–	–	–	–	–	–	–	7	6	–
Interim measures	17	–	17	15	2	–	–	12	–	–	–
Revisions	1	–	–	–	–	–	–	–	–	–	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	–	6	1	1	–	1	–	–	–	1	6
Total	386	7	158	108	50	73	–	13	140	282	377

TABLE 4(c) – 1985

Cases dealt with by the First Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the First Chamber in 1985	Cases brought before the full Court or Chamber and assigned to the First Chamber in 1985	Cases dealt with in 1985			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	–	36	13	13	–	11	–	–	8	31
Art. 173 EEC Treaty	–	1	1	1	–	1	–	–	1	1
Art. 181 EEC Treaty	–	1	4	1	3	1	–	–	3	–
Arts 175 & 215 EEC Treaty	–	–	–	–	–	–	–	–	–	–
Arts 178 & 215 EEC Treaty	–	–	–	–	–	–	–	–	–	–
Protocol and Convention on Jurisdiction	–	–	1	1	–	1	–	–	1	–
Art. 33 ECSC Treaty	–	5	1	1	–	–	–	–	1	5
Interim measures	2	–	3	2	1	–	2	–	1	–
Taxation of costs	1	–	1	1	–	–	1	–	–	–
Legal aid	1	–	–	–	–	–	–	–	–	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	24	1	394	20	374	14	1	–	647	278
Total	28	44	418	40	378	29	4	–	662	316

TABLE 4(d) 1985

Cases dealt with by the Second Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Second Chamber in 1985	Cases brought before the full Court or Chamber and assigned to the Second Chamber in 1985	Cases dealt with in 1985			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	–	13	18	17	1	17	–	–	12	7
Art. 173 EEC Treaty	–	–	2	2	–	1	–	–	2	–
Art. 181 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Protocol and Convention on Jurisdiction	–	1	1	1	–	1	–	–	–	–
Art. 33 ECSC Treaty	–	3	3	1	2	1	–	–	2	2
Interim measures	2	–	2	2	–	–	2	–	–	–
Taxations of costs	2	–	2	2	–	–	2	–	–	–
Legal aid	2	–	2	2	–	–	2	–	–	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	18	–	26	24	2	13	1	–	32	24
Total	24	18	56	51	5	33	7	–	48	34

TABLE 4(e) – 1985

Cases dealt with by the Third Chamber analysed according to the type of proceedings

Nature of proceedings	Cases brought before the Third Chamber in 1985	Cases brought before the full Court or Chamber and assigned to the Third Chamber in 1985	Cases dealt with in 1985			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	–	25	15	14	1	14	–	–	5	15
Art. 173 EEC Treaty	–	1	–	–	–	–	–	–	–	1
Art. 33 ECSC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 41 ECSC Treaty	–	1	2	2	–	2	–	–	1	–
Arts 146 & 188 EAEC Treaty	–	7	–	–	–	–	–	–	–	7
Interim measures	1	–	1	1	–	–	1	–	–	–
Taxation of costs	2	–	2	2	–	–	2	–	–	–
Revisions	1	–	1	1	–	–	1	–	–	–
Legal aid	1	–	1	1	–	–	1	–	–	–
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	23	–	7	4	3	10	–	7	20	29
Total	28	34	30	26	4	27	5	7	27	52

TABLE 4(f) – 1985

Cases dealt with by the Fourth Chamber analysed according to the type of proceedings[1]

Nature of proceedings	Cases brought before the Fourth Chamber in 1985	Cases brought before the full Court or Chamber and assigned to the Fourth Chamber in 1985	Cases dealt with in 1985			Judgments and inter-locutory judgments	Orders	Cases referred to the Court or a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	–	15	23	23	–	20	–	–	13	5
Art. 173 EEC Treaty	–	2	–	–	–	–	–	–	1	3
Arts 173 & 215 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Arts 178 & 215 EEC Treaty	–	–	2	2	–	1	–	–	2	–
Protocol and Convention on Jurisdiction	–	–	3	3	–	3	–	–	3	–
Art. 33 ECSC Treaty	–	2	1	1	–	1	–	–	1	2
Legal aid	–	–	1	1	–	–	1	–	1	–
Total	–	19	31	31	–	26	1	–	22	10

TABLE 4(g) – 1985

Cases dealt with by the Fifth Chamber analysed according to the type of proceedings[1]

Nature of proceedings	Cases brought before the Fifth Chamber in 1985	Cases brought before the full Court or Chamber and assigned to the Fifth Chamber in 1985	Cases dealt with in 1985			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1985	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the Register				31 Dec. 1984	31 Dec. 1985
Art. 177 EEC Treaty	–	16	12	12	–	12	–	1	8	11
Art. 173 EEC Treaty	–	3	9	9	–	3	–	–	9	3
Art. 173 EEC Treaty	–	3	9	9	–	3	–	–	9	3
Arts 173 & 215 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Art. 181 EEC Treaty	–	–	1	1	–	1	–	–	1	–
Arts 178 & 215 EEC Treaty	–	1	–	–	–	–	–	–	6	7
Protocol and Convention on Jurisdiction	–	2	2	2	–	2	–	–	1	1
Art. 33 ECSC Treaty	–	3	10	3	7	3	–	–	7	–
Art. 35 ECSC Treaty	–	1	–	–	–	–	–	–	–	1
Third party proceedings	1	–	–	–	–	–	–	–	–	1
Revisions	1	–	1	1	–	1	–	–	–	–
Total	2	26	36	29	7	23	–	1	33	24

TABLE 5

Judgments delivered by the Court and Chambers analysed by language of the case 1979–85

Judgments	Year	Danish	Dutch	English	French	German	Greek	Italian	Total
Full Court									
Direct actions	1979	–	4	7	7	10	–	9	37
	1980	1	1	7	8	2	–	11	30
	1981	–	1	3	2	3	–	11	20
	1982	1	4	6	18	7	–	9	45
	1983	1	4	5	9	7	–	10	36
	1984	–	2	4	6	5	1	11	29
	1985	1	3	8	11	8	3	12	46
References for a preliminary ruling	1979	2	11	4	12	21	–	8	58
	1980	1	7	5	11	10	–	6	40
	1981	1	11	6	4	7	–	7	36
	1982	1	10	4	12	9	–	2	38
	1983	–	2	1	2	3	–	6	14
	1984	1	5	4	1	12	–	1	24
	1985	2	6	2	10	4	–	2	26
Staff cases	1984	–	–	–	1	–	–	–	1
	1985	–	–	–	1	–	–	–	1
Chambers									
Direct actions	1980	–	–	–	1	1	–	2	4
	1981	–	–	–	1	–	–	–	1
	1982	–	–	3	5	4	1	2	15
	1983	–	1	2	5	7	1	1	17
	1984	–	4	–	10	3	–	11	28
	1985	–	4	2	5	3	–	4	18
References for a preliminary ruling	1979	–	8	–	6	10	–	1	25
	1980	–	3	3	9	14	–	6	35
	1981	1	7	2	7	11	–	1	29
	1982	–	7	1	14	30	–	4	56
	1983	1	10	3	11	15	–	4	44
	1984	–	14	2	12	21	–	4	53
	1985	2	14	2	26	28	–	11	83
Staff cases	1979	–	–	–	17	–	–	1	18
	1980	–	–	–	23	–	–	–	23
	1981	–	2	4	28	4	–	4	42
	1982	–	–	2	21	5	–	3	31
	1983	2	1	–	32	–	1	3	39
	1984	–	1	1	24	2	–	1	29
	1985	–	2	–	32	1	–	1	37

B—*Remarks on cases decided by the Court*

Cases decided by the Court in 1984

by

Judge P. Pescatore

Most of the judgments which characterize the development of the Court's case-law in 1984 relate to the free movement of goods, freedom to provide services and freedom of establishment. Of particular significance in that year was the Court's judgment of 31 January 1984 in the *Luisi and Carbone* case concerning corresponding financial transfers. In a number of cases covering the same area the Court had to grapple with difficult problems concerning the dividing line between the requirements of free trade within the Community and the special powers of the Member States in the field of economic legislation. Those problems, with which the Court is ever more frequently confronted, are illustrated by its judgments of 7 February in *Jongeneel Kaas*, concerning the manufacture of cheese in the Netherlands, and *Duphar*, concerning price controls for pharmaceutical products in the same Member State, as well as by its judgment of 10 July 1984 in the *Campus Oil* case concerning the management of a petrol refinery in Ireland.

Reference must also be made to certain judgments in the field of competition, although they did not really break new ground with regard to the solution of substantive problems. Two of these judgments are considered below.

It should be noted that in the year under consideration, the Court was on numerous occasions called upon to consider questions relating to equal treatment for men and women as a result of the entry into force of certain directives in this field.

Some of the cases decided by the Court had a more political flavour, such as the dispute between the Grand Duchy of Luxembourg and the European Parliament, decided by judgment of 10 April 1984, concerning the place of work of that institution, and the legal consequences of an incident which occurred at sea off the coast of the United Kingdom during a fishing trip organized by a Member of the European Parliament.

Finally, a decision which breaks new ground in its field is the Court's judgment of 10 July 1984 in the *STS* case, which is conerned with the operations of the European Development Fund and is no doubt destined to set a precedent in this area.

The principal judgments, grouped by subject, are set out below; within those groups, the judgments are considered in chronological order.

Decisions on freedom of trade within the Community

Judgment of 31 January 1984 in Joined Cases 286/82 and 26/83, *Graziana Luisi and Giuseppe Carbone* v *Ministero del Tesoro* [1984] ECR 377 (reference for a preliminary ruling from the Tribunale di Genova).

The Tribunale di Genova [District Court, Genoa] referred to the Court for a preliminary ruling a number of questions on the interpretation of Article 106 of the EEC Treaty in proceedings instituted by two Italian residents against decisions of the Minister for the Treasury imposing fines upon them for purchasing various foreign currencies for use abroad in an amount whose exchange value in Italian lire exceeded the maximum permitted by Italian law, which at the time was LIT 500 000 per annum for the export of foreign currency by residents for the purposes of tourism, business, education and medical treatment. It may be recalled that under Article 106, each Member State undertakes to authorize, in the currency of the Member State in which the creditor or the beneficiary resides, any payments connected with the movement of goods, services or capital, and any transfers of capital and earnings, to the extent that the movement of goods, services, capital and persons between Member States has been liberalized pursuant to the Treaty.

The questions raised sought in substance to ascertain whether the Member States were still entitled to adopt control measures regarding transfers of foreign currency and to impose administrative penalites in respect of such transfers in so far as they are made by way of consideration for the provision of services in the field of tourism, business travel, education and medical treatment, which have been liberalized by the Treaty itself or by implementing measures adopted to that end. The proceedings instituted before the Tribunale di Genova were concerned with transfers for purposes of tourism and medical treatment.

In order to answer the questions submitted to it by the national court, the Court of Justice carried out a detailed analysis of the problem which had been raised.

(a) In the first place, it was necessary to determine whether tourism, business travel, education and medical treatment fell within the scope of the provision of services or 'invisible transactions' referred to in Article 106. The Treaty contains express provisions guaranteeing the freedom to provide services. This case, however, was concerned with the question whether that freedom also extends to a person who goes to another Member State in order to receive a service there. The Court analysed the provisions of the Treaty, of the secondary legislation and, in particular, of the General Programme for the abolition of restrictions on the freedom to provide services of 18 December 1961 and reached the conclusion that freedom must be assured from the point of view of both the provider and the recipient of a service. It is also clear from those provisions that all the categories of services referred to in the questions submitted by the national court are in practice within the scope of the concept of the provision of services within the meaning of the Treaty. The Court therefore held in that respect that 'the freedom to provide services includes the

freedom, for the recipients of services, to go to another Member State in order to receive a service there, without being obstructed by restrictions, even in relation to payments and that tourists, persons receiving medical treatment and persons travelling for the purpose of education or business are to be regarded as recipients of services'.

(b) Secondly, the Court considered it necessary to define the concepts of 'current payments' and 'movements of capital' since, according to the Treaty, and the provisions of secondary legislation, current payment had, as a rule, been liberalized whilst it was no secret that transfers of capital were still subject to severe restrictions. Both kinds of transfer may be carried out by means of the same financial measures. The Court pointed out in that regard that the nature of a transaction could be determined not by reference to the financial measure employed, such as the transfer of bank-notes, but by reference to the consideration for a transfer of foreign exchange according to whether it is used to discharge an obligation arising from a transaction involving the movement of goods or services or from financial operations concerned with the investment of funds. The Court came to the conclusion that payments in connection with tourism or travel for the purposes of business, education or medical treatment could not be classified as movements of capital, even where they were effected by means of the physical transfer of bank-notes.

(c) After resolving those points, the Court considered the extent to which the payments referred to in the Treaty had been liberalized. In that regard it recalled that, by virtue of Article 59, restrictions on the freedom to provide services within the Community were to be abolished before the end of the transitional period. Consequently, according to Article 106, payments relating to those services were to be liberalized at the same time.

(d) Once the principle upon which its solution was based had been established, the Court considered what limits had been set to the freedom of financial transfers guaranteed by the Treaty. To begin with, it drew attention to a restriction imposed by Article 106, which provides that the Member States have undertaken to authorize financial transfers 'in the currency of the Member State in which the creditor or the beneficiary resides', which excludes from the scope of the liberalization of payments any payments made in the currency of a non-member country. The Court noted that it was clear from the documents in the two cases before it that, apart from German marks and French francs, the plaintiffs had also exported American dollars and Swiss francs. Secondly, the Court held that, since there were different degrees of liberalization, the Member States had a legitimate interest in controlling transfers of foreign exchange, in view of the distinction between current payments and transfers of capital. The Court therefore acknowledged that the Member States were empowered to verify that transfers of foreign currency purportedly intended for liberalized payments were not diverted from that purpose and used for unauthorized movements of capital. In that connection, Member States were entitled to verify the nature and genuineness of the transactions in question.

However, the Member States were not entitled to apply controls that would render illusory the liberalization of the provision of services or to subject the exercise of that freedom to the discretion of the administrative authorities. In particular, such controls could not have the effect of limiting payments in connection with the provision of services to a specific amount for each transaction or for a given period, since in that case it would interfere with the freedoms recognized by the Treaty. But the Court added that those findings did not preclude a Member State from fixing flat-rate limits below which no verification was carried out and from requiring proof, in the case of expenditure exceeding those limits, that the amounts transferred had actually been used in connection with the provision of services, provided however that the flat-rate limits so determined were not such as to affect the normal pattern of the provision of services.

That judgment counterbalances and supplements, as it were, an earlier judgment, that of 11 November 1981 in Case 28/80, *Casati*, [1981] ECR 2595, which was concerned with the transfer of capital and in which the Court had occasion to reaffirm the restrictions on the freedom of financial transfers. Taken together, those two judgments provide a balanced picture of the extent to which financial transfers within the Community have been liberalized.

Judgment of 7 February 1984 in Case 237/83, *Jongeneel Kaas BV and Others* v *State of the Netherlands*, [1984] ECR 483 (reference for a preliminary ruling from the Arrondissementsrechtbank, The Hague).

In 1982 the Netherlands brought into force certain rules on the quality of cheese products. Those rules contain an exhaustive list of the types of cheese which may be produced in the Netherlands, including traditional Dutch cheeses such as Gouda and Edam. In addition, there are precise requirements for each variety of cheese and the production of cheese which does not comply with those rules is forbidden. Supervision to ensure compliance with the rules on quality is exercised by a central agency to which all producers must be affiliated and which collects from its members levies to cover the cost of supervision and inspection. All cheese produced in the Netherlands must be marked in accordance with the rules laid down by the central agency.

A number of dealers in cheese challenged the compatibility of those provisions with the common organization of the market in milk and milk products and with the rules of the Treaty on freedom of imports and exports, whereupon the Arrondissementsrechtbank [District Court], The Hague, submitted a number of questions to the Court for a preliminary ruling in that regard.

After analysing the rules of the common organization of the market in milk and milk products and finding that the rules governing the market in cheese were only fragmentary, the Court considered that that body of rules did not prevent the Member States from adopting measures designed to guarantee the quality of cheeses produced within their territory including a ban on the production of

cheeses other than those exhaustively listed. The Court added however that such rules could not restrict the possibility of importing cheeses produced in other Member States, even if they did not correspond to the standards of production in the Member State of destination. In that connection it held that the Netherlands legislation did not in any way restrict the freedom to import cheeses produced in other Member States.

However, the Court was more cautious with regard to the compulsory affiliation of producers to a central inspection agency. It did not dispute that a Member State might adopt the requisite supervisory measures in that form, although it emphasized that it would be contrary to the Treaty to reserve exclusively to persons affiliated to such bodies the right to market, re-sell, import and export domestic cheese production. As the documents in the file were ambiguous in that regard, the Court held that it was for the national court to ascertain whether the characteristics of the Netherlands agency satisfied those criteria.

Judgment of 7 February 1984 in Case 238/83, *Duphar BV and Others* v *State of the Netherlands,* [1984] ECR 523 (reference for a preliminary ruling from the Arrondissementsrechtbank, The Hague).

In 1982, in order to enable savings to be made under the health-care insurance scheme, the Netherlands adopted legislation designed to restrict consumption of pharmaceutical products. That legislation provides in particular that persons affiliated to the compulsory health-care scheme are no longer entitled to be supplied with medicinal preparations which are paid for by the social security institutions where it is established that there are other medicinal preparations on the market which have the same therapeutic effect but are cheaper.

The compatibility of that legislation with Community law was challenged by a group of pharmaceutical undertakings in the Netherlands. The Arrondissements-rechtbank [District Court], The Hague, entertaining the proceedings, referred a number of questions to the Court in order to ascertain whether such legislation was compatible with the rules of the Treaty relating to the free movement of goods and, if not, whether it was covered by Article 36 of the Treaty which provides that Member States may maintain restrictions on imports which are justified on grounds of public health.

The Court stated, in the first place, that provisions restricting the consumption of pharmaceutical products, imposed under a social security scheme which applied to the vast majority of the population, undoubtedly affected the possibilities of marketing those products and, to that extent, they might indirectly influence the import patterns. The Court nonetheless recognized that Community law did not detract from the powers of the Member States to organize their social security systems and to adopt, in particular, provisions intended to regulate the consumption of pharmaceutical preparations in order to promote the financial stability of their health-care insurance schemes. Moreover, in view of the special nature of the trade in pharmaceutical products, namely the fact that social security institutions

were substituted for consumers as regards responsibility for the payment of medical expenses, legislation of the type in question could not in itself be regarded as constituting a restriction on the freedom to import guaranteed by Article 30 of the Treaty.

Having said that, however, the Court laid down a number of conditions which such legislation had to satisfy in order to be in conformity with the Treaty. The choice of the medicinal preparations which would not be paid for by the social security institutions had to be free of any discrimination to the detriment of imported medicinal preparations. To that end, the exclusionary lists had to be drawn up in accordance with objective criteria, without reference to the origin of the products, and had to be verifiable by any importer. If those conditions were fulfilled, an importer might secure access to the Netherlands market provided that he was in a position to market a product which, whilst having the same therapeutic values, offered a price advantage over some other product already available on the market. Such rules would in no way detract from the freedom to market any product meeting that requirement.

However the Court rejected the Netherlands argument based on Article 36 of the Treaty. In accordance with its consistent case-law, it emphasized that Article 36 had to be restricted to the protection of public health and could not be relied upon to justify economic or financial measures, such as those on which the Netherlands legislation was based.

Judgment of 28 February 1984 in Case 247/81, *Commission* v *Federal Republic of Germany*, [1984] ECR 1111.

The Commission brought an action against the Federal Republic of Germany for a declaration that it had failed to fulfil its obligations under Article 30 et seq. of the EEC Treaty by incorporating in its law on medicinal preparations a provision laying down that proprietary medicinal products may be placed on the market only by a pharmaceutical undertaking having its registered office in Germany. According to the Commission, such legislation constituted a restriction on imports resulting in increased costs for foreign undertakings and seriously jeopardizing their freedom of action.

In its defence, the German Government argued that, in any event, an importer had to establish a branch or representative in Germany for commercial reasons. Moreover, it was important, from the point of view of the protection of public health, to ensure the presence in Germany of a responsible person capable of cooperating with the supervisory authorities in the event of the marketing of defective medicinal preparations. The German Government also insisted on the need to ensure, through the presence of a representative established in the Federal Republic, the effectiveness of the measures adopted in relation to the civil and criminal liability of pharmaceutical undertakings.

The Court did not dispute the principle behind the arguments put forward by the

German Government, inasmuch as, in the absence of adequate harmonization at Community level, each Member State was entitled to take appropriate measures in order to ensure the protection of public health in its territory. However, it considered that, in intra-Community trade, the requirement of a representative established in national territory was not a measure needed to ensure the proper protection of public health.

In that connection, the Court drew attention to the fact that certain rules had already been harmonized by Directive 65/65 of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to proprietary medicinal products, which does not provide for any precautionary measure of the kind introduced by the German legislation. The Court also pointed out that the procedure for the grant of authorization to place pharmaceutical products on the market enables the national authorities to take all the necessary precautions in their dealings with persons who apply for authorization to market specific products. As regards civil and criminal liability, although it might have a deterrent effect, it did not provide an adequate safeguard from the point of view of the protection of public health, since such protection called for precautions and controls of a different nature.

In conclusion, therefore, the Court held that the Federal Republic of Germany had failed to fulfil its obligations, thereby confirming an earlier decision given in a similar case involving Belgium (judgment of 2 March 1983 in Case 155/82 [1983] ECR 531) and concerning the approval of phyto-pharmaceutical products.

Judgment of 10 July 1984 in Case 72/83, *Campus Oil and Others* v *Ireland*, [1984] ECR 2727 (reference for a preliminary ruling from the High Court of Ireland).

The questions referred to the Court of Justice by the High Court of Dublin for a preliminary ruling on the interpretation of Articles 30 and 36 of the EEC Treaty concern an unusual case. In 1982, the Irish State acquired the only petrol refinery in Ireland, which had been opened at Whitegate by four oil companies which also controlled the greater part of the Irish market in refined petroleum products. The decision to acquire the Whitegate refinery was taken after the four companies which owned it announced their intention to close the refinery. In order to keep the refinery in operation on a profitable basis, the Irish Government had issued the Fuels (Control of Supplies) Order in 1982 requiring importers of petroleum products to procure a certain proportion of their requirements at prices to be determined by the competent minister from the Irish National Petroleum Corporation which was responsible for operating the refinery.

A number of importers of petroleum products challenged the compatibility of those provisions with the rules on the free movement of goods in the Community. In its defence the Irish Government argued in particular that the measure adopted was justified by Article 36 of the Treaty on grounds of public security inasmuch as it was intended to keep in operation Ireland's only refinery, which was capable of guaranteeing relatively secure supplies of petroleum products for that country which were essential to its economy.

The Court acknowledged that in themselves the Irish measures were incompatible with Article 30 inasmuch as their purpose was to protect domestic production and, by the same token, to restrict the possibility of importing petroleum products. In its view, goods could not be considered exempt from the rules on the free movement of goods merely because they were alleged to be of particular importance for the existence or the economy of a Member State. However, it conceded that petroleum was a special case in view of its exceptional importance as an energy source in the modern economy; the supply of petroleum products was of fundamental importance for the existence of a State since not only its economy but above all its institutions, its essential public services and even the survival of its inhabitants depended upon it. The Court therefore recognized that an interruption of supplies of petroleum products, with the resultant dangers for a State's existence, could seriously affect the security interests which Article 36 allowed States to protect.

Having established the principle underlying its decision, the Court added however that the application of a system of compulsory purchase at prices fixed by the State should in no circumstances exceed the minimum supply requirements of the State concerned and the quantities which were absolutely necessary to keep the refinery in operation. The Court remitted the assessment of the question whether those limits had been exceeded by the aforesaid system to the national court.

Rules of competition

Judgment of 17 January 1984 in Joined Cases 43 and 63/82, *Vereeniging ter Bevordering van het Vlaamse Boekwezen, VBVB*, and *Vereeniging ter Bevordering van de Belangen des Boekhandels VBBB* v *Commission* [1984] ECR 19.

This action, brought by the Flemish and Dutch publishers' and booksellers' trade associations, sought the annulment of Commission Decision 82/123/EEC of 25 November 1981 which held to be incompatible with the rules of competition in the Treaty an agreement concluded between the two associations concerning the application, in the book trade between the Flemish part of Belgium and the Netherlands, of the resale price maintenance system provided for by the agreements in force within the two national associations.

Apart from a number of procedural objections, which were all rejected by the Court, the applicants put forward various arguments in support of resale price maintenance in the book trade. The following arguments are noteworthy:

(a) The effect of the resale price maintenance system, owing to the optimal organization of the distribution network, was to encourage a multiplicity of titles issued by publishers and thus to ensure the publication of less readily saleable works such as, for example, works of science and poetry. Accordingly, by finding that the agreement concluded between the associations was unlawful, the Commission jeopardized freedom of expression.

On that point, the Court acknowledged that although it was true that certain

economic provisions might not be without effect from the point of view of freedom of expression, the applicants had not established in this case the existence of any real link between the Commission's decision and freedom of expression. The Court considered that to submit the production of, and trade in, books to rules whose sole purpose was to ensure freedom of trade between Member States in normal conditions of competition could not be regarded as restricting freedom of publication.

(b) The applicants also claimed that the Commission's conduct was in contradiction with the policy pursued in the matter by most of the Member States. In their view, the system of resale price maintenance for books was permitted in practically all the Member States as a result of legislation or practices recognized as lawful by the courts.

In reply to that argument, the Court stated that national legislative or judicial practices, even on the supposition that they were common to all the Member States, could not prevail in the application of the competition rules set out in the Treaty. The same reasoning applied with even greater force in relation to practices of private undertakings, even when they were tolerated or approved by the authorities of a Member State.

(c) In their principal argument, the applicants contended that the Commission had failed to take account of the special structure of the market in books. In its decision, the Commission had failed to take account of the specific nature of the book, having taken the view that price competition was the sole essential element in competition. In their view, each book constituted a market in itself and price elasticity of books, as goods, was minimal, so that other facets of competition had a predominant interest in comparison with price. In that connection the applicants mentioned the variety of supply, the diversity of stock held by bookshops, the speed with which orders were executed and the services offered to consumers by way of information and advice. They argued that the consumer derived only advantages from that system as he could buy the same books in all places at the same price and in return enjoyed a wide spread of titles available and the best possible service.

In reply to that argument, the Court stated that the special features of the market in question did not permit the two associations to set up, in their mutual relations, a restrictive system whose effect was to deprive distributors of all freedom of action as regards the fixing of the selling price up to the level of the final price to the consumer. Such an arrangement was contrary to Article 85 (1) (a), which expressly prohibited all agreements which 'directly or indirectly fix purchase or selling prices'. Furthermore the system of resale price maintenance laid down in the agreement allowed each of the two associations to control outlets as far as the last stage and thus to make impossible the introduction of sales methods capable of allowing consumers to be supplied in economically more favourable conditions.

(d) Finally, the applicants alleged that the Commission had dismissed their

application for the grant of an exemption, pursuant to Article 85 (3) of the Treaty, in favour of the system of resale price maintenance. They claimed in that regard that the agreement was intended to improve the production and distribution of books as a result of the system of "cross-subsidization" made possible by the resale price maintenance system. They explained in that connection that the existence of the fixed price allowed the publisher, as a result of the profit realized on his successful titles, which met with a ready sale and a rapid turnover, to accept the responsibility and the risk of publishing more difficult and less profitable works. Distributors in their turn were in a position to maintain more extensive stocks and to serve their customers better by helping in this way to disseminate a greater number of varied works. On the other hand, they alleged that the abolition of resale price maintenance would have the effect of concentrating trade on works which sold rapidly with the result that more difficult titles would be abandoned and numerous specialist bookshops would go out of business.

In reply to that argument, the Court drew attention to the fact that Article 85 (3) conferred a discretion on the Commission the limits of which did not appear to have been exceeded in this case. The Court held that, in any event, this question could be considered in detail only in connection with the national agreements which had been concluded within the two associations and which were outside the scope of the dispute. Moreover, the contested agreement concluded between the two associations did not appear to be a precondition for the operation of the national agreements.

In conclusion, the Court dismissed the application but left open the question whether an exemption should be granted, which could be purposefully considered only in relation to the national agreements which the Commission had of its own accord left outside the scope of its appraisal.

Judgment of 14 November 1984 in Case 323/82, *SA Intermills* v *Commission*, [1984] ECR 3809.

This action, brought by a paper-manufacturing undertaking against a Commission decision on aid, was concerned with an important problem raised by a plan for the restructuring of undertakings; in its judgment, however, the Court dealt only with certain procedural aspects of the decision which was declared void because it did not state the reasons on which it was based.

The Belgian State, acting through the Walloon Regional Executive, had granted a substantial aid to a paper-manufacturing undertaking which was in difficulty. The aid had been granted partly in the form of a holding acquired by the public authorities in the capital of the undertaking, which was at the same time subdivided into three manufacturing companies the control of which was taken over by the State, and partly in the form of low-interest loans. The Commission considered that the holding acquired in the undertaking's capital, which was intended to allow the undertaking to repay its accumulated debts, did not constitute a genuine

restructuring aid and was capable of distorting competition within the common market. Only the aid granted in the form of repayable loans on which interest was payable was economically justified.

After rejecting a number of procedural objections, the Court resolved a preliminary issue concerning the interpretation of Article 92 of the EEC Treaty relating to the system of aid. That provision applies to aid granted by a State or through State resources 'in any form whatsoever'. Accordingly, the Court held that no distinction could be drawn in principle between aid granted in the form of loans and aid granted in the form of a holding acquired in the capital of an undertaking. Aid taking either form fell within the prohibition laid down in Article 92 where the conditions set out in that provision were fulfilled.

Having said that, the Court emphasized that the granting of aid in the form of capital holdings acquired by the State or by public authorities could not be regarded as being automatically contrary to the provisions of the Treaty. It was the Commission's task in each case to examine whether such aid was contrary to Article 92 (1) and, if so, to assess whether there was any possibility of its being exempt under Article 92 (3), giving the grounds on which its decision was based accordingly.

In the light of that requirement, the Court considered that the contested decision contained contradictions and did not make clear the grounds for the Commission's action on certain vital points. In particular, the Court pointed out that the Commission had not explained why, in principle, it regarded the aid granted in the form of loans as lawful and the aid granted in the form of a capital holding as unlawful, without considering the use to which the aid granted in either form was to be put. The Court therefore declared void the contested decision.

Pursuit of economic activities

Judgment of 10 July 1984 in Case 63/83, *Regina* v *Kent Kirk* [1984] ECR 2689 (reference for a preliminary ruling from the Crown Court at Newcastle-upon-Tyne)

The events with which this case is concerned took place during a very short period at the beginning of 1983 in which there was some uncertainty regarding the system of rules on fishing in the coastal waters of the United Kingdom. It must be remembered that under Articles 101 to 103 of the Act of Accession, the United Kingdom was authorized to restrict fishing by nationals of other Member States in a zone which varied from 6 to 12 nautical miles according to the region. That system was to expire on 31 December 1982 subject to the adoption by the Council of new provisions to replace it. The Council failed to take a decision within the time allowed on the provisions that were to replace the system concerned. In the meantime the Commission had notified the United Kingdom that it would not raise any objections to the adoption of appropriate transitional measures. The Council finally adopted, though not until 25 January 1983, a regulation retaining the derogation régime defined in Article 100 of the Act of Accession for a further 10

years and extending the coastal zones from 6 to 12 nautical miles. That regulation authorized retroactively, as from 1 January 1983, the retention of the derogation régime.

With the Commission's assent, the United Kingdom adopted the Sea-Fish Order at the end of 1982 which prohibited, *inter alia*, any fishing boat registered in Denmark from fishing within such part of British fishery limits as lay within 12 miles from the base lines adjacent to the United Kingdom.

On 6 January 1983 Mr Kent Kirk, the master of a Danish fishing vessel, entered the zone in which fishing was prohibited. His vessel was intercepted by a ship of the Royal Navy and he was fined UKL 30 000 by North Shields Magistrate Court. He appealed to the Newcastle-upon-Tyne Crown Court where he claimed that the United Kingdom was not entitled to bring into force the Sea-Fish Order of 1982 and that, consequently, no offence had been committed.

The Crown Court, hearing the appeal, requested the Court of Justice to give a preliminary ruling on the question whether at the time when the Sea-Fish Order was adopted, it was permissible for a Member State, under Community law on fisheries, to prohibit vessels registered in another Member State from fishing within the coastal zone specified by that order.

In reply, the Court stated that at the material time, since the effect of Article 100 of the Act of Accession had expired and the Council had not yet adopted new measures, access to the zone in question was allowed to nationals of all the Member States in accordance with the principles embodied in Article 7 of the EEC Treaty and the provisions of regulation No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry, which ensured equal conditions of access to waters coming within the jurisdiction of Member States for nationals of all other Member States. The Court pointed out in that regard that the measure adopted by the United Kingdom was intended exclusively to regulate access to the fishing zone concerned and did not constitute a response to a concern to conserve fishery resources.

With regard to the retroactive provision set out in the Council regulation which entered into force on 25 January 1983, the Court pointed out that it could not have the effect of validating *ex post facto* national measures of a penal nature which imposed penalties for an act which, in fact, was not punishable at the time at which it was committed. Accordingly it followed that Community law did not authorize a Member State, at the time of the adoption of the United Kingdom order, to prohibit vessels registered in another Member State from fishing within a coastal zone specified by law and not covered by conservation measures.

Judgment of 12 July 1984 in Case 107/83, *Ordre des Avocats du Barreau de Paris* v *Klopp*, [1984] ECR 2971 (Reference for a preliminary ruling from the French Cour de Cassation)

Mr Onno Klopp, a German national and member of the Düsseldorf Bar, who possessed at the same time the qualifications required of French avocats, had applied for admission to the Paris Bar whilst remaining a member of the Düsseldorf Bar and retaining his residence and chambers there. The Council of the Paris Bar Association rejected his application on the ground that a rule of professional conduct in force in France allowed an avocat to establish chambers in one place only. Mr Klopp appealed against that decision and the case ultimately reached the Court of Cassation which requested the Court of Justice to give a preliminary ruling on the question whether Article 52 et seq. of the EEC Treaty prevented the competent authorities of a Member State from denying pursuant to their national law and the rules of professional conduct in force there a national of another Member State the right to enter and practice the legal profession solely because he maintained at the same time professional chambers in another Member State.

In that connection the Court referred to its judgment of 21 June 1974 in the *Reyners* case in which it had already held that as from the expiry of the transitional period, Article 52 of the Treaty on freedom of establishment constituted a directly applicable provision of Community law. It went on to emphasize that, pursuant to that article, freedom of establishment included access to, and the pursuit of, the activities of self-employed persons 'under the conditions laid down for its own nationals by the law of the country where such establishment is effected'. It followed that, in the absence of specific Community rules in the matter, each Member State was free to regulate the exercise of the legal profession in its territory.

The Court stated, however, that this rule did not mean that the legislation of a Member State could require a lawyer to have only one establishment throughout the territory of the Community. Article 52 expressly referred to the setting up of agencies, branches or subsidiaries, and that had to be regarded as a specific statement of a general principle, applicable equally to the liberal professions, according to which the right of establishment included freedom to set up and maintain, subject to observance of the rules of the professional conduct, more than one place of work within the Community. The Court did not overlook the fact that the host Member State was entitled, in the interests of the proper administration of justice, to require a minimum of continuity in the exercise of the profession and compliance with the rules of professional conduct. Nevertheless, such requirements could not prevent the nationals of other Member States from exercising properly the right of establishment guaranteed them by the Treaty. The Court pointed out that modern methods of transport and telecommunications facilitated proper contact with clients and the judicial authorities.

The Court therefore rules that Article 52 et seq. of the Treaty prevent the competent authorities of a Member State from denying, on the basis of the national legislation and the rules of professional conduct which are in force in that State, to a

national of another Member State the right to enter and practice the legal profession solely on the ground that he maintains chambers simultaneously in another Member State.

Equal treatment for men and women

Judgment of 10 April 1984 in Case 14/83, *Sabine von Colson and Elisabeth Kamann* v *Land Nordrhein-Westfalen*, [1984] ECR 1891 (Reference for a preliminary ruling from the Arbeitsgericht Hamm)

The Arbeitsgericht [Labour Court] Hamm referred to the Court for a prelimiary ruling several questions on the interpretation of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principal of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, in proceedings instituted against the Land Nordrhein-Westfalen by two qualified social workers following the rejection of their applications for posts as social assistants in a prison catering exclusively for male prisoners. The competent authorities refused to engage the plaintiffs in view of the problems and risks connected with the appointment of female candidates in such institutions and for those reasons had appointed instead male candidates who were, however, less well qualified.

The Arbeitsgericht considered that there had been discrimination but raised the question whether the compensation provided for by German legislation, namely Paragraph 611 (a) (2) of the German Civil Code, was not wholly inadequate, and it referred certain questions to the Court in which it asked essentially whether Directive 76/207 imposed on the Member States obligations which were more extensive than provided for by the German legislation with regard to the penalties applicable in the event of discrimination and, if so, whether the directive in question could be relied upon before the courts by individuals where the Member State concerned had failed to adopt appropriate implementing measures within the time allowed.

In its analysis of the directive in question, the Court drew attention to the fact that Article 6 required Member States to introduce into their national legal systems such measures as were necessary to enable all persons who considered themselves wronged by discrimination 'to pursue their claims by judicial process'. It followed from that provision, according to the Court, that the Member States were required to adopt measures which were sufficiently effective to achieve the objective of the directive and to ensure that those measures could in fact be relied on before the national courts by the persons concerned. However the directive did not describe specific sanctions such as, for example, provisions requiring the employer to offer a post to the candidate discriminated against or giving the candidate adequate financial compensation or laying down a system of fines. None the less the purpose of the directive was to establish real equality of opportunity which was capable of real and effective judicial protection. Where a Member State, such as Germany, had opted for a system of compensation, such compensation had to be adequate in

relation to the damage sustained and not be limited to a purely nominal amount. In reply to the question concerning the internal effect of the directive, the Court added that it was for the national court to interpret and apply the legislation adopted for the implementation of the directive in conformity with the requirements of Community law in so far as it was given a discretion to do so under national law.

Judgment of 12 July 1984 in Case 184/83, *Ulrich Hofmann* v *Barmer Ersatzkasse*, [1984] ECR 3047 (Reference for a preliminary ruling from the Landessozialgericht Hamburg)

The Landessozialgericht [Higher Social Court] Hamburg referred a number of questions to the Court of Justice for a preliminary ruling on the interpretation of the Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women in order to enable it to determine the compatibility with Community law of a provision of the Mutterschutzgesetz, the German law for the protection of working mothers, which provides for a period of maternity leave for mothers after the birth of a child. Those questions arose in a dispute between a social security institution and a father who had taken care of his child during the period of maternity leave and who claimed in respect of that child the allowance which was reserved to the mother by law.

After considering the purpose of maternity leave, the Court acknowledged that the measure in question was applicable specifically to women and was connected with their condition during pregnancy and motherhood, with the result that maternity leave fell within the exception expressly provided for by Article 2 (3) of the directive which authorized the Member States to retain provisions intended to protect women, particularly in connection with pregnancy and motherhood. Accordingly, the fact that national legislation restricted the benefit of such leave to women did not constitute a form of discrimination prohibited by the directive.

Place of work of the European Parliament

Judgment of 10 April 1984 in Case 108/83, *Grand Duchy of Luxembourg* v *European Parliament*, [1984] ECR 1945

This judgment provides the epilogue to the judgment given by the Court on 10 February 1983 in a dispute between the same parties. Following the first judgment, the Parliament adopted on 7 July 1981, on the basis of the Zagari Report, a resolution on the organization of its departments. The Luxembourg Government considered that the implementation of that resolution would have the effect, in the guise of a more rational division of the staff between Strasbourg and Brussels, of breaking up the Secretariat General which had its seat in Luxembourg.

The Parliament had challenged the admissibility of the application on the ground that the proposed measures were not in the nature of a decision. That argument was rejected by the Court which considered that the contested resolution provided

for specific measures, consisting in the permanent division of the services and staff of the secretariat, with the result that it was impossible to dispute the specific and precise decision-making character of the resolution which was intended to produce legal effects.

With regard to the substance, the Court held that the implementation of the contested resolution would have lead to the transfer of part of the Secretariat to Brussels and of another part to Strasbourg, which would have been contrary to the decisions adopted by the governments of the Member States regarding the provisional seat of the Community institutions. Accordingly, as the Parliament had exceeded the limits set by the previous judgment to its power to organize its departments, the Court decided to declare void the resolution of 7 July 1981.

Judicial review of the operations of the European Development Fund

Judgment of 10 July 1984 in Case 126/83, *STS Consorzio per Sistemi di Telecomunicazione via Satellite SpA, Milan* v *Commission of the European Communities*, [1984] ECR 2769

This judgment is destined to set a precedent with regard to a question which was hitherto in doubt, namely the judicial review of operations financed in developing countries by the European Development Fund. The case was concerned with an application requesting the Court to declare void the award to Telspace, a French undertaking, of public works contracts for the provision of telecommunications on certain Pacific islands; it was submitted by an Italian consortium whose tender had been rejected when the contracts were awarded under an invitation to tender organized by the South Pacific Bureau for Economic Cooperation, created by the ACP States who were to benefit from the project.

In its judgment, the Court analysed the division of powers and responsibilities between the Community and the ACP States with regard to the implementation of projects financed by the European Development Fund. It pointed out that the ACP States concerned were responsible for awarding the public works contracts in question and that the Commission exercised in the matter only the supervisory powers needed for the preparation of the financing decisions required. The Court therefore came to the conclusion that an application by an undertaking which had submitted a tender was inadmissible since undertakings which took part in an invitation to tender the legal relations only with the ACP States responsible for the contract. Accordingly, the measures adopted by the representatives of the Commission in their dealings with the States concerned could not have the effect of substituting a Community decision for the decision of the ACP States, which had sole power to conclude and sign the contract. The application was therefore declared inadmissible.

Cases decided by the Court in 1985

Tax provisions

Case 112/84 – *Humblot v Directeur Général des Impôts* – (Preliminary ruling) – 9 May 1985 – (Article 95 – Special tax on motor vehicles) – (Full Court)

The Tribunal de Grande Instance [Regional Court], Belfort, referred a question to the Court for a preliminary ruling on the interpretation of Article 95 of the EEC Treaty.

That question was raised in a dispute between Mr Humblot and the Directeur Général des Impôts concerning an application for the reimbursement of the special tax on certain motor vehicles which had been paid by Mr Humblot.

In France there were two types of annual taxes on motor vehicles: (i) a differential tax on vehicles of 16 CV (horsepower) or less and (ii) a *special tax* on vehicles of more than 16 CV. The differential tax increased in relation to the power of the vehicle whereas the special tax was a single fixed amount and was much higher.

In 1981 Mr Humblot became the owner of a car which was rated at 36 CV for tax purposes. He had to pay a special tax amounting to FF 5 000. He applied to the tax administration for a refund of the difference between that sum and the highest amount of the differential tax which at that time was FF 1 100.

When his application was rejected, Mr Humblot brought an action in which he argued that the charging of the special tax was contrary to Articles 30 and 95 of the EEC Treaty.

The dispute promoted the Tribunal de Grande Instance, Belfort, to refer a question to the Court for a preliminary ruling. In substance the question was whether Article 95 prohibited the charging on cars exceeding a certain power rating for tax purposes of a special fixed tax which was several times higher than the highest rate of the progressive tax payable in cars with a lower power rating if the only cars liable to the special tax were imported, in particular from other Member States.

Mr Humblot pointed out that the special tax affected only imported vehicles since no French car was rated at more than 16 CV for tax purposs. In his view, vehicles of 16 CV or less and vehicles of more than 16 CV were quite comparable in performance, price and fuel consumption. The French Government had therefore

created discrimination contrary to Article 95 of the Treaty by subjecting only imported vehicles to a special tax very much higher than the differential tax.

The French Government argued that the special tax was charged solely on luxury vehicles, which were not similar, for the purposes of Article 95 of the Treaty, to cars on which the differential tax was payable. It conceded that some vehicles rated at 16 CV or less and other vehicles rated at more than 16 CV were in competition for the purposes of Article 95. However, there was no evidence that a consumer who might have been dissuaded from buying a vehicle of more than 16 CV would purchase a French-made car of 16 CV or less.

The Commission took the view that the special tax was contrary to the first paragraph of Article 95 of the Treaty. It argued that all cars, whatever their power rating for tax purposes, were similar within the meaning of the Court's case-law.

The criterion adopted by France in this case, namely power rating for tax purposes, was not geared to an economic policy aim such as heavier taxation of luxury goods or vehicles having a high fuel comsumption.

The Court stressed in the first place that, as Community law stood, Member States were at liberty to subject goods such as cars to a road-tax system under which the amount of tax increased progressively on the basis of an objective criterion such as power rating for tax purposes which could be determined in various ways. However, such a system of taxation was permissible only of it was free from any protective effect. That was not the case with the system in question.

Under that system there were two separate taxes: a differential tax, which increased progressively, on cars not exceeding a certain power rating for tax purposes and a fixed tax on cars exceeding that power rating which was five times higher than the maximum rate of differential tax. Although such a system made no strict distinction between products on the basis of their origin, it manifestly exhibited discriminatory or protective features which were contrary to Article 95 since only imported vehicles, in particular cars imported from other Member States, were subject to the special tax.

Liability to the special tax entailed a much greater increase in taxation than passing from one category to another in a progressive tax system embodying balanced differentials like the system on which the differential tax was based. That additional tax burden was liable to cancel out the advantages which certain cars imported from other Member States might appear to have to consumers over comparable cars of domestic manufacture, particularly since the special tax continued to be payable for several years. In that respect the special tax reduced the competition to which cars of domestic manufacture were exposed and was therefore contrary to the principle of neutrality with which domestic taxes had to comply.

The Court replied to the question by ruling that:

'Article 95 of the EEC Treaty prohibits the charging on cars exceeding a

given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States.'

Free movement of goods

Case 229/83 – *Association des Centres Distributeurs E. Leclerc v Au Blé Vert Sàrl and Others* – 10 January 1985 – (Preliminary ruling) – (Fixed prices for books) – (Full Court),

The Cour d'Appel [Court of Appeal], Poitiers, referred a question to the Court for a preliminary ruling on the interpretation of various rules of Community law, in particular the provisions relating to free competition in the common market and Articles 3 (f) and 5 of the EEC Treaty, so as to enable it to assess the compatibility with Community law of national legislation requiring all retailers to abide by the selling prices for books fixed by the publisher or importer.

The question was raised in proceedings between Association des Centres Distributeurs Edouard Leclerc and Thouars Distribution SA, part of the Leclerc group, on the one hand, and various sellers in Thouars and Union Syndicale des Libraires de France [French Booksellers' Association], on the other.

The dispute concerned the need to comply with the retail selling prices for books fixed under the Law of 10 August 1981 on book prices.

Under that law all publishers or importers of books were required to fix a retail selling price for the books which they published or imported. Retailers had to charge an effective price for sales to the public of between 95% and 100% of that price.

As far as imported books are concerned, the law provided that 'where the imported books were published in France the retail selling price fixed by the importer shall be no less than that fixed by the publisher'. The principal distributor of the imported books, who was required to deposit a copy of each book imported with the Ministry of the Interior, was deemed to be the importer within the meaning of the law.

It appeared that Thouars Distribution SA, and the Leclerc group sold books at prices undercutting the prices fixed under the aforesaid legislation.

The Cour d'Appel, Poitiers, referred the following question to the Court of Justice for a preliminary ruling:

> 'Must Articles 3 (f) and 5 of the EEC Treaty be interpreted as prohibiting the setting-up in a Member State, by law or by regulation, in respect of books published in that Member State and books imported into that State,

in particular from other Member States, of a system which compels retailers to sell the books at the price fixed by the publisher or the importer without being able to reduce that price by more than 5%?'

Article 3 (f) of the Treaty is a general provision for 'the institution of a system ensuring that competition in the common market is not distorted'.

Article 5 of the Treaty requires Member States to 'abstain from any measure which could jeopardize the attainment of the objectives' of the Treaty.

The question referred by the national court therefore sought to establish whether the 1981 Law accorded with the principles and objectives of the Treaty and with those provisions of the Treaty concerned with the detailed implementation of those principles and objectives.

The application of Articles 3 (f), 5 and 85

Leclerc maintained that the French Law on book prices did not introduce State price controls but rules restricting price competition, since the relevant prices were freely fixed by publishers and importers. The law laid down a collective price maintenance system contrary to Article 85 (1) of the Treaty and to the principle that competition in the Common Market must not be distorted.

The French Government considered that Articles 3 (f) and 5 of the Treaty merely laid down general principles and did not give rise to obligations. In its view, Article 85 applied only to certain practices on the part of firms and could not be constructed as prohibiting Member States from adopting measures which might have an effect on free competition. It considered that the only potentially relevant Treaty provision in this case was Article 30.

The Commission considered that Articles 3 (f) and 5 could not be interpreted in such a manner as to deprive the Member States of all power in the economic sphere by prohibiting them from interfering with free competition.

It followed that the compatibility with the Treaty of legislation of the type in question was to be considered in the light of Article 30 et seq. only.

The Court considered that although competition rules were concerned with the conduct of undertakings and not with national legislation, Member States were none the less obliged not to detract, by means of national legislation, from the full and uniform application of Community law or from the effectiveness of its implementing measures.

However, legislation of the type at issue did not require agreements to be concluded between publishers and retailers or other behaviour of the sort contemplated by Article 85 of the Treaty. It required retail prices to be fixed unilaterally by publishers or importers pursuant to a statutory obligation.

Accordingly, the question arose as to whether national legislation making corporate behaviour of the type prohibited by Article 85 superfluous detracted from the effectiveness of Article 85 and hence was contrary to the second paragraph of Article 5 of the Treaty.

The French Government observed that the legislation in question aimed at protecting books as cultural media from the adverse impact that untramelled competition in the retail prices of books would have on the diversity and cultural level of publishing. Its object was to prevent a small number of large distributors from being able to impose their choice on publishers to the detriment of poetic, scientific and creative works. It was therefore indispensable in order to preserve books as an instrument of culture and had counterparts in most of the Member States.

The Court observed that – so far the purely national systems and practices in the book sector had not been made subject to any Community competition policy with which the Member States would be required to comply by virtue of their duty to abstain from any measure which might jeopardize the attainment of the objectives of the Treaty. Accordingly, as Community law stood, Member States' obligations under Articles 5, 3 (f) and 85 of the Treaty were not specific enough to preclude them from enacting legislation of the type at issue on competition in the field of retail prices for books provided that such legislation was consonant with the other specific Treaty provisions, in particular those concerning the free movement of goods.

The application of Articles 30 and 36 of the Treaty

The Commission considered that the legislation in question constituted a measure equivalent in effect to a quantitative restriction on imports, contrary to Article 30 of the Treaty.

Two provisions of the law of 10 August 1981 were peculiar to imported books, namely: (a) the price of imported books was to be fixed by the importer, and hence by the principal distributor; and (b) where books published in France were imported, the retail price was to be no lower than that fixed by the publisher.

The Commission considered that those two provisions impeded imports by making it impossible for importers to set lower prices and preventing them from penetrating the French market by means of price competition.

Leclerc expressed the same view.

The French Government argued that legislation of the type at issue was not contrary to Article 30. In its contention, each Member State remained free to regulate its domestic trade. The principal distributor was responsible for fixing the price of foreign books because he performed an equivalent commercial role in the domestic market to that performed by the publisher in distributing French books.

The provision concerning books published in France and re-imported prevented the re-importation of books from being used as a device for circumventing the Law.

The Court noted that Article 30 prohibited quantitative restrictions on imports and all measures having equivalent effect between Member States.

Two different situations to which the legislation in question applied had to be considered: first, that of books published in another Member State and imported into the Member State concerned and, second, that of books published in the Member State concerned and re-imported, following exportation to another Member State.

As regards books published in another Member State and imported into the Member State concerned, the Court held that a provision whereby the retail price was to be fixed by the book importer responsible for complying with the statutory requirement to deposit a copy with the authorities, that is to say the principal distributor, transferred the responsibility for fixing the retail price to a trader at a different stage in the commercial process than the publisher and made it impossible for any other importer of the same book to charge the retail price in the importing State that he considered adequate in the light of the cost price in the State in which it was published.

As a result, separate rules existed for imported books which were liable to impede trade between the Member States.

In so far as such legislation applied to books published in the Member State concerned and re-imported following exportation to another Member State, it discouraged the marketing of re-imported books by preventing the importer from passing on in the retail price an advantage resulting from a lower price obtained in the exporting Member State.

Those rules therefore constituted measures equivalent in effect to quantitative restrictions on exports, contrary to Article 30. As far as Article 36 was concerned, the Court held that it was to be interpreted strictly and could not be extended to cover objectives not expressly enumerated therein.

The Court ruled as follows:

'1. As Community law stands, the second paragraph of Article 5 of the Treaty, in conjunction with Articles 3 (f) and 85, does not prohibit Member States from enacting legislation whereby the retail price of books must be fixed by the publisher or by the importer and is binding on all retailers, provided that such legislation is consonant with the other specific provisions of the Treaty, in particular those relating to the free movement of goods;

2. In the context of such national legislation the following constitute measures equivalent in effect to quantitative restrictions on imports, contrary to Article 30 of the Treaty;

(a) provisions whereby the importer responsible for complying with the statutory requirement to deposit one copy of each imported book with the authorities, that is to say the principal distributor, is responsible for fixing the retail price;

(b) provisions requiring the retail price fixed by the publisher to be applied to books published in the Member State concerned and re-imported following exportation to another Member State, unless it is established that those books were exported for the sole purpose of re-importation in order to circumvent the legislation in question.'

Case 231/83 – *H. Cullet and Chambre Syndicale des Réparateurs Automobiles et Détaillants de Produits Pétroliers Toulouse* v *Centre Leclerc, Toulouse and Saint-Orens de Gameville* – (Preliminary ruling) – 29 January 1985 – (National rules on fuel prices) – (Fifth Chamber)

The President of the Tribunal de Commerce [Commercial Court], Toulouse referred to the Court for a preliminary ruling a question concerning the interpretation of various provisions of Community law and in particular of Articles 3 (f) and 5 of the EEC Treaty in order to enable it to determine whether national rules fixing a minimum retail selling price for fuel were compatible with Community law.

The question was raised in connection with an action brought by Mr H. Cullet, a service station operator at Toulouse, and the Chambre Syndicale des Réparateurs Automobiles et Détaillants de Produits Pétroliers [Association of motor-car repairers and retailers of petroleum products], Toulouse, against Sodinord SA and Sodirev SA, undertakings operating supermarkets which incorporate petrol stations under the name of 'Centre Leclerc'.

The case concerns the minimum retail selling price for fuel laid down by the French authorities.

Under the distribution system, as adjusted with the approval of the Commission, the importation and purchase from French refineries of crude oil for release for consumption requires special authorization from the State, known as A 3 authorization.

A holder of an A S authorization must procure 80% of his supplies on the French market or from the Community and is at liberty to obtain the remaining 20% where he sees fit and, in particular, on the spot market.

The wholsesale price, known as the 'ex-refinery price' is freely determined by each refinery or importer holding an A 3 authorization. The ex-refinery price may not exceed a 'ceiling price' fixed each month by the competent authorities. The rules provide that in so far as the European rates are no more than 8% above or below the French refineries' cost price they are to determine the ceiling price. If, on the

other hand, the European rates move outside the so-called 'tunnel' constituted by the divergence of 8% from the French refineries' cost price, it is that price which is to determine the ceiling price.

Thus the prices for sales to the consumer have an upper and lower limit. With regard to the upper limit the 'maximum retail selling price' is based on the sum of the ex-refinery price and commercial costs and margins together with taxes and levies. With regard to the lower limit the 'minimum price' is fixed on a monthly basis for each price canton by deducting from the maximum selling price to consumers based on the average scales of ex-refinery prices of French refineries in the preceding month an amount which at the material time was 9 centimes per litre for 'regular' petrol and 10 centimes per litre for 'super' petrol.

The Leclec group, to which Sodinord and Sodirev belong, was the holder of an A 3 authorization. They sold fuel at prices which were lower than the minimum prices fixed by the competent authorities in accordance with the aforementioned rules.

An action was brought against them before the President of the Tribunal de Commerce, Toulouse, by a competitor who contended that such a practice was unlawful and unfair and had caused him damage.

That dispute prompted the President of that court to refer the following question to the Court of Justice for a preliminary ruling:

> 'Must Articles 3 (f) and 5 of the Treaty of 25 March 1957 establishing the EEC be interpreted as prohibiting the fixing in a Member State, by law or by regulation, of minimum prices for the sale to consumers, at the pumps, of "regular" and "super" petrol and diesel oil, a system which compels any retailer, being a national of any Member State, to conform to the fixed minimum prices?'

Articles 3 (f), 5 and 85 of the Treaty

The Court stated that Article 5 of the Treaty, in conjunction with Articles 3 (f) and 85 thereof, did not prohibit Member States from providing for the fixing of retail selling prices for products in the manner laid down by the rules contested in the main proceedings. The question remained whether such rules complied with the provisions of the Treaty relating to the free movement of goods.

Articles 30 and 36 of the Treaty

Sodinord and Soriev considered that the effect of the method of fixing the minimum price laid down by the contested rules was to prevent competition by the products of other Member States when their cost prices were more than 8% below those of French refineries by cancelling out the competitive advantage of the importer's lower costs. It therefore constituted an obstacle to imports prohibited by Article 30 of the Treaty.

The French Government, supported by the Governments of Italy and the Hellenic Republic, took the view that the fixing of prices in the manner in which it had been effected in this case did not effect imports from other Member States. The purpose of such a system was to harmonize the distribution of supplies of petroleum products throughout national territory by ensuring sufficient margins for all retail outlets.

The Commission observed that rules fixing a minimum price were capable of having an adverse effect on the marketing of imported products in so far as it prevented the lower cost price of imported products from being reflected in the retail selling price.

The Court noted that it had held, in relation to the fixing of a minimum price, that a national provision which provides for a minimum profit margin applicable to both national products and imported products could not adversely affect the marketing of imported products alone. However, the position was different where the minimum price was fixed at a specific amount which, although it applied both to national products and to imported products, was capable of adversely affecting the marketing of imported products in so far as it prevented their lower cost price from being reflected in the retail selling price.

In practice under the contested system the minimum retail selling price was determined by the ex-refinery price which had to comply with the ceiling price fixed by the national authorities.

The fact that the minimum price was calculated by reference to the average ex-refinery prices of French refineries did not prevent importers from benefiting from any competitive advantage resulting from a lower ex-refinery price.

The adverse effect on imported products arising from a system such as that at issue in this case was also reinforced, according to the Court, by the method of calculating the ceiling price which set an upper limit to the ex-refinery price and which was normally adopted by national refineries as the ex-refinery price. It was the ex-refinery price of the national refineries which was decisive when the European rates fell more than 8% below that price. It followed that whenever the competitive advantage of imported products exceeded that threshold, their more advantageous ex-refinery price was no longer taken into account in fixing the ceiling price.

Such a method adversely effected the distribution of imported products by depriving them of their competitive advantage with the consumer whenever the threshold of 8% was exceeded.

It followed that a national system for fixing a minimum retail selling price for fuel according to which the price was determined by reference only to the ex-refinery prices of national refineries and those prices were linked to the ceiling price calculated on the basis solely of the cost prices of the national refineries adversely

affected imported products, where the European rates for fuel differed from those prices by more than 8%, by depriving them of the opportunity of enjoying competitive advantages in sales to the consumer as a result of a lower cost price.

In order to justify the contested system the French Government also relied upon the overriding need to protect consumer interests. In its opinion competition with regard to fuel prices could lead to the disappearance of a great number of service stations and therefore to an inadequate supply network throughout the whole of the country.

As regards the application of Article 36 the French Government referred to the threat to public order and public security represented by the violent reactions which could be expected on the part of retailers affected by unrestricted competition.

According to the Court, it was sufficient to state that the French Government had failed to show that it would be unable to deal with the consequences which an amendment of the rules in question would have upon public order and public security.

The Court replied to the question referred to it by the Tribunal de Commerce, Toulouse, by ruling as follows:

'1. Articles 3 (f), 5, 85 and 86 do not prohibit a natonal rule providing for a minimum price to be fixed by the national authorities for the retail sale of fuel.

2. Article 30 prohibits such rules where the minimum price is fixed on the basis solely of the ex-refinery prices of the national refineries, and where those ex-refinery prices are in turn linked to the ceiling price which is calculated on the basis solely of the cost prices of national refineries when the European fuel rates are more than 8% above or below those prices,'

Free movement of persons

Case 293/83 – *Gravier* v *City of Liège* – (Reference for a preliminary ruling) – 13 February 1985 – (Non-discrimination – Access to vocational training) – (Full Court)

The Tribunal de Première Instance [Court of First Instance], Liège, referred two questions to the Court of Justice for a preliminary ruling on the interpretation of Article 7 of the Treaty.

Those questions were raised in proceedings in which Françoise Gravier, a student of French nationality at the Académie Royale des Beaux-Arts, Liège, claimed that the City of Liège should be prohibited from requiring her to pay an enrolment fee which was not demanded of students of Belgian nationality.

The Court noted that although in Belgium primary and secondary education was

free of charge in the State system and institutions of post-secondary or higher education might charge only very low registration fees intended to finance their social services, the laws setting out the national education budget had, since 1976-77, authorized the Minister to charge 'an enrolment fee for foreign pupils and students whose parents are not resident in Belgium and who attend a State educational institution or an institution supported by the State at pre-school, primary, special, secondary, higher (short or long type) and technical (second and third degree) level'.

On the basis of that provision the Minister imposed, for 1983-84, a fee on pupils not of Belgian nationality who were attending art courses subsidized by the State.

Miss Gravier, who is French and whose parents live in France, went to Belgium in 1982 to study the art of strip cartoons as part of a course of higher artistic studies lasting four years. For the 1982-83 academic year she sought exemption from the enrolment fee of BFR 24 622 demanded of foreign students. Her request was rejected and Miss Gravier was asked to pay the fee for the academic years 1982-83 and 1983-84. Since the fees were not paid within the period allowed, her enrolment for the 1983-84 year was refused with the result that her residence permit was not extended.

In those circumstance she applied to the President of the Tribunal de Première Instance, Liège, to obtain exemption from the enrolment fee and extension of her residence permit.

In the proceedings the plaintiff challenged the validity of the ministerial circulars imposing the enrolment fee in question. She maintained that such an obligation constituted discrimination on grounds of nationality which was prohibited by Article 7 of the Treaty and that a national of a Member State who went to Belgium to study must be free to do so as a recipient of services for the purposes of Article 59 of the Treaty.

The City of Liège took the view that it was for the Belgian State and the Communauté Française, who were joined as third parties, to reply to the complaints made in respect of the circulars on the payment of the enrolment fee.

The Tribunal de Première Instance found it necessary to refer the following questions to the Court:

'1. Is it in accordance with Community law to consider that nationals of Member States of the European Community who enter the territory of another Member State for the sole purpose of duly following courses there in an institution that organizes instruction relating to particular vocational training fall, with regard to that institution, within the scope of Article 7 of the Treaty of Rome of 25 March 1957?

2. If that question is answered in the affirmative, by what criterion may it be

decided whether a course on the art of strip cartoons falls within the scope of the Treaty of Rome?'

The Court stated that it was necessary first of all to consider whether or not the imposition of such an enrolment fee constituted 'discrimination on the grounds of nationality' within the meaning of Article 7 of the Treaty.

The Belgian State and the Communauté Française alleged that there was an imbalance between the number of foreign students in Belgium and the number of Belgians studying abroad. That imbalance led to serious budgetary consequences and, in claiming an enrolment fee from students who were nationals of another Member State and did not normally pay taxes in Belgium, the Belgian Government was in no way practising discrimination. On the contrary, such a contribution put foreign students on an equal footing with Belgian nationals.

The Commission stated that Belgium had the highest percentage of students from other Member States.

The Commission considered that the imposition of the enrolment fee in question created a difference in treatment based in nationality between students of Belgian nationality, whether or not their parents or they themselves paid taxes in Belgium, and nationals of other Member States.

Such unequal treatment based on nationality was to be regarded as discrimination prohibited by Article 7 of the Treaty if it fell within the scope of the Treaty.

The United Kingdom and the Danish Government voiced their concern on that point. They considered that the present case raised problems of principle which went beyond the Belgian context. After denying the claim that a student might be regarded as the recipient of services they contended that Article 7 of the Treaty did not prevent a Member State from treating its own nationals more favourably in the field of education. In that respect every Member State had special responsibilities towards its own nationals.

The Commission argued primarily that the imposition of an enrolment fee on students from another Member State was incompatible with Article 59 of the Treaty in so far as it was not required of students who were nationals of the State in question.

It was only in the alternative that the Commission saw the imposition of the fee as constituting discrimination on grounds of nationality contrary to Article 7.

The Court stated that in view of that difference of opinion it was necessary first of all to define the nature of the problem raised. The problem concerned neither the organization nor the financing of education but the erection of a financial barrier to access to education for foreign students only. Further, it concerned a particular type of education termed 'vocational training' in the first question and 'a course in strip cartoon art' in the second.

The Court noted in the first place that access to and participation in educational courses and apprenticeship, especially vocational training, were not unconnected with Community law.

Article 128 of the Treaty provided that the Council was to lay down general principles for implementing a common vocational training policy capable of contributing to the harmonious development both of the national economies of the common market.

The common vocational training policy referred to in Article 128 was gradually being established. Moreover, it constituted an indispensable factor in the activities of the Community, whose objectives included, *inter alia*, freedom of movement, mobility of labour and the improvement of the living standards of workers.

In particular, access to vocational training was likely to encourage freedom of movement throughout the Community by enabling people to obtain qualifications in the Member State where they intended to work and by giving them an opportunity of completing their training and developing their special talents in the Member State whose vocational training programmes included the special subject desired.

In its second question the national court sought to ascertain criteria for deciding whether a course on the art of strip cartoons constituted vocational training. It followed from the general guidelines laid down by the Council in 1971 that any form of instruction which led to the acquisition of qualifications for a particular profession, trade or employment or which provided the necesssary training and skills for such a profession, trade or employment was vocational training whatever the age and the level of training of the pupils or students, and even if the training programme included an element of general education.

The Court, in answer to the questions put to it by the President of the Tribunal de Première Instance, Liège, ruled as follows:

'1. The imposition on students who are nationals of other Member States of a charge, a registration fee or the so-called 'minerval' as a condition of access to vacational training, where the same fee is not imposed on students who are nationals of the host Member State, constitutes discrimination on grounds of nationality contrary to Article 7 of the Treaty.

2. The term "vocational training" includes courses in strip cartoons art provided by an institution of higher art education where that institution prepares students for a qualification for a particular profession, trade or employment or provides them with the skills necessary for such a profession, trade or employment.'

Common commercial policy

Case 264/82 – *Timex Corporation* v *Council and Commission of the European Communities* – 20 March 1985 – (Anti-dumping duty on mechanical wrist-watches) – (Full Court)

Timex Corporation, of Dundee, Scotland, brought an action against the Council and the Commission seeking the partial annulment of Article 1 of Council Regulation (EEC) No 1882/82 imposing a definitive anti-dumping duty on mechanical wrist-watches originating in the Soviet Union.

Article 1 of Regulation No 1882/82 imposed a definitive anti-dumping duty on mechanical wrist-watches originating in the Soviet Union, at a rate determined by the recorded dumping margin and amounting to 12.6% for watches without gold-plating, or with gold-plating of a thickness not exceeding five microns, and 26.4% for watches with gold-plating of a thickness exceeding five microns.

However, no anti-dumping duty was imposed on the movements of such watches.

Regulation No 1882/82 was based on Council Regulation (EEC) No 3017/79 on protection against dumped or subsidized imports from countries not members of the EEC. That regulation laid down the circumstances in which an anti-dumping or compensatory duty was to be imposed and defined *inter alia* the concepts of dumping and injury; further, it established rules of procedure, in particular with regard to the lodging of complaints, the opening and conduct of investigations, the confidential treatment of information received and the termination of proceedings where protective measures were unnecessary.

The applicant was the only manufacturer of such products in the United Kingdom. In its action for annulment it argued that Regulation No 1882/82 stood in contravention of the substantive and procedural rules contained both in the basic regulation, Regulation No 3017/79, and in the Treaty itself, on the grounds that, first, the rate of anti-dumping duty imposed on the watches in question was inadequate and, secondly, no anti-dumping duty was imposed on the movements of such watches.

The Court rejected the objection of inadmissibility raised by the Council and the Commission.

Substance

In support of its application the applicant advanced three arguments, alleging that the normal value of the dumped watches was determined incorrectly, that it was refused certain information contrary to Article 7 of the regulation in question and that no adequate statement of reasons was provided.

The Court considered it necessary to begin by examining the argument alleging an infringement of Article 7 (4) (a) of Regulation No 3017/79, which allowed a complainant to inspect all information made available to the Commission by any party to an investigation. Article 8 provided that information of a confidential character was not to be divulged.

The applicant charged the Commission with refusing to supply it with certain information collected from undertakings in Hong Kong which had been chosen as reference undertakings. In the first place, the applicant claimed that the Commission did not permit it to check whether the cases and dials of watches originating in Hong Kong were comparable to the equivalent Soviet-made items. In the second place, the Commission allegedly failed to supply it with any particulars of the prices or cost of the articles assembled in Hong Kong. In the applicant's view, that refusal was contrary to the requirements of Article 7 (4) of Regulation No 3017/79.

The applicant also emphasized that there were various ways in which the information gathered in Hong Kong could have been communicated to it without violating any duty of confidentiality.

The defendant institutions acknowledged that no information concerning either the cases and dials or the prices of the articles in question was made available to Timex Corporation. They contended that Community legislation allowed access only to information supplied by 'any party to an investigation', which automatically excluded undertakings of a non-member country.

As for the information regarding the prices of the articles assembled in Hong Kong, the defendants pleaded that it was confidential.

The Court noted that the aim of Article 7 of Regulation No 3017/79 was to ensure that the traders concerned could inspect the information gathered by the Commission in the course of the investigation. The expression 'any party to an investigation' was to be interpreted as meaning not only the parties who were the subject of the investigation but also the parties whose information had been used, as in this case, to calculate the normal value of the relevant products, since such information was just as relevant to the defence of complainants' interests as the information supplied by the undertakings engaged in dumping.

The Commission was under a duty either to make samples available to the applicant or, failing that, at least to provide all the information necessary to enable it to identify the items in question so that it could ascertain whether the institutions had established the facts correctly.

The Commission ought to have endeavoured, as far as was compatible with the obligation not to disclose business secrets, to provide the applicant with information relevant to the defence of its interests, choosing, if necessary on its own initiative, the appropriate means of providing such information; mere disclosure of the items referred to in the calculation, without any figures, did not satisfy those imperative requirements.

The Court stated that since the anti-dumping duty was therefore imposed in breach of the essential procedural requirements laid down in Article 7 (4) of Regulation No 3017/79, Article 1 of Regulation No 1882/82 was to be declared void on that

ground, and it was unnecessary to consider the other submissions advanced by the applicant in support of the same claim.

However, the aim of the action was not to have the provision in question declared void but to have it replaced by a more stringent measure fixing a higher anti-dumping duty on mechanical watches and imposing such a duty on mechanical watch movements. The Court therefore held that the anti-dumping duty imposed by the provision declared void should be maintained until the competent institutions had adopted the measures needed to comply with the Court's judgment.

The Court rules as follows:

'1. Article 1 of Council Regulation No 1882/82 of 12 July 1982 is declared void;

2. The anti-dumping duty imposed by that provision shall be maintained until the competent institutions adopt the measures needed to comply with this judgment;

3. The applicant's and the interveners' costs shall be borne jointly and severally by the Council and the Commission.'

Transport

Case 13/83 – *European Parliament, supported by the Commission of the European Communities,* v *Council of the European Communities, supported by the Kingdom of the Netherlands* – 22 May 1985 – (Common transport policy – Obligations of the Council) – (Full Court)

On 24 January 1983 the European Parliament brought proceedings pursuant to the first paragraph of Article 175 of the EEC Treaty for a declaration that by failing to introduce a common policy for transport and in particular to lay down the framework for such a policy in a binding manner and by failing to reach a decision on 16 enumerated proposals on transport matters submitted to it by the Commission, the Council had infringed the EEC Treaty and in particular Articles 3 (e), 61, 74, 75 and 84 thereof.

The adoption of a common transport policy was one of the actions which was to be undertaken by the Community under Article 3 of the Treaty with a view to establishing a common market and progressively approximating the economic policies of the Member States.

According to Article 75 (1) the Council must, on a proposal from the Commission and after consulting the Economic and Social Committee and the European Parliament, lay down:

'(a) common rules applicable to international transport to or from the territory of a

Member State or passing across the territory of one or more Member States;

(b) the conditions under which non-resident carriers may operate transport services within a Member State;

(c) any other appropriate provisions.'

Admissibility

The Council, the defendant in the case, raised an objection of inadmissibility on two grounds: it argued first that the applicant lacked the capacity to bring proceedings and secondly that the conditions laid down in Article 175 regarding the procedure to be followed before the initiation of proceedings had not been complied with.

1. *Capacity to bring proceedings*

The Council explained that this action was a further chapter in the Parliament's efforts to increase its influence in the decision-making process within the Community. The Parliament had no right of review over the Council such as to provide a basis for an action for failure to act.

It added that the scheme of the Treaty could not be interpreted in such a way as to give the Parliament the capacity to bring proceedings. In so far as the Treaty deprived the Parliament of the right to review the legality of measures taken by the Council and by the Commission, it would have been illogical to grant it a right of action in the case of unlawful failure by one of those institutions to act.

The European Parliament and the Commission challenged that reasoning and referred to the wording of Article 175, which, they said, could not be interpreted in such a way as to prevent the Parliament from bringing an action for failure to act.

The Court emphasized that the first paragraph of Article 175 expressly gave a right of action for failure to act against the Council and the Commission *inter alia* to 'the other institutions of the Community'. It thus gave the same right of action to all the Community institutions.

The first objection of inadmissibility was therefore rejected by the Court.

2. *The conditions governing the procedure prior to the action*

The Council took the view that the conditions laid down in Article 175 regarding the procedure to be followed before initiating proceedings had not been fulfilled. The letter of the President of the European Parliament of 21 September 1982 did not call upon the Council to act, as provided for in Article 175; furthermore, the Council had 'defined its position' on that letter for the purposes of Article 175 by providing the Parliament with a full report of the Council's activities regarding the common transport policy referred to in the letter of 21 September 1982.

The Council argued that it could be inferred from its reply to that letter that it had viewed the correspondence between the two institutions as a contribution to political dialogue and not as the first step in proceedings.

The Parliament and the Commission took the view that the letter of the Parliament of 21 September 1982 set out sufficiently clearly the measures called for by the Parliament under the second paragraph of Article 175, and that the reply of the President of the Council, dated 22 November 1982, was significant precisely because it failed to define the Council's position on any of those measures, so that the Parliament's charge that the Council had failed to act was left unanswered.

The Court held that the conditions required by the second paragraph of Article 175 were fulfilled. After expressly referring to that provision, the Parliament had clearly stated in the letter from its President that it was calling upon the Council to act pursuant to Article 175 and had appended a list of measures which in its view the Council ought to undertake in order to remedy its failure to act.

The Council's reply, however, simply summarized what action it had already taken in the transport sector but did not deal with 'the legal aspects' of the correspondence initiated by the Parliament.

The second objection of inadmissibility was also rejected by the Court.

Subject-matter of the action

In its defence the Council submitted that the Parliament had failed to address the key issue in the dispute, that is, whether the word 'act' as used in Article 175 could be interpreted as including the establishment of a common transport policy.

The Council took the view that the procedure provided for in Article 175 was intended for cases where the institution in question was legally obliged to adopt a specific legal measure and that it was not well suited to resolving cases involving the establishment of a whole system of measures within the framework of a complex legislative process. According to Article 176 an institution which had failed to act was required 'to take the necessary measures' to comply with the judgment of the Court. The applicant had not however, indicated the precise measures which the Council had failed to adopt.

The Parliament conceded that a common transport policy would probably not be adopted at a stroke but would have to be achieved by means of successive measures. It considered it clear, however, that it was necessary 'to act' one way or another in order to bring the requisite set of measures into being in accordance with a pre-determined plan.

The Court noted that the Parliament had made two separate claims: one concerning the failure to establish a common transport policy and to lay down its framework, and the other regarding the failure of the Council to act on 16

proposals on transport matters submitted to it by the Commission. Only the first claim raised the issue of whether the wording of Article 175 and its place in the system of legal remedies provided for by the Treaty made it possible for the Court to declare that the Council had failed to act in breach of the Treaty.

The issue raised by the Council was, in essence, whether in the present case the European Parliament, in describing in its first claim the measures which it complained the Council had failed to take, had done so with a degree of precision which would make it possible for the Council to comply, pursuant to Article 176, with a judgment of the Court allowing that claim.

It followed that even if the Parliament's first claim were substantiated it could be upheld only to the extent to which the Council's alleged failure to adopt a common transport policy amounted to a failure to take measures the scope of which was sufficiently specific for them to be individually identified and adopted in compliance with the Court's judgment pursuant to Article 176. It was therefore necessary to examine the arguments of the parties as to whether or not there was a common transport policy.

The first claim: Failure to establish a common transport policy

1. *The common transport policy in general*

The European Parliament recognized that the Treaty allowed the Council a wide discretion with regard to the content of the common transport policy. That discretion was however limited in two respects: first, it did not permit the Council to ignore the time-limits laid down by the Treaty and in particular that in Article 75 (2); secondly, the Council was required to lay down a common framework consisting of a coherent set of principles, taking general account of all the complex economic factors at work in the transport sector.

In those circumstances, the Parliament maintained, the basic principles which the Council ought to have adopted should at least comply with certain objectives and cover certain areas.

The Commission stated that there were still serious lacunae in all areas of transport policy in spite of the numerous proposals submitted by it to the Council over a period of more than 20 years. It referred to the inadequacy of the measures taken regarding the transport of goods by road, the obstacles presented by the large number of border controls, the unsatisfactory situation of railway accounts, the large structural overcapacity in transport by inland waterway and the almost total absence of Community action with regard to sea and air transport.

The Council did not dispute the existence of the lacunae described by the Commission. However, it raised a number of arguments intended to show that those lacunae could not be regarded as a failure to act for the purposes of Article 175 of the Treaty.

The Council went on to give details of the action it had already taken in this field, a summary of which had been supplied to the Parliament.

The Court concluded from those arguments that the parties were in agreement that there was not yet a coherent set of rules which could be regarded as a common transport policy within the meaning of Articles 74 and 75 of the Treaty. That conclusion could be based on the lack of a coherent framework for the implementation of such a policy, referred to by the Parliament, the fact that the main problems in the field of transport remained unresolved, as the Commission had pointed out, the failure to abide by the 1965 and 1967 decisions establishing a timetable for action in the area, or the continued existence of obstacles to the freedom to provide services in relation to transport, as the Netherlands Government had emphasized.

The Court therefore considered it necessary to decide whether, in the absence of a set of measures which could be regarded as a common transport policy, the Council's repeated failure to act could be the subject of an action under Article 175 of the Treaty.

The Council's argument that it had a discretion was, in principle, correct. According to the scheme of the Treaty it was for the Council, in accordance with the procedural rules laid down in the Treaty, to determine the objectives of and means for implementing a common transport policy.

Similarly, it was for the Council to set priorities in the harmonization of legislation and administrative practices in this sector and to decide what matters such harmonization should cover.

The absence of a common policy which the Treaty required to be brought into being was not necessarily a failure to act sufficiently specific in nature to form the subject of an action under Article 175. That remark was applicable in this case notwithstanding the fact that progress towards the achievement of a common transport policy in accordance with Article 75 had to continue, or the fact that a substantial part of that work should have been completed before the end of the transitional period.

2. *Freedom to provide services in the transport sector*

The Parliament and the Commission argued that not only did the provisions of Article 75 (1) (a) and (b) regarding the common rules applicable to international transport and the conditions under which non-resident carriers could operate transport services within a Member State have to be adopted within a certain period but also imposed on the Council obligations sufficiently specific to be capable of being the subject of a finding of failure to act under Article 175 of the Treaty. Both institutions emphasized the close relationship between those provisions and the freedom to provide services, the achievement of which was one of the principal tasks of the Community.

The Council disputed that contention, arguing that even in the context of Article 75 (1) (a) and (b) the content and objectives of the rules to be adopted were not sufficiently defined.

The Commission and the Netherlands Government emphasized the importance of freedom to provide services.

The Court therefore considered it necessary to give detailed attention to the arguments of the parties regarding freedom to provide services in the transport sector and its relationship with the establishment of a common transport policy.

The Commission took the view that Articles 59 and 60 were not directly applicable in the transport sector. Under Article 61 freedom to provide services in the transport sector was to be achieved under the rules provided for by Article 75 (1) (a) and (b). That provision was intended to give the Council an appropriate period, which might if necessary extend beyond the end of the transitional period, to achieve freedom to provide services in the transport sector within the framework of a common policy. The appropriate period could not however be extended indefinitely and since more than 15 years had elapsed since the end of the transitional period it should almost have reached its end.

In those circumstances, the Commission argued that in its judgment the Court should indicate by way of a warning what was a reasonable period for the purposes of Article 61.

The Court pointed out that Article 61 (1) provided that freedom to provide services in the field of transport was to be governed by the provisions of the Title relating to transport. According to the Treaty the application of the principles governing freedom to provide services (Articles 59 and 60) was therefore to be achieved by the implementation of the common transport policy and more particularly by the establishment of common rules on international transport and the conditions under which non-resident carriers were permitted to operate transport services within a Member State, which rules and conditions were referred to in Article 75 (1) (a) and (b) and necessarily affected freedom to provide services.

The Parliament, the Commission and the Netherlands Government had therefore rightly contended that the Council's obligations under Article 75 (1) (a) and (b) included the introduction of freedom to provide services in the transport sector, and that the scope of that obligation was clearly defined by the Treaty.

It followed that in that regard the Council did not have the discretion which it had in other areas of the common transport policy. In those circumstances the obligations laid down by Article 75 (1) (a) and (b), in so far as they were intended to establish freedom to provide services, were sufficiently precise for disregard of them to be the subject of a finding of failure to act under Article 175. The Council was required to extend freedom to provide services to the transport sector before the end of the transitional period under Article 75 (1). Since the Council had failed

to adopt measures which should have been adopted before the end of the transitional period and whose subject-matter and nature could be identified with sufficient precision, the Court held that the Council had failed to act.

The Court added that the Council was at liberty to adopt, in addition to the requisite measures of liberalization, such accompanying measures as it considered necessary and to do so in the order it held to be appropriate.

The second claim: Failure to take a decision on the 16 proposals submitted by the Commission

The European Parliament's second claim concerned the Council's failure to take a decision regarding the 16 proposals of the Commission set out in the application.

The Court held that in so far as the proposals based on Article 75 (1) (a) and (b) were intended to contribute to the achievement of freedom to provide services in the transport sector, the Council's obligation to reach a decision thereon was apparent from the above finding of the Court that the Council had failed to act. In so far as the proposals did not fall within that category, they belonged to the class of accompanying measures which might be adopted in addition to the requisite liberalization measures and their adoption was a matter for the Council's discretion.

The Court held that:

'1. In breach of the Treaty the Council has failed to ensure freedom to provide services in the sphere of international transport and to lay down the conditions under which non-resident carriers may operate transport services in a Member State;

2. The remainder of the application is dismissed;

3. The parties and interveners are ordered to bear their own costs.'

II — Decisions of national courts on Community law

Statistical information

The Court of Justice endeavours to obtain the fullest possible information on decisions of national courts on Community law.

The tables below show the number of national decisions, with a breakdown by Member State, delivered between 1 July 1983 and 30 June 1985 entered in the card-indexes maintained by the Library, Research and Documentation Directorate of the Court. The decisions are included whether or not they were taken on the basis of a preliminary ruling by the Court.

A separate column headed 'Brussels Convention' contains the decisions on the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which was signed in Brussels on 27 September 1968.

It should be emphasized that the tables are only a guide as the card-indexes on which they are based are necessarily incomplete.

General table, by Member State, of decisions on Community law (from 1 July 1983 to 30 June 1985)

	Decisions on Community law excluding the Brussels Convention	Decisions on the Brussels Convention	Total
Belgium	68	48	116
Denmark	6	–	6
France	301	43	344
Federal Republic of Germany	361	52	413
Greece	2	–	2
Ireland	5	–	5
Italy	122	26	148
Luxembourg	9	–	9
The Netherlands	222	55	277
United Kingdom	92	1	93
Total	1 188	225	1 413

[1]This table does not include decisions merely authorizing enforcement under the Convention. Those decisions are included in the statistics appearing in the *Digest of Community Case-law. D series. Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.*

III — The departments of the Court of Justice

The Registry

The Court of Justice performs by its very nature two functions: in the first place, it is a court of law and, secondly, it constitutes one of the institutional pillars of the European Community.

That twofold role is clearly reflected in the Registry.

The Registry is both the focal point of the Court's activities, in keeping with the manner in which courts are organized in all the Member States, and also the nerve centre of the administration, as is particularly apparent from the tasks entrusted to the Registrar.

Many members of staff are engaged in the performance of all those tasks under the auspices of the Registrar.

The Registrar

The Registrar is appointed by the Court for a term of six years which may be renewed.

In institutional terms the Registrar is responsible, under the President's authority, for the administration of the Court, financial management and the accounts. The Registrar's powers and duties are of course very extensive. He is responsible for maintaining the files of cases pending, he follows the proceedings in cases brought before the Court and deals with the representatives of the parties, and he is responsible for the conservation of official records. The Registrar is responsible for the acceptance, transmission and custody of documents and for effecting such service as is provided for by the Rules of Procedure. Finally, the Registrar attends the sittings of the Court and of the Chambers.

The Registry staff

It is clear that in order to cope with such a heavy workload, the Registrar must delegate certain tasks to other members of staff. He is therefore assisted by an Assistant Registrar, whose task is specifically to oversee the running of the Registry, and by two administrators who between them attend the sittings and deal with the various procedural formalities.

Office duties are entrusted to assistants and secretaries who are recruited in such a way as to ensure that all the official languages of the Community are represented in the Registry.

Tasks of the Registry

The department consists of two distinct sections. In the first place, the secretariat of the Registry is responsible for sorting and distributing the post, the exchange of correspondence concerning administrative matters between the Registrar and the Court, preparing the administrative meetings of the Court and the Chambers (drawing up the agenda, issuing the notice convening the meeting, creating files, notifying officials of administrative decisions concerning them), drawing up the calendar and list of public sittings and indicating the rooms in which the sittings are to be held.

Secondly, the sections themselves are small units consisting of an assistant and a secretary. These officials are responsible for dealing with cases pending, in their own mother tongue, under the auspices of the Assistant Registrar. There are seven sections in all, which makes it possible for documents to be accepted and for cases to be followed without any language problems. The creation of Spanish and Portuguese sections has been under way since 1 January 1986.

In each section, the real cogs in the procedural machinery are the assistants. They are responsible for maintaining the files and constantly updating them, and for the internal distribution of the pleadings and documents relating to the cases. They are also responsible for effecting service, giving notice and transmitting communications, in accordance with the requirements of Community law, and deal with any correspondence relating to cases.

The compilation of statistics on the work of the courts is also entrusted to an assistant. That entails the following tasks: gathering of information, classification of unprocessed information, periodical publication of statistics, compilation of statistical tables and collection of statistics from various sources.

Those tasks will be profoundly affected by the modernization of the Registry as a result of the introduction of a data-processing system which is described below.

The Court's official records are also stored at the Registry. The records of judicial work kept at the Registry span more than 30 years and constitute at present an impressive quantity of documents. In the future the Court may create a storage system in the form of microfiches.

Finally, the Registrar is responsible for the publication of the *Reports of Cases before the Court*. Only these reports may be cited as official publications of the Court. They contain the full text of the judgments, the Opinions of the Advocates General and certain orders. They are published in the seven official languages of the European Communities.

The Registry's future

In order to cope with the steady increase in the workload and to adapt to the needs of modern life, the Registry will shortly be computerized. The computerization project which has been drawn up and which is designed to provide a number of products and services will have several advantages including, in particular, speed and reliability.

The system will be able to provide the following services:

(i) *Consultation of the data base through a terminal*

By interrogating the computer on the basis of the case number, the user will be able to ascertain the stage of the proceedings reached in a case pending before the Court, the background to a case and the analytical elements of each case.

(ii) *Research by means of multiple criteria* on a group of cases

Computerized research will make it possible, in particular, to detect links between two or more cases, to obtain a list of cases pending which correspond to a combination of two or more parameters entered in the data base.

(iii) *Print-out of the stage reached in the proceedings*

The system will produce, automatically and on a regular basis, synoptic tables indicating the latest stage of the proceedings in cases before the Court.

(iv) *Precedents file and statistics file*

There is no need to stress the importance of the proposed computerization of the Registry. Even the most prodigious human memory is no longer capable of mastering such an extensive body of case-law which is both technical and involved.

It was time for the Court of Justice to take a step forward from its rough-and-ready beginnings to a modern organization of its departments. It comes as no surprise that the Registry, the administrative and judicial backbone of the Court, has resolutely embarked on the path of progress.

Library, Research and Documentation Directorate

This directorate includes the library and the research and documentation divisions.

The library division

This division is responsible for the organization and operation of the library of the Court which is primarily a working instrument for the Members and the officials of the Court.

The library has also subscribed to a number of publications edited in the form of microfiches. Two microfiche readers have been installed in the reading room for this purpose.

All works may be consulted in the reading room of the library. However they are lent only to the Members and officials of the Court. No loans are made to persons not belonging to the Community institutions. Loans to officials of other Community institutions may be made via the library of the institution to which the official in question belongs.

The division prepares a quarterly list of new acquisitions both of bound volumes and journals. The complete annotation of the Community case-law has, moreover, been stored in the Court's computer. The division also publishes an annual bibliographical catalogue relating to works and articles which, during the preceding year, have been added to its collection of material on European law, and in particular of Community law. The catalogue has an index comprising a list of key-words.

As from 1 January 1983 access to the library has no longer been limited to the Members or the staff of the Court but has been allowed to visitors interested in consulting its collections.

At the end of 1985 the library proceeded to draw up the annual inventory of its holdings and of its activities.

The principal features of that inventory are as follows:

(i) volumes held: 67 743, including 228 volumes which have been discarded. This represents a 4% increase in relation to 1984;

(ii) volumes purchased in 1985: 2 873, representing 1 202 titles;

(iii) works missing: 58, amounting to barely 0.1% of the library's total holdings;

(iv) microfiches held: 75 952, subdivided by subject and by country as set out in Annex I;

(v) subscriptions to periodicals: 433;

(vi) periodicals in circulation: 369. Several periodicals are circulated two, three, or even five times concurrently. Copies of the latest issues of Community law journals are always displayed on the display stands installed in the reading room;

(vii) subscriptions to newspapers: 85;

(viii) subscriptions to press agencies: 26;

(ix) 'permanent loans' (office books): 312;

(x) temporary loans in 1984 and 1985 (which may be made only to officials of the Court): 2 450 and 2 650 respectively, representing a monthly average of 212;

(xi) visitors to the library over the same period: 392.

In 1985 considerable progress was made with regard to the computerization of the library's catalogues. As far as Community law is concerned, all the publications dating from 1982 have been entered in the computer. The next step will be to enter Community law for the years prior to 1982, followed by international law and national legislation. The *Bibliographie juridique de l'intégration européenne*, Volume 5 (1985) has once again been compiled with the aid of the computer.

The research and documentation division

The primary task of this division is, at the request of Members of the Court, to prepare research notes on Community law, international law and comparative law.

The division is also responsible for drawing up the summaries of the judgments and preparing the alphabetical index of subject-matter in the *Reports of Cases before the Court* which since 1981, appears not merely in the form of an annual index but also as a monthly index inserted in each part of the *Reports of Cases before the Court*. It also distributes periodically to the Members of the Court a bulletin on the case-law in which the summaries of judgments not yet published in the *Reports of Cases before the Court* are set out systematically.

The division also prepares a digest of case-law relating to the European Communities which comprises four series and covers the case-law of the Court as well

as a selection of the case-law of the Member States relating to Community law. The 'A' and 'D' series are published in loose-leaf format whereas the format for the publication of the 'C' series has not yet been determined. (For more detailed information on the structure of these series, on the situation regarding updating and on the terms of delivery, see page 96).

As regards the 'B' series which will cover the decisions of national courts in matters of Community law, it has been decided by the Court that, without prejudice to publication in the future, this series will be the subject of a computerized information system collating, according to the various problems of Community law, the decisions of national courts contained in the card-indexes of the division (at present more than 5 000).

Access to this system, which is operated directly on the Court's computer, will not be confined to the Court's staff.

Legal information section

As its principal task this section runs a computerized retrieval system for the case-law of the Court of Justice (CJUS), giving rapid access to the whole of the Court's case-law including the Opinions of the Advocates General. CJUS forms part of the Celex inter-institutional system of computerized documentation for Community law. The data base is no longer available exclusively to the Members and the staff of the Court but may be consulted by the public in English, French and German (the Dutch and Italian versions are being prepared), from inquiry terminals set up in the Member States.

This section is linked to the legal data bases known as Juris (Federal Republic of Germany), Credoc (Belgium), Juridial (France), Italgiure (Italy), Kluwep (Netherlands) and Lexis (United Kingdom and United States). Access to those bases, yielding rapid information on national case-law, legislation and doctrine, is restricted to the staff of the Court.

The section also manages certain specific data bases on computer equipment belonging to the Court. For instance it operates a data base for internal use, comprising information relating to cases pending before the Court. It regularly publishes a systematic synposis of such cases, known as 'Tables AP', which categorizes them according to subject-matter under the various headings of Community law.

It periodically draws up lists (the 'A-Z Index'), on the basis of a computerized system, of all the cases brought before the Court since 1954, including those in which the judgments have not yet been published in the European Court Reports. Whenever the decisions have been published, the list gives the reference in the European Court Reports.

Translation Directorate

Since 1984 the Translation Directorate has been composed of 104 lawyer-linguists who are divided up as follows into the seven translation divisions and the terminology branch:

Danish language division	14	German language division	13
Dutch language division	13	Greek language division	15
English language division	17	Italian language division	10
French language division	18	Terminology branch	1

The total number of staff is 151.

The principal task of the Translation Directorate is to translate into all the official languages of the Communities for publication in the *Reports of Cases before the Court* the judgments of the Court and the Opinions of the Advocates General. In addition it translates any documents in the case into the language or languages required by Members of the Court.

Between 1 January 1984 and 31 December 1985 the Translation Directorate translated 159 000 pages of which 110 000, representing 69.2% of the total, were revised by a person other than the translator.

The relative importance of the various official languages of the Community as languages into which texts are translated on the one hand and as source languages on the other may be seen from the following table. The first column of the table at the same time shows the amount of work done by each of the seven translation divisions.

Translations:

into Danish:	23 100 pages;	from that language:	1 100 pages
into Dutch:	20 400 pages;	from that language:	15 800 pages
into English:	24 000 pages;	from that language:	16 200 pages
into French:	28 800 pages;	from that language:	91 700 pages
into German:	21 900 pages;	from that language:	24 300 pages
into Greek:	21 500 pages;	from that language:	900 pages
into Italian:	19 300 pages;	from that language:	9 000 pages
	159 000 pages		159 000 pages

Interpretation division

The interpretation division provides interpretation for all the sittings and other meetings organized by the institution. At present it consists of seven teams, one for each of the official languages (in 1985) and a secretariat.

The need for interpretation has grown steadily in 1984 and 1985 by comparison with the preceding period and has been particularly marked in the case of certain languages, especially Greek. It has led to an increase in the number of staff interpreters, which now stands at 18, and in the services provided by freelance interpreters amounting to approximately 1 000 working days.

That trend will be strengthened by the accession of Spain and Portugal. Preparations of a linguistic, financial and organizational nature have been made in order to carry out the tasks resulting from the accession of those countries.

IV — Composition of the Court

The composition of the Court has changed on several occasions in 1984 and 1985.

By decision of the Representatives of the Governments of the Member States of the European Communities of 29 November 1983, Mr Carl Otto Lenz was appointed Advocate General in place of Mr Advocate General Gerhard Reischl, who retired. Mr Lenz took up office on 12 January 1984.

By decision of the Representatives of the Governments of the Member States of the European Communities of 7 February 1984, Mr Marco Darmon was appointed Advocate General in place of Mrs Advocate General Simone Rozès, who retired. Mr Darmon took up office on 13 February 1984.

By decision of the Representatives of the Governments of the Member States of the European Communities of 26 March 1984, Mr René Joliet was appointed judge in place of the President of the Court, Judge Mertens de Wilmars, who retired. Mr Joliet took up office on 10 April 1984.

On 10 April 1984 Lord Mackenzie Stuart was elected President of the Court of Justice for the period from 10 April 1984 to 6 October 1985.

By decision of the Representatives of the Governments of the Member States of the European Communities of 17 December 1984 Mr Thomas Francis O'Higgins was appointed judge in place of Judge Aindrias O'Keeffe, who retired. Mr O'Higgins took up office on 16 January 1985.

By decision of the Representatives of the Governments of the Member States of the European Communities of 15 July 1985, Mr Fernand Schockweiler was appointed judge in place of Judge Pierre Pescatore. Mr Schockweiler took up office on 7 October 1985.

At their administrative meeting on 7 October 1985 the judges of the Court of Justice elected Lord Mackenzie Stuart President of the Court for the period from 7 October 1985 to 6 October 1988.

Composition of the Court of Justice of the European Communities on 31 December 1984
(order of precedence)

Lord Mackenzie Stuart, President
Giacinto Bosco, President of the First Chamber
Ole Due, President of the Second Chamber
Peter VerLoren van Themaat, First Advocate General
Constantinos Kakouris, President of the Third Chamber
Pierre Pescatore, Judge
Aindrias O'Keeffe, Judge
Thijmen Koopmans, Judge
Ulrich Everling, Judge
Sir Gordon Slynn, Advocate General
Kai Bahlmann, Judge
G. Federico Mancini, Advocate General
Yves Galmot, Judge
Carl Otto Lenz, Advocate General
Marco Darmon, Advocate General
René Joliet, Judge
Paul Heim, Registrar

Composition of the Court of Justice of the European Communites on 31 December 1985
(order of precedence)

Lord Mackenzie Stuart, President
Ulrich Everling, President of the Third Chamber
Kai Bahlmann, President of the Second Chamber
G. Federico Mancini, First Advocate General
René Joliet, President of the First Chamber
Giacinto Bosco, Judge
Thijmen Koopmans, Judge
Ole Due, Judge
Sir Gordon Slynn, Advocate General
Peter VerLoren van Themaat, Advocate General
Yves Galmot, Judge
Constantinos Kakouris, Judge
Carl Otto Lenz, Advocate General
Marco Darmon, Advocate General
Thomas Francis O'Higgins, Judge
Ferdinand A. Schockweiler, Judge
Paul Heim, Registrar

V — General information

A — *Information and documentation on the Court of Justice and its work*

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

L-2925 Luxembourg
Telephone: 43031
Telex (Registry): 2510 CURIA LU
Telex (Information Office of the Court): 2771 CJ INFO LU
Telegrams: CURIA

Complete list of publications:

Texts of judgments and opinions and information on current cases

1. *Judgments or orders of the Court and Opinions of Advocates General*

Orders for offset copies, provided some are still available, may be made to the Internal Services Branch of the Court of Justice of the European Communities, L-2925 Luxembourg, on payment of a fixed charge of BFR 200 for each document. Copies may no longer be available once the issue of the *European Court Reports* containing the required judgment or opinion of an Advocate General has been published.

Anyone showing he is already a subscriber to the *Reports of Cases before the Court* may pay a subscription to receive offset copies in one or more of the Community languages.

The annual subscription will be the same as that for *European Court Reports*, namely BFR 3 500 for each language.

Anyone who wishes to have a complete set of the Court's cases is invited to become a regular subscriber to the *Reports of Cases before the Court* (see below).

2. *Calendar of the sittings of the Court*

The calender of public sittings is drawn up each week. It may be altered and is therefore for information only.

This calender may be obtained free of charge on request from the Court Registry.

Official publications

1. *Reports of Cases before the Court*

The *Reports of Cases before the Court* are the only authentic source for citations of jugments of the Court of Justice.

The volumes for 1954 to 1980 are published in Dutch, English, French, German and Italian.

The Danish edition of the volumes for 1954 to 1972 comprises a selection of judgments, opinions and summaries from the most important cases.

Since 1973, all judgments, opinions and summaries are published in their entirety in Danish.

The *Reports of Cases before the Court* are on sale in the Member States at the addresses given for the sale of the digest (see under B *infra*) and marked with an asterisk.

In other countries orders must be addressed to the Office for Official Publications of the European Communites, L-2985 Luxembourg.

2. *Selected instruments relating to the organization and procedure of the Court*

Orders, indicating the language required, should be addressed to the Office for Official Publications of the European Communities, L-2985 Luxembourg.

Publications of the Information Office of the Court of Justice of the European Communities

Applications to subscribe to the following three publications may be sent to the Information Office (L-2925 Luxembourg) specifying the language required. They are supplied free of charge.

1. *Proceedings of the Court of Justice of the European Communities*

Weekly information on the legal proceedings of the Court containing a short summary of judgments delivered and a brief description of the opinions, the oral procedure and the cases brought during the previous week.

2. *Annual synopsis of the work of the Court*

Annual publication giving a synopsis of the work of the Court of Justice of the European Communities in the area of case-law as well as of other activities (study courses for judges, visits, study groups, etc.). This publication contains much statistical information.

3. *General information brochure on the Court of Justice of the European Communities*

This brochure provides information on the organization, jurisdiction and composition of the Court of Justice.

B — *Publications of the research and documentation division of the Court of Justice*

1. *Digest of Community Case-law*

The Court of Justice publishes the *Digest of Community Case-law* which systematically presents not only the whole of the case-law of the Court of Justice of the European Communities but also selected judgments of national courts. In its conception it is based on the *Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes* (see below under 2.) The digest appears in all the languages of the Community. It is published in the form of loose-leaf binders and supplements are issued periodically.

The digest comprising four series each which may be obtained separately, and which cover the following fields:

A series: Case-law of the Court of Justice and the European Communities excluding the matters covered by the C and D series.

B series: Case-law of the courts of Member States excluding the matters covered by the D series (not yet published).

C series: Case-law of the Court of Justice of the European Communities relating to Community staff law (not yet published).

D series: Case-law of the Court of Justice of the European Communities and of the courts of Member States relating to the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. (This series replaces the *Synopsis of case-law* which was published in instalments by the Documentation Division of the Court but has now been discontinued.)

The first issue of the A series covering the judgments delivered by the Court of Justice of the European Communities during the years 1977 to 1980 was published in 1983. The updating supplement covering the case-law of the Court in 1981 was published in 1985. The supplement covering the case-law of the Court in 1982 has gone to press.

The first issue of the D series was published in 1981. It covers the case-law of the Court of Justice of the European Communities from 1976 to 1979, and the case-law of the courts of Member States from 1973 to 1978. The supplement covering the case-law of the Court of Justice from 1980 to 1981 and judgments of national courts in 1979 was published in 1984. The supplement covering the case-law of the Court from 1982 to 1984 and the case-law of the courts of Member States from 1980 to 1982 has gone to press.

Work on the C series is in progress. Work on the B series is also in progress and priority has been given to its computerization.

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2. *Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes – Europäische Rechtsprechung*
(published by H. J. Eversen and H. Sperl)

This *répertoire* which has ceased publication contains extracts from judgments of the Court of Justice of the European Communities and from judgments of national courts and covers the years 1954 to 1976. The German and French versions are on sale at:

Carl Heymann's Verlag
Gereonstrasse 18-32
D-5000 Köln 1
(Federal Republic of Germany)

Compendium of case-law relating to the European Communities
(published by H. J. Eversen, H. Sperl and J. A. Usher)

In addition to the complete collection in French and German (1954 to 1976) an English version is now available for 1973 to 1976. The English version is on sale at:

Elsevier – North Holland
PO Box 211
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C — *Information on Community law*

Community case-law[1] is published in the following journals amongst others:

Belgium:
Administration publique
Cahiers de droit européen
Info-Jura
Journal des tribunaux
Journal des tribunaux du travail
Jurisprudence du Port d'Anvers
Paicrisie belge
Rechtskundig weekblad
Recueil des arrêts et avis du Conseil d'Etat
Revue belge du droit international
Revue belge de sécurité sociale
Revue critique de jurisprudence belge
Revue de droit commercial belge (anc. Jurisprudence commerciale de Belgique)
Revue de droit fiscal
Revue de droit intellectuel – 'L'Ingénieur-conseil'
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Revue de droit social
Sociaal-economische wetgeving
Tijdschrift rechtsdocumentatie
Tijdschrift voor privaatrecht
Tijdschrift voor vreemdelingenrecht (TVR)

Denmark:
Juristen & Økonomen
Nordisk Tidskrift for International Ret
Ugeskrift for Retsvæsen

France:
Actualité juridique
Annales de la propriété industrielle, artistique et littéraire
Annuaire français de droit international
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Revue critique de droit international privé
Revue du droit public et de la science politique en France et à l'étranger
Revue internationale de la concurrence
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Revue trimestrielle de droit européen

[1] Community case-law means the decisions of the Court as well as those of national courts concerning a point of Community law

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	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht
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Ireland:	The Gazette of the Incorporated Law Society of Ireland
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United Kingdom:

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Formal Sittings of the Court of Justice of the European Communities 1984 and 1985

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FORMAL SITTING
of 11 January 1984

Address by President J. Mertens de Wilmars on the occasion of the retirement from office of Mr Advocate General G. Reischl and the entry into office of Mr Advocate General C. O. Lenz

Your Excellencies,
Ladies and Gentlemen,

In expressing, in accordance with due and established custom, the gratitude of the Court to one of its Members on his retirement, I would observe, dear colleague and friend Reischl, that after having had the privilege of speaking in praise of you, I ought to be listening to the same office being performed in my own case since we have both asked at the same time to be relieved of our duties.

I was particularly pleased at the prospect of being associated with you in this ceremony because of our close and unfailing collaboration during the ten years you have devoted to the high office of Advocate General. However, the ways in which it is made possible for the Ministers meeting in Council to fill a vacant seat are, like those of providence, sometimes unfathomable.

All things considered, however, equity, if not the law, has been well served because your talents and merits fully justify a formal sitting of the Court which focuses on you the expression of our gratitude and our friendship, all the more so since the seat which tradition has reserved to an Advocate General with a German legal background is the one which has had the fewest occupants. When you took up your duties on 9 October 1973 you were directly succeeding one of the founding fathers of the Court of Justice, Advocate General Karl Roemer, who had held the position since 1953.

You have been an exemplary successor, as might have been expected from your career the different stages of which combined knowledge of and a taste for the law with increasing responsibilities of an administrative, judicial and political nature: Gerichtsassessor in the Bavarian Ministry of Justice in 1951; Administrative Judge in 1954; Attaché to the Bavarian Permanent Delegation to the German Government in 1955, Bavarian senior civil servant in 1956; Judge at the Oberlandesgericht Munich 1958; Deputy in the Bundestag in 1961; Parliamentary Secretary to the Federal Ministry of Finance in 1969, in which capacity you were associated with the work of the Council of Ministers of the Community; and a Member of the European Parliament in 1971 until you took up your duties at the Court.

Original text: French.

Numerous enduring features characterize a *cursus honorum* remarkable for its diversity: attachment to your native Bavaria; the unfailing interest which you have shown, whether it be as an official, judge, member of the Government or legislator, in the most modern aspects of economic law, especially the law of competition and of artistic, literary, industrial and commerical property, and your no less unwavering devotion to the development of European integration.

The principal beneficiary of all this, during the 10 years that have just expired, has been the Court of Justice. Although the Bavarian aspect has above all manifested itself in enhancing professional and private relationships, your knowledge of the law, of government, people and things has largely contributed, by means of a series of remarkable Opinions, to the development of the case-law of the Court. In that respect I should like to draw special attention to the important contribution to legal theory made by your Opinions, especially in those areas which were particularly close to your heart, namely competition and industrial and commercial property, and to emphasize the great service you have rendered to the Court in making its voice heard in the discussions on the consequences for the Court of the Convention on the Community Patent and the draft in relation to the Community trade mark.

I would also like to draw attention to the talent and ability you have shown in participating in the Court's effort to be a tribunal that is modern, open to the world, welcoming and looking for contact with national courts, universities and the various circles interested in the dissemination of Community law. In a nutshell, you are, dear colleague and friend, the living example, if ever one was needed, of the eminent and irreplaceable role of the Advocate General in the Court's fulfilment of the task conferred on it by the Treaties. The Court is all the more grateful to you since it is aware of the worries of a medical nature which have been weighing on you recently as you carried out your duties; that is why, in addition to its very sincere thanks, it expresses its heartfelt wishes that you should be restored to health and have a pleasant and enjoyable retirement. In so doing it also has in mind Mrs Reischl, whose discreet charm, and qualities of mind and spirit we have appreciated each time we have had an opportunity of meeting her.

You arrive at the Court, dear Mr Lenz, at an age close to that of Gerhard Reischl when he took the oath as Advocate General and after a career which, like his, combines the study and practice of law with important political responsibilities. However, it is not so much economic law as public and constitutional law, both at national and Community level, and from the point of view of comparative law, to which your interests and researches have been directed and from which your experience has been enriched. Your interest in politics seen in the perspective of the observance of the law was apparent from your university days. From 1949 you studied law and political sciences in several German and Swiss universities and then, after the first Staatsexamen, at Cornell University and the Hochschule für Verwaltungswissenschaften, Speyer.

In 1959, at the same time as you took the second State examination, you made a choice which first directed you towards the European institutions and you became

the Secretary-General of the Christian Democratic Group of the European Parliament, a post in which you displayed great talent in performing your duties until 1965 when you were elected to the Bundestag, as was your predecessor with whom you sat on more than one parliamentary committee. Since then you have had an illustrious parliamentary career which – and this is exceptional in political life – continued faithfully to reflect the direction which you took at university. Member (1965), then President (1969) of the Legal Committee of the Bundestag and Rapporteur on constitutional questions; Member of the Liaison Committee [Vermittlungsausschuß] between the Bundestag and the Bundesrat, Member of the Electoral Committee for the election of judges of the Bundesverfassungsgericht and Deputy Chairman of the Commission of Inquiry on Constitutional Reform. At the same time you kept your sights on wider horizons, for since 1969 you were President of the Franco-German Parliamentarian Group. Nevertheless it was in 1980 that responsibilities which transcended national frontiers began to lay increasing claim on your interest and the exercise of your talents: in that year you became a member of the Foreign Affairs Committee in the Bundestag and Rapporteur on European Community affairs. In 1981 you became a member of the North Atlantic Assembly; quite recently, in 1983, you became Chairman of the European Committee of the Bundestag.

And here you are at the next stage, at which you are called upon to take part directly in the task of ensuring observance of the law in the interpretation and application of the Treaties and in the development of the Community legal system which constitutes the solid foundation of that community of destiny which our nations have created and which they wish to see maintained and extended. It is a matter of satisfaction for the Court to observe the high level of talents, experience and necessary guarantees of independence which the governments of the Member States attach to the performance of the tasks of Judge and Advocate General. You have them and we are happy to recognize the fact. For your part, you may be assured that the tasks awaiting you at the Court of Justice are in no way of less importance or interest, above all in what they promise for the future of Europe, than those which you have performed with such distinction until now.

The Court welcomes you with confidence and friendship and extends to you its warm congratulations and in which it includes Mrs Lenz and your children. It wishes you every success in the important task which you will be undertaking.

May I ask you to take the solemn undertaking which will invest you with your duties.

Carl Otto Lenz

Curriculm vitae
Carl Otto Lenz Dr Jur.

Born 5 June 1930 in Berlin.
Married to Ursula Heinrich, five children.
Father: Otto Lenz Dr Jur., died 1957 (Landgerichtsdirektor [Presiding judge at a regional court], Rechtsanwalt [Lawyer] and Notary, Staatssekretär des Bundeskanzleramts [State Secretary of the Federal Chancellery] 1951-53, Member of the Bundestag 1953-57).
Mother: Marieliese Pohl, died 1972.

1948	School-leaving certificate in Munich.
1949 – 53	Studied law and constitutional law in Munich, Freiburg, Fribourg (Switzerland) and Bonn.
1955 – 56	Cornell University, Ithaca, NY, USA.
1958	Hochschule für Verwaltungswissenschaften [School for Administrative Studies], Speyer.
1967	Harvard International Seminar, Cambridge, Mass. USA.

1954	First State examination in Law (Cologne).
1959	Second State examination in Law (Düsseldorf).
1961	Awarded the degree of Doctor of Laws (Bonn Univeristy) Thesis: 'The system for advising the American President on general policy questions'.
Since 1966	Rechtsanwalt at the Landgericht Darmstadt.
Since 1976	Notary in the Oberlandesgerichtsbezirk Frankfurt [Frankfurt Higher Regional Judicial District] with an office in Heppenheim.

1959 to 66	Secretary-General of the Christian Democratic Group of the European Parliament, Luxembourg.
Since 1965	Member of the German Bundestag.
1965 – 69	Member of the Legal Committee, Rapporteur on constitutional questions.

1971	Commentary on the doctrine of emergency in the Basic Law.
1969 – 80	Chairman of the Legal Committee.
1969 – 80	Member of the Liaison Committee between the Bundestag and the Bundersrat.
Since 1969	Member of the Electoral Committee for the election of judges of the Bundesverfassungsgericht [Federal Constitutional Court].
1971 – 76	Deputy Chairman of the Commission of Inquiry on Constitutional Reform.
1973 – 83	President of the Deutsche Vereinigung für Parlamentsfragen.
1976	Awarded the Großes Verdienstkreuz.

1966 – 69	Committee Member of the Franco-German Parliamentarian Group.
1969 – 83	President of the Franco-German Parliamentarian Group.
Since 1982	Coordinator for Franco-German cooperation.
1980	Officier de la Légion d'Honneur.
1983	Grand Officier de l'Ordre de Mérite National de la République Française.

Since 1980	Member of the Foreign Affairs Committee.
1980 – 83	Rapporteur on European Community Affairs.
Since 1981	Member of the North-Atlantic Assembly.
Since 1983	Chairman of the European Committee of the Bundestag.

FORMAL SITTING
of 13 February 1984

Address by President J. Mertens de Wilmars on the occasion of the retirement from office of Mrs Advocate General S. Rozès and the entry into office of Mr Advocate General M. Darmon

You see, Mrs Advocate General, around you at this sitting, Luxembourg and foreign personalities who traditionally honour with their presence the occasions to which the Court of Justice wishes to attach a certain solemnity and you will allow me in the first place to thank them for their loyalty to that friendly tradition.

Many of them will remember that they were here on 18 March 1981, that is almost three years ago, when we were assembled on a similarly formal occasion, that on which you took up your duties.

At that sitting I wished you on behalf of the Court every success in the important task which you were going to undertake. You have, Madam, more than fulfilled those good wishes as regards the amount and quality of your contribution to 'declaring Community law', but not, if we consider only the interest of the Court and the admiration and affection in which it holds you, as regards the length of your presence among us, which we should have gladly seen extended for a long time yet.

That is fate, however, as you wrote in announcing that you were leaving. And who could take umbrage at the fact that a person to whom heavy responsibilities are familiar should answer the call from the highest authorities of her country when they ask her to assume responsibility at the summit of the national judicial structure and when in answering that call she dazzlingly demonstrates that women may attain the highest public office. You are, if I am not mistaken, the first European woman to have reached the summit of the judicial hierarchy in one of the Member States, just as you were the first European woman to become a Member of the Court of Justice of the European Communities, after having been the first French woman to be President of the Tribunal de Grande Instance [Regional Court], Paris.

The three years which you spent in Luxembourg were in any event amply sufficient for you to make your mark on the case-law of the Court. During those 35 months you have delivered Opinions in not less than 100 cases of which many were important. Of those Opinions, all extremely well formulated and perspicacious, I should like to draw attention to those, and set them in a class of their own, which you gave in cases concerned with particularly delicate questions of Community law such as the *Polydor* (270/80), *Schul* (15/81), *Nungesser* (258/78) cases, the first concerned with new aspects of the principle of a single market, the second concerned with aspects not yet covered by the Community system of value-added

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Original text: French.

tax and the third relating to complicated problems of plant breeders' rights in Community law, not to mention Case 218/82 between the Commission and the Council on the interpretation of the Lomé Convention. On each occasion the Court was faced with new and sometimes daunting aspects of the development of Community law but your Opinion always enabled it to ascertain more easily what the development of law, within the confines of its due observance, required; that is precisely the Court's task.

Although the Court legitimately feels a pang of regret at seeing you abandon the toga of Advocate General for 'the highest national ermine', as one celebrated legal reporter nicely expressed it, it also sees, as I emphasized on the occasion when Mr Advocate General Warner left us to sit at the High Court, the significance in the return to the highest national courts of lawyers who have taken part within the Court of Justice in the development of the Community legal system. Everyone knows how much the Court is conscious that the task of ensuring that Community law is observed is the joint responsibility of the national courts and the Court of Justice, which together make up the judiciary of the European Communities. Everyone knows that it accordingly attaches the highest importance to unfailing and confident cooperation between the courts and itself and that its action is continuously pointed in that direction. The exchange of people between the Court and the highest national courts is certainly likely to encourage such cooperation which I, for my part, have always regarded as the corner stone in the maintenance and development of the Community legal system. We are therefore happy to see that one of the two highest instances in the legal system of a great Member State is to be presided over by a person with such a direct and profound knowledge of the requirements of such cooperation. That is why at the same time as sincerely expressing its recognition of the task you have accomplished in Luxembourg, the Court extends to you its warm wishes for your success in the important task you are going to undertake in your country.

The words which I have just addressed to Mrs Advocate General Rozès will, I hope, my dear Mr Darmon, make you appreciate the nature of the bonds which unite the Members of the Court. They are based on esteem and friendship forged in the joint fulfilment of the task of ensuring observance by all – individuals, institutions and Member States – of the law in the interpretation and application of the Treaties and thus contributing to the structure of a Community legal order in accordance with the principles of the rule of law. They are the bonds which allow persons coming from very diverse backgrounds and trained in very diverse legal disciplines to satisfy the sometimes tough requirements of the task to be accomplished. It is in that spirit that the Court welcomes you and is happy to count you among its Members, for it recognizes in you not only legal and administrative experience of high quality from which the Court will benefit but also human qualities, of lawyer and judge, which, as from today, will be placed at the service of the great undertaking to which the Court is devoted and to which it contributes by such means as are appropriate to the exercise of the judicial function.

You are already an experienced judge, for in 1957, at the age of 27, you began a judicial career in the jurisdiction of the Cour d'Appel, Rennes. Soon however your career was to take a turn which in France often characterizes the *cursus honorum* of members of the judiciary who are noted for their capacity to assume major responsibilities. In 1959 you were called to the Ministry of Justice in the Directorate of Prison Administration; later you became technical adviser in the Cabinet of the Garde des Sceaux; before that you taught at the Law Faculty, Paris I, and were concerned with fundamental problems of contemporary justice. In 1974 you were appointed Vice-President of the Tribunal de Grande Instance [Regional Court], Paris where you were, I am happy to point out, the colleague and co-worker of the President, Mrs Simone Rozès. In 1980 you returned to the Chancellery to become Assistant Director in the Cabinets of two Gardes des Sceaux. In 1981 you were appointed President of Chamber at the Cour d'Appel, Paris, and in 1982 Head of the Direction des Affaires Civiles in the Ministry of Justice. In that important post you were closely associated with the preparation of civil and commercial legislation and you thus acquired very useful knowledge for carrying out your duties as Advocate General in the Court of Justice by preparing new legislation governing modern economy. Several Members of the Court have in the past been responsible for large directorates in the Ministry of Justice, Paris: Adolphe Touffait was Inspecteur Général de la Magistrature [Inspector General of the Judiciary] and Head of the Direction des Services Judiciaires [Courts Directorate] to which Henri Mayras also belonged, as did Fernand Grévisse, who had, like you, been Directeur des Affaires Civiles. Those precedents do you honour and reassure us in the hopes which your arrival awakens, for the Court knows from experience how useful and profitable is the collaboration of such highly qualified lawyers who unite in their person the independence of the judge and the experience of the senior civil servant.

In the name of my colleagues and on my own behalf I extend to you our hearty congratulations and I very much wish you success in your great task. I am happy to include Mrs Darmon in those congratulations and wishes.

May I ask you to give the formal undertaking which will invest you with your duties.

Marco Darmon

Curriculum vitae
Marco Darmon

Born on 26 January 1930 in Tunis (Tunisia).

Married with two children. His son Pierre, aged 25, is a member of the Paris Bar. His daughter Anne, aged 21, is a law graduate and is followng a post-graduate course in Community law.

His wife, Elsa Darmon, is the daughter of a painter and the sister of a painter. She has studied at the École du Louvre and has worked at the Musée des Arts Décoratifs.

Studies and qualififcations

Secondary education at the Lycée Carnot, Tunis.

Graduated in law in Paris in 1953.

Diploma in Advanced Legal Studies, Paris, 1954.

Passed the entrance examination for admission to the judiciary in 1956 (the first occasion on which he was a candidate).

Career

Deputy Judge attached to the Cour d'Appel, Rennes, from 1957 to 1959.

Employed in the Minstry of Justice from 1959 to 1973 in the directorate of prison administration, dealing with budgetary problems and personnel policy (recruitment, training and management) and later with methods of applying penalties of a non-custodial nature.

From 1970 he taught in the law faculty in Paris (Paris I) within the framework of the course given by Jean-Denis Bredin, Professor of Law. Initially his teaching was concerned with 'fundamental problems of contemporary justice'. Subsequently he went on to deal with the most important aspects of civil procedure: basic principles of court procedure, applications for interim relief, the principle of adversary proceedings, etc., and, more generally, the office of judge.

Technical adviser to Jean Taittinger, Garde des Sceaux, from April 1973 to May 1974; he was then appointed Vice-President of the Tribunal de Grande Instance [Regional Court], Paris, which office he held from 1974 to 1981.

In particular, in 1976 he and two colleagues were entrusted with the task of setting up and organizing the chambers of courts which would be responsible for implementing the divorce reform. At that time, fruitful cooperation developed between members of the judiciary and advocates in legal, methodological and educational terms. Mr Darmon was ultimately assigned to the First Chamber of the *Tribunal*.

In June 1981 he was appointed Assistant Director at the office of Maurice Faure, Garde des Sceaux in the first government of Mr Mauroy. He held a similar post in the office of Robert Badinter, Minister for Justice.

He was appointed President of Chamber at the Cour d'Appel, Paris, in October 1981 and became head of the *Direction des Affaires Civiles et du Sceau* in September 1982.

Appointed Advocate General at the Court of Justice of the European Communities on 13 February 1984.

Mr Darmon's great interest in Community law stretches back many years, including in particular his period as head of the *Direction des Affaires Civiles*, which has an office specializing in Community law.

FORMAL SITTING

of 10 April 1984

J. Mertens de Wilmars

Address by President J. Mertens de Wilmars on the occasion of his retirement from office and the entry into office of Judge R. Joliet

Your Excellencies,
Ladies and Gentlemen,

I have always maintained that, thanks to its superlative translation and interpretation departments, the Court of Justice provides proof that it would have been feasible to organize the Tower of Babel. This makes it possible for me, in accordance with the accepted ritual of the fascinating but complicated Member State which is my mother country, to use in turn Dutch and French for this farewell address.

After enjoying for 17 years the privilege of witnessing and of being able to collaborate in the genesis – which I regard as a beneficent historical achievement – of Community law; after having the honour to preside over the Court of Justice, I feel at one and the same time the propriety and the difficulty of a well-considered retirement, prompted, like the decision of my immediate predecessors in the presidential chair, by the conviction that not too high an age-limit for an exacting appointment may be salutary.

In the course of those 17 years time has not stood still either around us or in the bosom of this institution. When I came to the Court in 1967 there were six Member States, now 10, and presently there will be 12; the Court consisted of seven judges and two advocates general, whilst now there are 11 judges and five advocates general; we sat in the building in the Côte d'Eich, now we are established in this handsome and impressive building which however, in its turn, no longer provides sufficient room for the proper operation of all our branches. In 1967, 77 cases were lodged at the Court Registry and 30 judgments were delivered, whilst last year the numbers were 366 and 200 respectively.

The nature of the issues referred to the Court for its judgment, too, has changed by degrees. For many years litigation mostly reflected the economic and legal problems of a period of economic prosperity, whilst now it is to a considerable extent the reflection for the Community of the economic crisis which afflicts the world: steel quotas, aids granted by States, neo-protectionism, dumping practices – these are the subject-matter of a considerable part of the administration of justice in the Community.

However, in my conviction the essential matter for the Court remains unchanged: namely the compelling necessity and the compelling duty to contribute, to the best of its ability, to the progress of European integration in so far as lies in the power of

a court of law, that is to say by upholding and developing Community law. I think I may testify that the Court has faithfully pursued this mission. Whenever opportunity has offered, it has not only ensured with great vigilance, and where necessary with severity, that the *acquis communautaire* has remained unscathed but also has always remained true to its mission of promoting the further development of the Community legal system.

In laying down his office a judge leaves no personal message. He has expressed it during the Court's deliberations and what remains of it may be read in the essential and beneficent anonymity of the judgments delivered.

But he is not forbidden to give expression to the pride which he feels in having been able to participate, by serving the law, in the realization of a design the pursuit of which, today more than ever, conditions the future of the peoples who have determined that their future shall become and remain inseparable. I have had that feeling of pride ever since, in 1967, I took up my duties as a judge and it has never left me. For 17 years of my life I have had the honour to sit in a Court which has endeavoured, I think I may say unceasingly, to combine the duty of giving a fair and informed judgment on every individual dispute brought before it with the obligation incumbent upon a court of last instance, responsible for reviewing and ensuring observance of the law in the actions of the other institutions which is the guarantor of compliance by the Member States with the Treaties and a guide for the activities of other courts in promoting the establishment and subsequently, day after day, the progress of the Community legal order. Promoting the establishment and progress of that order: the fact is that Community law was, at the outset, and to some extent still is, a law without an acknowledged past, created at a stroke by a great political decision just as, one day, Minerva sprang from the head of Jupiter. But whereas Minerva emerged fully armed from Jupiter's head, Community law in its beginnings bore more resemblance to Hans Andersen's emperor with his new clothes, and the problem was to provide it progressively with something other than trumpery attire.

In two spheres the way in which the Court has complied with this obligation seems to me to have had significant, perhaps even decisive, consequences. In the institutional field the case-law of the Court has made it possible to define the essential characteristics of an independent Community legal order based on respect for human rights and fundamental freedoms, guaranteeing, as a result of the direct effect of the rules of Community law, both the protection of Community citizens and their participation, through the exercise of their rights, in building a stronger Europe, and guaranteeing too where necessary that those rules shall have precedence over the law of the Member States and that the *acquis communautaire* will be irreversible. In a different connection the Court has placed at the centre of its case-law in the socio-economic sphere the idea of the unity of the market as both a basic condition and a constant stimulus towards economic integration, that is to say that it has consistently interpreted the provisions of the Treaties in such a way as to bring about conditions as close as possible to those governing a large-scale internal market.

I think, moreover, that the way in which the Court works is such as to demonstrate the superiority of well-balanced mechanisms for integration which, as a result of their very structure, when used according to their spirit and their letter, enable those responsible to perceive factors which make for unification rather than diversification and thus constantly encourage them to choose courses which lead to approximation rather than to segmentation. I might illustrate this point, without either undue ostentation or false modesty, by referring to the collaboration which is always desired, sought after and successfully achieved between the Members of a Court who have such different legal and national horizons. Thanks to the well-formed institutional framework within which they work and to the observation of the rules imposed by that framework, they have succeeded, without major difficulties, in finding the necessary consensus on the basis of the wording and aims of the Treaties and in drawing, where appropriate, on their rich experience of the various national legal systems. In this connection I should like to stress also the successful collaboration in the matter of references for a preliminary ruling between the Court of Justice and the innumerable national courts which guarantee the correct and uniform application of Community law throughout the territory of the Member States.

Mingled with that pride – why should I conceal it? – is a certain feeling of distress in the face of those cataclysms of impotence which so frequently rock the Community and which threaten to its foundations the most positive of all the ventures to which the European peoples and nations have devoted their efforts in the course of this troubled century. For those born in 1912 the meaning of a Europe of divided States lined up one against the other and the terrible and repeated misfortunes to which it leads need no explanation. My generation took a vow that the future would be different and that vow has been inscribed in the key sentence of the Treaty establishing the European Economic Community, which makes the Community the privileged instrument of a wider design, namely 'an ever closer union among the peoples of Europe'. My hope is that that vow and the intention which it expresses shall be passed on from generation to generation. The Treaties have shown wisdom in the manner in which they have set out the forms and conditions in which that will to union is to be expressed; how could a President of the Court of Justice refrain from believing and hoping that a return to compliance with the Treaties in the essential sphere of the decision-making capacity might immediately be felt by all, including the Member States, as a blessing, since observance of the law makes the exercise of great responsibilities not harder but easier, and for Member States too it is better to be wrong or right turn and turn about than always to be right but more or less impotent to act.

Blended with the emotions I have just expressed is a keen sense of gratitude. I feel that gratitude, in the first place, towards the Royal House of the Grand Duchy, towards the Grand Ducal Government and to the municipality of Luxembourg. Like all my colleagues I have been honoured by the tokens of esteem and the facilities which those authorities have generously provided for the Court of Justice and which permit its Members to carry out their duties in the most favourable conditions. I should like them to accept my heart-felt thanks. I should like to

express my gratitude too to the members of the Diplomatic Corps, whose relations with the Court of Justice are ones of esteem and friendship of which my colleagues and I are especially appreciative.

Finally, I should like to tell our numerous Luxembourg friends how pleasant their kindness and cordiality have made, for my wife and me, our stay in their beautiful country.

The kind words you have addressed to me, Judge Koopmans, my respected colleague and friend, confirm my keen awareness of how much I owe to many in this Court, and in the first place to my colleagues the Judges and Advocates General. From our constant joint endeavour to uphold and develop Community law a fellowship has arisen which, extending considerably further than that of mere professional colleagues, has developed into genuine friendship, increased and confirmed in my case by a lasting appreciation and admiration of the intellectual capacity and the character of the Members of the Court. The fascinating exchanges of opinion regarding all aspects of Community law; the courtesy in the exercise of each Member's talents, including his dialectical gifts, and the mutual friendly appreciation and appreciative friendliness which succeed in turning even sharp disagreements into subjects which may be discussed, the uplifting feeling that one is labouring for the construction of something great and important, all this makes the Court a sphere of life which is not only pleasant and fascinating but also is conducive to the best. I am profoundly and abidingly grateful to my colleagues.

In mentioning the many to whom I owe thanks in connection with the fulfilment of my duties I should not like to forget to include the members of the Bar with whom as a dyed-in-the-wool advocate I have retained so many bonds and the excellent legal departments of the Council, the Commission and a number of Ministries of the Member States. With all of them I have had the pleasure of maintaining excellent relations.

But what would the Court be without its officials? I have always said and believed that a judgment of the Court is the product of the collaboration of the whole institution. Translators, interpreters, members of the Documentation Branch, the Library and the Information Office, but also the members of the administrative and other ancillary branches of our institution – they all share without exception in the responsibility for the proper functioning of the Court and the machinery of Community law. They fulfil to perfection their various duties and in the course of years I have been able to come to a realization of how great and how valuable is the assistance which they provide for the Court and in particular for the President. In this connection I should not like to forget to refer to the 'Comité du Personnel', the vigilant, sometimes impetuous guardian of the interests of the staff with whom I have always cooperated gladly and, I think I may say, fruitfully. In this sincere and well-deserved testimonial I hope it will not be taken amiss if I include, last but not least, my closest collaborators: the two Registrars, my friends Albert Van Houtte and Paul Heim with whom as President I worked day in and day out; all the members of my Chambers, both past and present, the Legal Secretaries Etienne

Hamoir, Yvan Verougstraete, Francis Herbert, Kamiel Mortelmans, Francis Hubeau, Jacques Steenbergen, Roger Grass in his capacity as Reader of Judgments, and the senior administrative assistants Mrs De Groot-Eeckhoute, Mrs Vanni-Schiettecatte, Mrs Kreplin, Mrs Van der Perre, Miss Vervliet, Mrs Bernasconi, Mrs Ludwigs, not forgetting my capable chauffeur Alex Theunis, who has driven my wife and me safely over thousands of kilometres. I shall preserve a lasting and pleasant memory of all of them. To all of them my sincere thanks.

Mr Joliet, it is the privilege of a Judge who is President when he steps down from the Bench to greet his successor himself and I am happy that the last of my duties is to welcome you, to congratulate you and to express to you the Court's good wishes. If I may use a colloquial expression, the delivery of the new judge has been a little long but the child is sturdy and in good health.

You were born in 1938, which means that with you the focus is placed on the generations of Judges and Advocates General for whom the Second World War will be a childhood memory and for whom the beginning of the European venture will have been the work of their fathers. My generation wished to call Europe into existence to put an end to civil wars between Europeans; yours, without being able to permit itself to forget that a certain degree of weakness might bring that danger to life once more, is entitled to extend its horizon and to aspire to give to Europe that place which is its due and which it does not possess in a multipolar world. In both cases the task has been and still is to work for that ever closer union which a few moments ago I made the focal point of my remarks and, for the lawyers of whom the Court is composed, to do so by ensuring that in the interpretation and application of the Treaties the law is observed.

You are remarkably well-equipped for that task since your studies and your professional career have made of you a specialist of high repute in Community law in both its institutional and its economic aspects. You became a *docteur en droit* at the University of Liège in 1960, you continued your studies in the United States where you became in 1966 an LLM and in 1968 an SJD of Northwestern University. In 1970 you were appointed *chargé de cours* and in 1974 *professeur ordinaire* at the University of Liège where you occupied the Chair of Law of the European Communities. Your teaching and your published works and articles which have given you the opportunity to consider, sometimes with approval, sometimes critically, the case-law of the Court of Justice have rapidly established your reputation to such an extent that almost without interruption the European or American Universities, Nancy, Amsterdam, Louvain-la-Neuve, King's College, Northwestern University, rely upon your scholarship. Recently – a decisive appointment – you became a member of the Curatorium of the Max-Planck Institute for intellectual property and competition law. Those are many reasons for the confidence of the Court, which expects great things of you, convinced as it is that it will profit greatly from your experience and scholarship in accomplishing its task. You will imagine my feelings and the great hope I cherish as I bid you, in its name, welcome.

May I now ask you to take the oath which is to vest you with your office.

René Joliet

Curriculum vitae

René Joliet

Born at Jupille-sur-Meuse on 17 January 1938.

Docteur en droit (Liège, 1960), LL M (Northwestern University, Chicago, 1966), SJD (Northwestern University, 1968).

Several visits to Germany and to the United States for research or post-graduate studies.

Holder of the chair in European Community law at Liège University (associate lecturer in 1970, professor in 1974) teaching the law of European Community institutions, European competition law and the law of intellectual property.

Visiting Professor of Nancy University (1971-78), the Europa-Institut of the University of Amsterdam (since 1976), the University of Louvain-la-Neuve (1980-81 and 1981-82), Northwestern University (1974 and 1983); holder of the Belgian chair at the University of London, King's College (1977); since 1979 he has taught European competition law at the College of Europe in Bruges.

Rapporteur or speaker at several international and foreign conferences (Fédération internationale pour le droit européen (FIDE), twice; Studienvereinigung Kartellrecht; Deutsche Gesellschaft für Rechtsvergleichung, twice; Centre Paul Roubier, Lyon; American Bar Association, twice).

Author of two books in English and three in French and of some thirty articles in English, French and German, published in Belgian and foreign periodicals (American, British, French and German).

Consultant to Belgian institutions (Ministry of Construction, Walloon Region) and European institutions (Commission of the European Communities) and to several public and private undertakings.

Thorough knowledge of English and German; familiarity with American, British and German affairs.

Member of the Board of Trustees of the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law.

Publications of Mr René Joliet on European Community Law[1]

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FORMAL SITTING

of 18 October 1984

Nicola Catalano

Address in commemoration of Nicola Catalano, a former Member of the Court, delivered by Lord Mackenzie Stuart, President of the Court

Ladies and Gentlemen,

During the judicial vacation we learned of the death of Mr Catalano, who was a Judge of the Court of Justice of the European Communities from 1958 to 1962.

His death deprives Europe of one of the last pioneers of its construction. Mr Catalano was a self-declared missionary of the European idea. In the course of his life he held an impressive range of offices in the service of peace and the European cause.

He was a Doctor of Laws of the University of Rome, and in 1939 became a member of that eminent institution, the Avvocatura dello Stato. From 1948 to 1950, he was the Agent of the Italian Government in the Conciliation Commissions established under the peace treaty with Italy. His international vocation dates from his work at that time. He applied all his natural ardour and enthusiasm towards finding a solution for each problem. He acquitted himself of his task with such distinction that soon afterwards he was appointed as Legal Adviser for the international zone of Tangier. It was quite natural that after the ECSC Treaty was signed he should become one of the senior officials in the Legal Department of the High Authority. In those early days he represented that institution before the Court. In the performance of his duties he came to acquire an intimate knowledge of the Treaty of Paris, which was subsequently to prove invaluable to his colleagues on numerous occasions. It was then that the Italian Government chose him as its legal expert for the negotiation of the two Treaties of Rome. The negotiations took place from October 1956 to March 1957 at Château Val Duchesse in Brussels, and they were concluded by the signature of the Treaties of Rome on 25 March 1957.

With the benefit of his Community experience, Mr Catalano was able to play a crucial role in those negotiations. Our colleague, Judge Pescatore, who represented Luxembourg in the same legal working party, has expressed to me his great admiration for the dynamism and the authority with which Mr Catalano carried out his task, establishing a wide range of political contacts and drafting numerous proposals for provisions of the Treaty relating in particular to institutional matters.

Thus it is Mr Catalano to whom we owe the idea for one of the most spectacular innovations of the Treaties of Rome by comparison with the Treaty of Paris, namely the reference for a preliminary ruling by way of interpretation. For the

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Original text = French.

ECSC Treaty only provided for references for preliminary rulings on 'validity', recourse to which involved much more delicate considerations. Fortified by the experience of the Constitutional Court of Italy, Mr Catalano made the suggestion that such references should be extended to questions of interpretation. Was he able to foresee at that time the exceptional judicial evolution which would be made possible on that basis? At all events we can only recognize that, without that procedure, the greatest judgments of our Court would never have seen the light of day.

Ambassador Ducci was therefore right to refer to Mr Catalano as one of the glorious co-authors of the Treaties of Rome.

It was a wholly natural development that Mr Catalano should be chosen as a Judge of our Court in 1958. In that position he succeeded once again in making an important contribution by his perspicacity, his familiarity with the problems at issue, his tencacity and his talent for ordered and coherent exposition. Here, as in his previous duties, what distinguished Mr Catalano was the creative passion with which he carried out his task. At the time of his departure for personal reasons in 1962, President Donner concluded his speech to mark the occasion with the words: 'We are certain that in the future we will meet you again in European affairs.'

The confidence was fully borne out by events.

Since then, Mr Catalano appeared as counsel before our Court on several occasions and wrote more than 50 books and articles on every aspect of the construction of Europe. He followed each judgment delivered by our Court and wrote a commentary on it in French, Italian or English. The first proper textbook on Community law was written by him. And this year saw the publication of a work which he wrote with Riccardo Scarpa, namely the 'Principi di Diritto Communitario', and which contains his true legacy to Europe and the law. Every time there was a congress, a conference or a public meeting, Mr Catalano, a true militant federalist, would be present to plead the cause of the Europe to which he had given his entire life. He fought to give the supranational institutions new powers to increase their authority *vis-à-vis* the Member States. This is demonstrated both by the support he lent to the new draft treaty to establish the European Union, known as the Spinelli draft, and by his recently published on that treaty, which he proposed should be renamed 'The Basic Law of the European Union'.

He was also a member of the Italian branch of the European Movement, a founder of the European Club in Rome and a leading representative of the federalist tendency within the Italian Liberal Party.

Mr Catalano was also, in his spare time, an excellent chess-player. The lucidity, intelligence and broad vision of problems which he displayed in chess he carried over into his professional life.

We will cherish the memory of an ardent, enthusiastic and warm-hearted man.

Our thoughts at this time go out to Mr Catalano's daughters. May they have the strength to bear the void left by such a remarkable personality.

FORMAL SITTING

of 16 January 1985

Address by President Lord Mackenzie Stuart on the occasion of the retirement from office of Judge O'Keeffe

More than 10 years ago, you suddenly arrived among us. I should remind our listeners that your predecessor, Judge O'Dálaigh, took office as President of Ireland in December 1974. Notwithstanding the distinction of that office, notwithstanding the inviolable character of the Constitution of Ireland, Article 5 of the Statute of the Court is even more peremptory. A judge or an advocate general must continue to hold office until his successor takes up his duties. Thus, like a *deus ex machina*, you were appointed by the Member States on 11 December and you gave your solemn undertaking before this Court on 12 December. As the then President of the Court, Judge Robert Lecourt, ironically remarked, people sometimes dare to suggest that the Council's procedures are slow! A moment ago, I used the expression *deus ex machina* to describe your arrival at the Court but the expression is otherwise far from being exact. In the classical theatre, the arrival of the *deus* signified an artificial dénouement of the play. In your case, it was in no sense a dénouement but a beginning. The beginning of a decade of important decisions of this Court which affect the more than 200 million citizens of the Community in a way which is not artificial but real. You played your role to the full in that important task.

With your characteristic modesty you asked that as little as possible be said about you. I accede to that request with regret but not to the point of doing an injustice either to you or to the Court and it would be just such an injustice if I did not mention the quality of your contribution to our efforts. None of us who have had the privilege of working with you will forget your practical and pragmatic approach to problems when the discussion seemed likely to become too abstract, or your ability, at our sittings, to pose the essential question which revealed the heart of the problem.

Your eye for detail, which fixed like a laser beam on errors of drafting, will also not be forgotten. It was an eye, I should add, capable of seeing mistakes of grammar in a French text drafted by a native French speaker.

In the name of the Court, may I thank you warmly for all that you have done and wish you a tranquil and happy retirement.

(*) May I add two or three sentences in a language which comes more easily to both of us.

Original text = French.
(*) Original text = English.

My dear Andreas, with the departure of yourself and Sheila not only this Court but the whole Luxembourg community will be the poorer. While never forgetting your Irish roots you have both truly made your life among us and added greatly to the pleasures of living in the Grand Duchy. We shall miss you both sadly and we can only hope that you will seize all possible chances to return and give us again the privilege of your company.

Address by Judge O'Keeffe on the occasion of his retirement from office

Mr President,
Members of the Court,
Your Excellencies,
Dear Friends,

I address you only to express my thanks. May I first thank their Royal Highnesses, the Grand Duke and Grand Duchess, and the Luxembourg Government for the warm welcome which they have always given to the Court of Justice.

May I also refer for a moment to my arrival at the Court at the beginning of 1975. The first thing that I very quickly discovered was that years of experience as a national judge did not in themselves suffice to equip me to discharge the functions of a judge of the Court of Justice. I had only a very vague knowledge of the Treaties and of Community law. Moreover my knowledge of French was slight. I was like a new-born baby surrounded by adults. How disappointing that must have been for the President of the Court who was entitled to expect the judge appointed to be well-versed in Community law, including the case-law.

In spite of that the President, Mr Robert Lecourt, welcomed me warmly and was very understanding and considerate. I take this opportunity of expressing my gratitude to him.

Those who succeeded him as President, Mr Hans Kutscher, Mr Josse Mertens de Wilmars and you, Mr President, have always been just as considerate, as have all my colleagues at the Court from my first day here until today. I thank them all.

I also wish to thank the staff of my chambers; my first legal secretary, Mr Hervé Gentin, who guided me along the paths of Community law, and my other legal secretaries, Mrs Philippa Watson and Mr Marc de Pauw, whose collaboration has been very valuable to me, my assistants, Mrs Maureen Russell and Mrs Jacqueline Hargreaves, and Mr Michael Brennan, who has always driven me swiftly but with care.

Lastly, I thank all the heads of the various departments and all the officials and other employees of the Court. Without them I would have been unable to accomplish my tasks.

Original text: French.

If you will allow me, Mr President, I would like to address a few words to the President of the Supreme Court of Ireland, who has been my friend for more than 40 years. I welcome him to the Court and congratulate the Irish Government on its choice. Judge O'Higgins will find the work of the Court difficult and demanding, but I am certain that he will derive from it as much satisfaction as I have throughout my 10 years as a judge.

Mr President, I thank you.

Address by President Lord Mackenzie Stuart on the occasion of the entry into office of Judge O'Higgins

Mr Chief Justice, our sadness at the departure of your predecessor is offset to no small degree by your arrival.

As with Judge O'Keeffe, the Irish Government has honoured this Court by designating as a member a person who has held his country's highest judicial offices for many years. Thanks to your long experience and the range of your knowledge, the Court will have a valuable aid in its deliberations. Even though the subject-matter of litigation inevitably varies from one court to another, the judicial capacity to conceive solutions and the resolution to adopt them remains the same. Everybody agrees that you possess that capacity and that resolution in the fullest measure.

Moreover, you bring to the Court not only your talents as an advocate and judge but also a wide experience in the political and ministerial world.

In a certain sense, that was inevitable because of the tradition of your family.

Both your father and your uncle were members of the Irish Parliament and both held ministerial office, one as Minister for Health and the other, until his life was brutally ended, as Minister for Justice.

You yourself, after having studied at University College Dublin and King's Inns, were called to the Bar in 1938 and elected to the Dáil barely 10 years later. Subsequently, you distinguished yourself by the political role which you played in your country both as an active parliamentarian, and, from 1954 to 1957, as Minister for Health. On the international level, you represented Ireland in the Consultative Assembly of the Council of Europe in 1950 and again in 1972.

The touchstone of the central position which you occupied in Irish public life is however your candidacy on two occasions, in 1966 and again in 1973, for the office of President of your country and, unless I am misinformed, you failed to be elected on one occasion at least only by the narrowest of margins.

However, it is not for the Court to deplore the lack of foresight of the Irish electorate. You were denied the right to reside in the presidential mansion but the beneficiary of this was the Four Courts in Dublin and is now this Court. You were

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Original text: French.

appointed a Judge of the High Court in December 1973 and Chief Justice the following year.

We are now honoured by your presence among us. Even though you must now exchange the resonant title of Chief Justice for the more modest one of 'Judge', we hope that your years among us will be happy and satisfying; in any event, there is no shortage of work.

I have been told that your principle hobbies in your private life are fishing and golf. You will find ample opportunity in the Grand Duchy to pursue those two activities.

I now extend the most cordial welcome to you and Mrs O'Higgins and may I now ask you to make the solemn declaration required by the Treaties?

Thomas Francis O'Higgins

Biographical note on Judge Thomas Francis O'Higgins

Born in Cork, Ireland on 23 July 1916. Eldest son of Thomas Francis O'Higgins and Agnes McCarthy. Married April 1948, with five sons and two daughters.

He was educated at St Mary's College Rathmines, Dublin, Clongowes Wood College, University College Dublin and King's Inns, Dublin.

He was called to the Bar in Michaelmas Term, 1938 and the Inner Bar in Hilary Term, 1954.

In February 1948 he was elected to 'Dáil Eireann' and served to 1973. During the years 1950 to 1972 he was the Irish Parliament Representative to the consultative assembly of the Council of Europe.

From 1954 to 1957 he was appointed Minister for Health and he was elected Presidential Candidate 1966 and 1973.

In December 1973 he was appointed Judge of the High Court and finally in October 1974 he was appointed Chief Justice.

FORMAL SITTING
of 24 January 1985

Address by President Lord Mackenzie Stuart on the occasion of the solemn undertaking given by the Members of the Commission

Mr President,
Members of the Commission,

It is both a pleasure and a privilege for me to welcome you to the Court today and to receive from you the solemn undertaking laid down in the Treaties.

The authors of the Treaties showed much wisdom in providing for such a solemn and public oath, not only for the Members of your Institution, Mr President, but also for those of the Court of Justice and the Court of Auditors.

No one who is familiar with our institutions can doubt the independence of their Members. However, by drawing attention to that independence, the solemn nature of this ceremony reaffirms at the same time the independence of the Community institutions themselves and reminds us that the Treaties assigned to each of them specific tasks.

I am certain that the presence of the distinguished personalities whom we are honoured to welcome here today at this formal sitting represents an encouragement to you and your colleagues, Mr President.

You will certainly need that encouragement in accomplishing your difficult task. It is by no means my intention to be a Cassandra. On the contrary, I believe that a more optimistic view is justified in the light of the concrete achievements of the Community over the last 30 years. In extending the best wishes of the Court to you in carrying out your duties, I should also like to say, Mr President, that I am convinced that you and your colleagues have all the necessary qualities to contend with the difficulties that lie ahead of you.

Those wishes and that encouragement are given not entirely without self-interest. On the success of your institution depends the success of the Court in accomplishing its own task which is to ensure that in the interpretation and the application of the Treaties the law is observed.

The Commission contributes to that task in many ways, all of which are extremely important.

Original text: French.

In the first place, as the guardian of the Treaties it ensures that Community law is respected by the Community and by Member States. When it considers that Community law is not being respected, the Commission must initiate the procedure for failure to fulfill obligations under the Treaty and, if necessary, bring the matter before the Court.

The Commission also has the right to submit observations to the Court in relation to questions referred by the courts of the Member States to this Court for a preliminary ruling; the Commission makes full use of that right. The extent of the Commission's involvement in the administration of justice in this area corresponds to the importance of the fundamental role which the preliminary ruling has played and continues to play in the development of Community law. The written observations and oral argument submitted by the Legal Service of the Commission have always been of considerable assistance to the Court and have often served to cast light on cases of great complexity.

The Commission also comes before the Court in another capacity, that of defendant. The Commission holds important executive powers in the fields of competition, anti-dumping measures, steel and the management of the common agricultural policy. The decisions which it has to take in those fields may be the subject of an action before the Court. I have been told that the Court's judgments in such cases are subjected to a very thorough analysis at the Commission and that the significance of different forms of wording is discussed at length. That is extremely flattering for those who draw up the judgments but it is also an indication of the seriousness with which the Commission carries out its own duty to respect and apply the law.

Finally I should like to stress one last aspect. The Court's duty to apply the law presupposes the existence of rules which the Court can apply. If such rules do not exist, the Court cannot invent them. It is possible – and indeed it is necessary – to extrapolate from existing texts. It is possible to resort to the most ingenious methods of interpretation but even those methods have their limits. In most cases what is needed is a Community measure that is appropriate to the circumstances and satisfies the requirements as to form.

Where there is no such measure, paradoxically, there is sometimes a temptation to seek to obtain a decision from the Court to fill that void. However let me repeat that the Court is not a legislative body. It relies on you, the Members of the Commission, who are empowered to initiate Community legislation, to see that the necessary provisions are adopted to deal with the ever changing circumstances.

I have every confidence that you will be able to meet that challenge and that by successfully fulfilling your task you will greatly assist the Court in the performance of its own duty. Mr President, Members of the Commission, I wish you all every success.

FORMAL SITTING

of 5 February 1985

Karl Roemer

Address in commemoration of Karl Roemer, a former Member of the Court, delivered by Lord Mackenzie Stuart, President of the Court

We are assembled today to pay tribute to Karl Roemer, a former Advocate General of the Court of Justice.

He was appointed to that office when the Court of Justice of the European Communities was created and he occupied it for 21 years until his retirement in 1973.

To those who knew him, it is hardly necessary to recount his distinguished career, but it would be fitting to recall some of its high points.

Karl Roemer was born on 30 December 1899, two days before the turn of the twentieth century, at Völklingen in Saarland, not far from Luxembourg. In a way, his studies and professional career presaged his subsequent work here in Luxembourg, where law cannot be divorced from economics. After studying political science at the University of Cologne, he worked for a private bank in Germany and abroad, and then resumed his studies of law and economics before becoming a Referendar and later an Assessor and a judge in Cologne. From 1932 to 1946 he was the director of a public banking institution in Berlin where he was head of the external relations department. During that time he was called to the Berlin Bar. After the closure of the banks in Berlin he began practising as an Advocate at the Law Courts in Saarbrücken, though he continued to hold important positions in the field of economics, being a member of the commission responsible for monetary reform and acting as legal adviser to the Federal Government on questions of international law.

There is no doubt that Karl Roemer was particularly proud – and rightly so – of other work which he did in that period: he was one of the founders of the German Red Cross in the French occupation zones. The end of the war, the bombing, the lack of supplies and separated families brought problems which could not be solved by the civil and military authorities alone. The Red Cross did much to alleviate the suffering of German citizens during that time. The first of the many decorations which Karl Roemer was to receive was the Medal of Honour, First Class, of the German Red Cross.

Karl Roemer was later to receive the Grand Cross of Merit, with Star and Sash, of the Order of Merit of the Federal Republic of Germany, the Grand Cross of the

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Original text: French.

Order of Merit of the Grand Duchy of Luxembourg, and the titles of Commandeur de Légion d'Honneur and Grande Ufficiale of the Order of Merit of the Italien Republic. He was also made a Doctor Juris Honoris Causa by the University of Munich.

But besides all those decorations, which reflect the esteem in which Karl Roemer was held, not only in his native country but also beyond its frontiers, we must mention his monumental constribution to the case-law of the Court. When Karl Roemer retired, President Lecourt pointed out that he had delivered no less than 288 Opinions before the Court. All those Opinions appear in *Reports of Cases before the Court*. They were first published in the original language and in the three other official languages used at that time. When Karl Roemer left the Court, his Opinions were being translated into two further languages. At some time in the future they will be published in Greek and probably in Spanish and Portuguese. There are few authors who can pride themselves on having 288 works published, or about to be published, in seven languages.

I do not wish to repeat the tribute paid to Mr Roemer by President Lecourt 11 years ago, but in one eloquent passage he summarized admirably the unique part played by Mr Roemer at the Court.

> 'How inspiring was the work that lay ahead of you in those days! Everything remained to be done! On the basis of a few terse texts to give substance to an office, to breathe life into it, to inspire confidence and respect, in a word, to command recognition through competence, lucidity and, at times, courage – was there ever a more enviable or envied task? How many men, in their lifetime, are entrusted with such innovatory assignments? How many have numbered among the privileged few who seem to have been specially chosen to bequeath a foundation of justice and peace? But is it not obvious that precisely this was the exceptional good fortune of the first generation of lawyers who formed the Court.'

The following years revealed how well Karl Roemer had accomplished the special task assigned to him.

We have received many tributes from Karl Roemer's former colleagues pointing out, as Maurice Lagrange has done, for example, that 'the great quality of Karl Roemer (who, unlike myself, had not participated in the drafting of the Treaty) was that he immediately assimilated its rules and principles and applied a method of interpretation acceptable to everyone'.

Judge Donner, who was President of the Court during the critical years which followed the establishment of the European Community, has also paid great tribute to him.

From the outset, Karl Roemer, together with his distinguished colleague Maurice Lagrange, demonstrated the vital importance of the role played by the Advocate

General in the Court's decision-making process. Judge Donner rightly points out that Karl Roemer's task was even more difficult because, unlike his colleague, he came from a legal tradition in which no such office existed.

In the early years, in a whole series of cases in which the Court laid down principles of decisive importance for the future of Community law, Karl Roemer's Opinions played a crucial role in shaping the thinking of the Court. There were few who had his capacity for going straight to the heart of issues and extracting both the strong and weak points, making full use of his critical faculties and powers of discernment. He concentrated instinctively on the facts of the case, always following the principle that legal arguments cannot be formulated in a vacuum and that the facts determine the rule to be applied. In the leading cases of the early years and until he retired, his perceptive analyses of the facts of each case provided the Court with an invaluable working basis and profoundly influenced its judgments.

Like an infant, the Court needed help at first before it found its feet. Under the firm, but not too strict, tutelage of Karl Roemer and his distinguished colleague, Maurice Lagrange, the Court developed the system of Community law as we know it.

The man to whom we pay tribute today can therefore be regarded as one of the architects of the legal edifice that is now one of the main pillars of the Community.

In St Paul's Cathedral in London is to be found the following inscription, dedicated to the architect who built it, Sir Christopher Wren: *Si monumentum requiris, circumspice*. Karl Roemer's monument surrounds us in this building, it lies on our bookshelves.

Karl Roemer was at the Court when it was still in the Villa Vauban, now the Pescatore Museum, and when its Members used to devote themselves to drafting the Rules of Procedure for lack of cases to try. When Karl Roemer left us, the Court was installed in this magnificent Court Building, built for it by the government of our host country, and by that time nobody dreamt of complaining of under-employment.

Time passes so quickly and since then a great many faces have disappeared. Only two Members of the Court whose terms of office overlapped with Mr Advocate General Roemer are left: Judge Pescatore and myself. Amongst the staff, there are only a few who knew him and worked with him.

It is therefore a special privilege to have had the honour of being for a time, short though it was, the colleague of one of the fathers of Community law and to be able to express my gratitude for the great kindness which he showed towards a new, inexperienced colleague.

On behalf of the Court, I should like to express our sympathy to Karl Roemer's family and to express our respect and gratitude for the great services which he performed for Europe.

FORMAL SITTING
of 7 October 1985

Address by President Lord Mackenzie Stuart on the occasion of the retirement from office of Judge P. Pescatore

The working language of the Court has traditionally been French and that tradition is not one with which I wish to break. Nevertheless, all traditions have, from time to time, to yield to a greater imperative. In the present case, my dear colleague, that imperative is your wish that I speak in English, and so today, which is no ordinary day but one on which the Court sadly takes leave of one of its most eminent Members, I willingly agree to depart from tradition.

(*) A tribute which is no more than a recital of achievements culled from any standard work of reference normally makes dull reading. In your case, however, these achievements are remarkable enough in themselves. After a distinguished academic career you joined the Luxembourg Ministry of Foreign Affairs in 1946: only 16 years later you held the post of Secretary General to the Ministry with rank of Minister Plenipotentiary. En route, during the late 1940s and early 1950s, you were a member of the Luxembourg delegation to the United Nations; you had taken part in the negotiations for the Convention establishing the OEEC, for the Benelux Treaty and for the revision of the Belgium-Luxembourg Economic Union. Perhaps most importantly of all, you had, in 1956 and 1957, been one of the Luxembourg negotiators for the European Economic Treaty and the Euratom Treaty. The brief account of those days at the Val Duchesse which you have so far given us in print leaves us all in the hope of one day seeing an expanded version.

At the same time as you were carving out for yourself a remarkable career in the diplomatic field you were building an academic reputation second to none. Your long association with the Univeristy of Liège, first as chargé de cours and then, from 1963, as professor, would by itself warrant such a statement. But there is much more. Lectures at The Hague Academy of International Law, seminars at the Centre Européen Universitaire, Nancy and membership of the prestigious Institut de droit international and of the Curatorium of the Max-Planck Institute for Comparative Public Law bear testimony to the respect which you had won.

It was with this background that you joined the Court in 1967. Of the 18 years service which you have given since then I have had the honour and privilege to have been your colleague for 13 years so that I can pay personal tribute to your erudition, your clarity of thought and your astonishing ability to encapsulate that thought in a striking phrase.

(*) Original text = English.

The American, Walter Savage Landor, said 'clear writers, like fountains, do not seem so deep as they are; the turbid look the most profound'. This is often true, but in your case never. The clarity and the profundity are both there in evident form.

Profundity indeed. Few have thought so deeply, so intensely, upon the response of the Community to changing circumstances and upon the role of the law in assuring the observance of the fundamental principles dictated by the Treaties.

It is to betray no secret to say that you have at all times forced us to think more exactly than otherwise we might have done and to free our minds of irrelevancies. Many, very many, of the critical passages of our most important decisions have flowed from your skilful pen.

But it is not only in your role as judge that you have shown your gifts as expositor and synthesiser. It was with good reason that in this courtroom two weeks ago a leading English Counsel expressed the thanks of the legal profession in the United Kingdom for the countless hours which you had devoted to making the law of the Community better understood in that country. I am certain that lawyers throughout the Community would say the same for the legal profession in their own Member State. Your patience with the uninformed and, according to your audience, your ability to paint the outlines of your subject with a broad brush or to delineate with exactitude a miniature landscape, have filled us all with admiration.

Moreover, it is not the Member States alone which have benefited from your energy and ability. You have participated in seminars directed towards the problems of integration in Latin America and in South-East Asia and I know how much your contribution has been valued. You have had a long association with academic circles in the Iberian peninsula and that already there exists in Spain and Portugal a profound understanding of Community law is in no small measure due to your efforts.

Characteristically in the last few weeks of your judicial tenure you have found time, in the first place, to organize a most interesting discussion on common problems with the legal staff of GATT and to produce an invaluable 'Vade Mecum' to keep us all on a consistent path in phrasing our judgments. Characteristic, I have said, because those two incidents reflect your gift for sighting simultaneously a problem in the round and yet an awareness that a successful outcome depends on meticulous drafting of the agreed solution.

The burden for a lesser man would have been intolerable but I am happy to think that for you it has been a fulfilment and a pleasure.

It is, accordingly, for us all a particular pleasure to know that you have every intention of continuing your role as expositor and commentator; indeed, freed of the constraints of the daily task, that you will be the more able to develop that role.

It also gives us pleasure and satisfaction to know that retirement does not involve the separation that distance imposes and we look forward to seeing you and your wife at frequent intervals. To you both I say a most sincere and affectionate au revoir and 'au revoir' in the most literal sense of those words.

Pierre Pescatore

Address by Judge P. Pescatore on the occasion of his retirement from office

In life there is a time for all things; a time to work and a time to rest; a time to build and a time to take stock.

Having now reached that last point, I can see the events of my life stream past my eyes as if on a film run at bewildering speed. I would like to show you, if I may, a few 'stills' of those events. My vision is of course a wholly personal one but it does focus on some points of a story which, objectively, is common to us all.

In the various tasks entrusted to me luck would have it that I should begin my professional career under the wings of the United Nations. I witnessed the early development of the world organization in the suburbs of New York. I was present when the cornerstone of the new seat was laid. I was among those who moved into the elegant and imposing edifice known as 'the glass palace on the banks of the East River'.

That, then, was the environment in which I served my first apprenticeship in international affairs. I thus became familiar with the problems of our times, viewed on a world scale, before I became acquainted with the problems of Europe. Immersed in that atmosphere, I became an international lawyer and that, essentially, is what I remained even when, later, I had to concern myself with the unification of Europe. That is the source of my predilection, which you may have noted on numerous occasions, for the Community's external relations and of my conception of a Europe solidly constituted in itself and yet open to the world. That, too, is the source of my sensitivity to all that has to do with the effectiveness of international treaties, and not just of those which established the Communities. It also explains my radically 'monist' conviction, to borrow a term dear to jurists, inspired by what Georges Scelle has called 'legal ecumenism' which, whilst acknowledging the existence of a hierarchy, admits of no cleavage between world law, regional law and national law.

Then, in October 1956, at what was an unexpected turning point in my career, I was plunged into the midst of the great negotiations which resulted in the signature of the Treaties of Rome. I was not one of the pioneers of Europe. At the time of what was then known as the *relance européenne* the ECSC was already in existence and the failure of the European Defence Community and of the first plan for a political

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Original text: French.

Europe was an irrevocable fact. Jean Monnet had retired from international affairs and Robert Schuman had left the political arena once and for all. I never knew the former and with the latter I had only a few snatches of conversation in our common mother tongue. However, I was imbued with their message and I have remained steadfastly faithful to it.

With the failure of 1954 still fresh in our minds, we embarked in 1956 upon European affairs in a spirit of realism and prudence but also with the desire to go to the very limits of what was still possible in the work of constructing the Community. The outcome was two treaties which, in qualitative terms, must rank among the most extraordinary achievements in international relations. Nowadays we are used to regarding them, in their lapidary serenity, as an end result; but for those who had to do battle in order to bring them into existence they constitute just as much a transitional stage on the way to the union, as yet unachieved, of Europe. For me, the great debate of the 1950s is not yet over, as you may have sensed more than once in the course of our deliberations.

After that bridgehead had been secured, I became involved in other events and these, alas, were far less positive. I watched with alarm as, prompted by an accumulation of political errors on all sides, the European crisis of the winter of 1965/66 was gathering. I was a witness to what has wrongly been called the Luxembourg 'accord' or 'compromise'. We were then prepared for the worst and, to meet that contingency, we had made provision in our calculation of eventualities for recourse to the Court of Justice as a last resort. In the event of a separation it would declare on whose side the law stood. Happily, things never came to such a pass, for the Community process proved to be irreversible even for those who sought to shake it to its foundations. But to this day Europe suffers from the injury inflicted on it by those events which constitute at the same time a personal trauma for all those who had striven to secure, at all costs, the cohesion and the future of the Community enterprise.

That was my state of mind when, a few months after those events, I was called upon to join the Court of Justice. I had no difficulty in integrating myself as a member of the bench. Although for a long time I remained the youngest of the company I was aware of being, in Community terms, one of the oldest. Indeed today I have been connected with the Community for exactly 29 years of which I have spent 18 as a judge.

When I joined the Court I found to my wonderment that, from 1962 to 1966, at a time when the crisis I had experienced elsewhere was gathering and breaking out, the Court had with tranquil assurance defined the basis of the Community legal order in the face of opposition before it on the part of virtually all the Member States in turn. For that early case-law, too, was the offspring of controversy. In judgments which are still famous and which I have no real need to cite the Court defined the fundamental characteristics of Community law, clarified the essential rules of the common market, traced the outlines of competition law and opened the way for the evolution of the Community towards a social union. In all modesty I

must say that those pinnacles of judicial activity have never subsequently been surpassed: *in initio lux*.

That is not to say that the 1970s were not fruitful years. That was the period in which the Court defined and refined the legislative system of the Community; it transposed freedom of establishment and freedom to provide services from the realm of principles to the real world; in numerous judgments it laid the foundations for a European citizenship and ensured equal dignity for all Europeans by systematically eliminating discrimination based on nationality. It also forcibly insisted on the international personality of the Community in the face of conjugate, not to say collusive, resistance from within and without, affirmed the Community's capacity in the matter of agreements and thus made possible the present burgeoning of practice in that field.

During the same period I was also able to share in another event of capital importance: the first enlargement of the Community. For the first time in history we have seen a real interpenetration of two hitherto mutually alien systems of law known, for want of more suitable terms, as 'civil law' and 'common law'. While adjustment to the Community by the new Member States did not fail to give rise to serious political problems it must be said that, from the beginning, on the legal and judicial levels the work of integration proceeded smoothly and coherently in a spirit of manifest good will. To you, Mr President, must be attributed the merit of having played a prominent part in bringing about this historic mutation; your colleagues recognized this in electing you as the first President of this institution from among the new Members. Since then the Court has been firmly anchored in its new legal dimension.

And here we are in the mid-1980s. Everyone agrees that things have become infinitely more complex. The great questions of principle are resolved and the Court now has a thousand and one problems which, although in a way peripheral, are no less important and the task of finding solutions for them is a daunting one even for the most resolute among us. The situation is also more complicated as the result of the influx of cases which increase not only in number but also in variety. At the same time the increase in the number of judges poses a problem of internal cohesion both for the full Court and for the various Chambers.

It is in this strained situation that we hear voices around us propagating the message of a 'second generation Europe', of undefined contours, and learn of the appraisals of commentators who impute to our recent decisions the quality of a 'new realism'. May I say that I am unable to take seriously the 'second generation' message when it comes from the mouths of those who have shown themselves incapable of keeping the promises of the first generation. Launched at a time when substantial parts of the Treaties have yet to be implemented, this catchphrase appears to me as an 'escape to the fore' and as an agent of creeping disintegration. As for realism, that is an attitude which befits political decision-makers; I tried to practise realism myself in the days when I had to deal with international and European political problems. But that word is not to be found in

my legal vocabulary because is is unpleasantly close to the well-known doctrine of the 'normative force of facts', that is to say the effacement of the law under the pressure of facts.

Thus my vision of Europe is quite different from the new variants of a Europe known as 'second generation', 'two-speed' or even said to be characterized by 'variable geometry'. The single Europe which I have in mind is the one which experienced a brief season of almost miraculous flowering in the mid-1950s. That was when a basic consensus between Europeans was formed. In the meantime that consensus has spread, as the result of subsequent enlargements, to nearly all the States of Western Europe which are free to determine their own destiny. Such a fundamental process cannot be reproduced at will; in particular, to propose a 'fresh deal' for Europe in the present state of affairs is to deal in illusions. The only realistic attitudes at this stage – and here I am talking politics – is to put to the best advantage the consensus achieved during the 1950s, extended by successive enlargements and supplemented in 1973 by a network of free-trade agreements whose importance and possibilities have hitherto been largely underestimated. Free trade is in fact the elementary form of economic interpretation and, as such, a political fact of the first importance.

In the midst of present difficulties the one sure method of ensuring that the advance of Europe is resumed thus consists in building on the basis laid by the Treaties which established the Communities; compared with all the other utopias, these Treaties have the decisive advantage of existing and having been accepted in due constitutional form by at present 12 European States. They embody a potential which is still largely unexploited. They provide an institutional structure which is well adapted to our needs, which is already producing excellent results and would be capable of yielding even more if only the Member States were to allow it to function as contemplated at the outset.

And so, my dear colleagues, after giving a brief account of my origins and the sources which have inspired me, I have now described the state of mind in which I leave you. My prevailing emotion is not sadness at leaving but a feeling of immense gratitude of having been able to work for so long in the very place where significant progress in the European system was still possible in an otherwise adverse context.

Address by President Lord Mackenzie Stuart on the occasion of the entry into office of Judge F. A. Schockweiler

Having thanked Judge Pescatore for his immense and inestimable contribution to the work of the Court, I now have the great pleasure, as President of the Court, of saying a few words to welcome his successor, Mr Schockweiler.

It is a particularly easy task to introduce you, Mr Schockweiler, since the Luxembourg Government has, as is its custom, nominated for appointment to the Court a man of great eminence.

To be frank, I must say that I have always been filled with admiration by the fact that a country of Luxembourg's limited geographical dimensions can produce so many men capable of assuming high office.

Mr Schockweiler without any doubt truly personifies the tradition to which I have just referred.

After concluding his law studies at the Paris Faculty of Law in 1958 and becoming a Doctor of Law in 1959, he immediately took up a post in the Luxembourg administration.

And in a remarkably short time he became a senior civil servant.

Having entered the Ministry of Justice in 1961 and rapidly moved through every stage of the administrative hierarchy, Mr Schockweiler became Premier Conseiller to the Luxembourg Government in 1982, an office which he held until being appointed a member of this Court.

In the course of his duties he has dealt with problems not only of Luxembourg law but also of Community law.

Besides drafting numerous parliamentary bills which have had a profound influence upon Luxembourg law, he has participated, as a representative of the Luxembourg State, in numerous committees dealing with Community law.

Throughout his career, his skills in the legal field and the high standards he observes in the discharge of his duties have been universally recognized.

Original text: French.

You will therefore without any doubt appreciate how pleased I am to be able to assure you, with the greatest peace of mind, of my conviction that a jurist as accomplished as Mr Schockweiler will take up his duties as a Member of the Court with great zeal and skill and that he will have no difficulty in adjusting to the demands of his new office.

I welcome you and Mrs Schockweiler most cordially, and may I now ask you to make the solemn declaration prescribed by the Treaties.

Fernand Antoine Schockweiler

Curriculum vitae
Fernand Antoine Schockweiler

Born in Luxembourg on 15 June 1935
Married in 1960 in Luxembourg
One son, 24 years of age, master's degree in law
One daughter, 20 years of age, in the final year of secondary school

Education

Primary school in Luxembourg from 1941 to 1942 and from 1945 to 1947 (in deportation in Germany from late 1942 to 1945).

Secondary education received at the *Athénée Grand-Ducal de Luxembourg*, 1947 to 1954.

Preparatory examination for legal studies passed in philiosophy and literature with distinction on 23 September 1955.

Read law at the Law Faculty of the University of Paris from 1955 to 1958.

Examinations taken before the Luxembourg State Examination Board:

17 September 1956 : *Candidature en droit* (passed with distinction),
30 October 1957: first examination for Doctorate in Law,
15 January 1959: Doctorate in Law,
8 June 1962: certificate of successful completion of judicial training course.

Career

Joined the Ministry of Justice on 15 May 1961.
Appointed *Attaché d'Administration* on 19 June 1961.
Secrétaire d'Administration 17 June 1963.
Attaché de Gouvernement Premier en Rang 30 August 1966.
Attaché de Gouvernement Adjoint 12 June 1969.
Conseiller de Gouvernement 17 June 1974.
Premier Conseiller de Gouvernement 30 August 1982.


OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

L-2985 Luxembourg

ISBN 92-829-0141-6


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