Synopsis of the work of the Court of Justice of the European Communities in 1979

Luxembourg 1980

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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 *European Court Reports*.

The synopsis is published in the working languages of the Communities (Danish, Dutch, English, French, German, 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 in Annex 6.

Contents

	Page
I — Proceedings of the Court of Justice of the European Communities	7
1. Case-law of the Court	7
A — Statistical information.....	7
B — Summary of cases decided by the Court.....	24
(a) Community capacity to enter into international agreements	24
(b) Common agricultural policy.....	29
(c) Sea fisheries	33
(d) Freedom of movement for persons	37
(e) Anti-dumping measures	39
(f) Community liability for its legislative actions	42
(g) Safeguarding of the fundamental rights of the individual..	45
2. Meetings and visits	50
3. Amendments to the Rules of Procedure	53
4. Composition of the Court	55
5. Library and Documentation Directorate	59
6. Language Directorate	61
II — Decisions of national courts on Community law	63
A — Statistical information.....	63
B — Remarks on some specific decisions	70
III — Annexes	73
Annex 1: Organization of public sittings of the Court	73
Public holidays in Luxembourg	73
Annex 2: Summary of types of procedure before the Court of Justice	74
Annex 3: Notes for the guidance of Counsel at oral hearings.....	76
Annex 4: Information and documentation on the Court of Justice and its work	78
Annex 5: Information on Community law	81
Annex 6: Press and Information Offices of the European Communities	83

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

1. Case-law of the Court

A — *Statistical information*

General trend in cases

The number of cases brought before the Court of Justice as well as the number of cases dealt with has constantly increased in the last few years. This trend continued in 1979. The total number of cases brought in 1979 was 1 332 (in 1978 there were 268). For the first time actions brought by officials of the Communities consisting of 1 163 (in 1978, 22) applications – 1 112 of which, however, belonged to 10 large groups of related cases – were the most numerous. Next came 106 requests for preliminary rulings[1] made to the Court by national courts (in 1978, 123), then 18 actions against Member States for failure to fulfil obligations under the Treaty (in 1978, 16), then 3 actions by Member States against the Council or the Commission (in 1978, 3), 32 actions brought by natural or legal persons against the Council or the Commission (in 1978, 104), 8 applications for the adoption of interim measures (in 1978, 14), 1 request for an interpretation (none in 1978) and 1 application for the revision of a judgment (none in 1978). No applications were made in 1979 for the taxation of costs (there were 2 in 1978).

In 1979 there were no requests for an opinion under Article 228 of the EEC Treaty (in 1978, 1), or for a ruling under Article 103 of the EAEC Treaty (in 1978, 1).

As regards the cases dealt with in 1979, they totalled 250 (in 1978, 156), 118 of which were requests for preliminary rulings (73 in 1978),[1] 10 were actions against Member States for a failure to fulfil obligations (in 1978, 11), 8 were actions by Member States against the Council or the Commission (none in 1978), 79 were actions brought by natural or legal persons against the Council or the Commission (in 1978, 36), 25 were actions by officials of the Communities (in 1978, 21), 6 were applications for the adoption of interim measures (in 1978, 14), 1 request for an interpretation (none in 1978), 2 requests for taxation of costs (none in 1978).

The Court gave an opinion in 1979 under Article 228 of the EEC Treaty (none in 1978). No ruling under Article 103 of the EAEC Treaty was made (1 in 1978).

[1] Including requests for preliminary rulings under Article 3 of the Protocol on the Interpretation by the Court of Justice of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Despite the increasing number of cases brought before the Court of Justice in 1979, it was able to keep the duration of most of the proceedings down to a very short time considering the complexity of the cases.

Judgments delivered

During 1979 the Court of Justice of the European Communities delivered 138 judgments and interlocutary orders (97 in 1978):

37 were in direct actions (excluding actions brought by officials of the Communities);

83 were in cases referred to the Court for preliminary rulings by the national courts of the Member States;

18 were in cases concerning Community staff law.

44 of the judgments were delivered by Chambers, of which:

26 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; and

18 were in Community staff cases.

The Court or its President made 6 orders relating to the adoption of interim measures.

In addition the Court gave an opinion under the second paragraph of Article 228 (1) of the EEC Treaty.

Cases pending

Whilst the number of judgments delivered by the Court in 1979 is 40% higher than the 1978 figure, the number of cases pending on which the Court has not yet given a decision is constantly increasing. Cases pending are divided up as follows:

	31 December 1978	31 December 1979
Full Court	227[1]	164
Chambers		
Actions by officials of the Communities	22	1 160[2]
Other actions	16	23
Total number before the Chambers	38	1 183[2]
Total number of current cases	265[1]	1 347[2]

[1] Including 68 cases belonging to 2 large groups of related cases.

[2] Including 1 112 cases belonging to 10 large groups of related cases.

Sittings

In 1979 the Court held 186 public sittings. The Chambers held 114 public sittings.

Length of proceedings

The average length of proceedings has become longer in the last few years as a result of the increasing number of actions which have been brought.

Proceedings lasted in 1979 for the following periods:

In cases brought directly before the Court the average length was approximately 18 months (the shortest being 5 months). In cases arising from questions referred to the Court by national courts for preliminary rulings, the average length was some 9 months (including judicial vacations).

Cases brought in 1979

In 1979, 1 332 cases[1] were brought before the Court of Justice. They concerned:

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

Belgium	4	
France	2	
Federal Republic of Germany	1	
Ireland	1	
Italy	7	
Luxembourg	1	
United Kingdom	2	
		18

2. Actions brought by the Member States against the Commission:

Belgium	1	
Federal Republic of Germany	1	
Italy	1	
		3
Carried forward:		21

[1] Including 1 112 actions by officials of the Communities belonging to 10 large groups of related cases.

Brought forward:		21
3. Actions brought by natural or legal persons against:		
Commission	26	
Council	6	
		32
4. Actions brought by officials of the Communities	1 163	
		1 163[1]
5. 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	
6 from the Cour de Cassation		
7 from courts of first instance or of appeal		
Denmark	1	
From a court of first instance		
France	18	
2 from the Cour de Cassation		
2 from the Conseil d'Etat		
14 from courts of first instance or of appeal		
Federal Republic of Germany	33	
2 from the Bundesgerichtshof		
1 from the Bundesverwaltungsgericht		
9 from the Bundesfinanzhof		
5 from the Bundessozialgericht		
16 from courts of first instance or of appeal		
Ireland	2	
1 from the High Court		
1 from the Chuirt Chuarda		
Carried forward:	67	1 216

[1] Including 1 112 actions by officials of the Communities belonging to 10 large groups of related cases.

Brought forward:	67	1 216[1]
Italy	19	
7 from the Corte Suprema di Cassazione		
12 from courts of first instance or of appeal		
Luxembourg	1	
From a court of first instance		
Netherlands	11	
1 from the Hoge Raad		
1 from the Centrale Raad van Beroep		
3 from the College van Beroep voor het Bedrijfsleven		
1 from the Tariefcommissie		
5 from courts of first instance or of appeal		
United Kingdom	8	
1 from the House of Lords		
1 from the Court of Appeal		
6 from lower courts		
	—	
		106
		1 322[1]
6. Applications for the adoption of interim measures	8	
7. Interpretation	1	
8. Revision	1	
	—	
		10
Total:		**1 332[1]**

[1] Including 1 112 actions by officials of the Communities belonging to 10 large groups of related cases.

TABLE 1

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

Situation at 31 December 1979

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

Type of case	Direct actions											
	ECSC				EEC							
	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	69 (14)	40 (1)	2	22 (6)	123	4	152 (7)	112 (13)	4
Cases not resulting in a judgment	25	6	10	16	9 (2)	1	2	7	—	20 (2)	13 (1)	1
Cases decided	142	29	17	37 (3)	24 (6)	1	12	103 (51)	1	114 (18)	67 (14)	3
Cases pending	—	—	—	16	7	—	8	13	3	18	32	—

The figures in brackets represent the cases dealt with by the Court in 1979.

[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 a preliminary ruling

Cases con- Com-	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[3]	Privileges and immunities	Other	Total
(2)	167 (6)	18 (2)	33 (1)	44 (6)	166 (3)	214 (8)	16	24 (1)	6	53 (2)	3 178 (72)
101 (6)	7 (1)	1	1	4	6 (3)	8	2	2	1	2 (1)	245 (16)
421 (19)	134 (23)	14 (4)	30 (2)	33 (2)	142 (16)	186 (33)	13 (3)	17 (3)	5	48 (27)	1 593 (224)
i	26	3	2	7	18	20	1	5	—	3	1 340

TABLE 2

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

Situation at 31 December 1979

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

Type of case	Proceedings brought under												
			Art. 173					Art. 177				Protocols Conventions Art. 220	Grand total[2]
	Arts. 169 and 93	Art. 170	By governments	By individuals	By Community institutions	Total	Art. 175	Validity	Interpretation	Total	Art. 215		
Cases brought	87	2	29	3	192	224	20	104	610	714	134	24	1 205
Cases not resulting in a judgment	18	1	4	—	18	22	—	2	27	29	10	2	82
Cases decided	45	1	21	3	151	175	17	98	502	600	92	17	947
In favour of applicant[3]	39	1	5	1	42	48	—				—		88
Dismissed on the substance[4]	6	—	15	2	76	93	2				84		185
Dismissed as inadmissible	—	—	1	—	33	34	15				8		57
Cases pending	24	—	4	—	23	27	3	4	81	85	32	5	176

[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

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

Situation at 31 December 1979

(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. 150 EAEC			
	ECSC	EAEC	ECSC	EAEC	ECSC	EAEC	Questions of validity	Questions of interpretation	ECSC	EAEC
Cases brought	20		2		277	2	—	3	297	7
Cases not resulting in a judgment	8		1		49	—	—	—	57	1
Cases decided	12		1		212	2	—	3	224	6
In favour of applicants[2]	5		1		38	1			43	2
Dismissed on the substance[3]	7		—		124	1			131	1
Dismissed as inadmissible	—		—		50	—			50	—
Cases pending	—		—		16	—	—	—	16	—

[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 procceedings rejected partly as inadmissible and partly on the substance.

TABLE 4(a)

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

Nature of Proceedings	Cases brought in 1979	Cases dealt with in 1979			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. 1978	31 Dec. 1979
Art. 177 EEC Treaty	100	115	110	5	80	—	1	95	80
Art. 169 EEC Treaty	18	9	8	1	8	—	—	15	24
Art. 170 EEC Treaty	—	1	1	—	1	—	—	1	—
Art. 173 EEC Treaty	13	74	71	3	17	—	—	86	25
Arts. 173 & 175 EEC Treaty	1	1	1	—	1	—	—	1	1
Arts. 173 & 215 EEC Treaty	1	—	—	—	—	—	—	—	1
Art. 175 EEC Treaty	2	2	2	—	—	—	2	—	—
Arts. 175 & 215 EEC Treaty	2	2	1	1	1	—	—	1	1
Arts. 178 & 215 EEC Treaty	9	5	5	—	7	—	—	25	29
Art. 228 EEC Treaty	—	1	1	—	—	1	—	1	—
Protocol and Convention on Jurisdiction	6	3	3	—	3	—	—	2	5
Art. 36 ECSC Treaty	7	3	3	—	2	—	—	11	15
Art. 40 ECSC Treaty	—	—	—	—	—	—	—	1	1
Interim measures	8	6	6	—	—	—	6	—	2
Taxation of costs	—	2	2	—	—	—	2	2	—
Interpretations	1	1	1	—	—	—	1	—	—
Revisions	1	—	—	—	—	—	—	—	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	1 163	25	19	6	18	—	1	24	1 162
Total	1 332	250	234	16	138	1	13	265	1 347
Cases kept on the register or adjourned *sine die*	1	—	—	—	—	—	—	8	24

TABLE 4(b)

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

Nature of proceedings	Cases brought before the Full Court in 1979	Cases brought before a Chamber and referred to the Full Court in 1979	Cases dealt with in 1979			Judgments and interlocutory judgments	Opinions	Orders	Cases assigned to a Chamber in 1979	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the register					31 Dec. 1978	31 Dec. 1979
Art. 177 EEC Treaty	100	—	86	81	5	54	—	1	32	81	63
Art. 169 EEC Treaty	18	—	9	8	1	8	—	—	—	15	24
Art. 170 EEC Treaty	—	—	1	1	—	1	—	—	—	1	—
Art. 173 EEC Treaty	13	—	74	71	3	17	—	—	2	86	23
Arts. 173 & 175 EEC Treaty	1	—	1	1	—	1	—	—	—	1	1
Arts. 173 & 215 EEC Treaty	1	—	—	—	—	—	—	—	1	—	—
Art. 175 EEC Treaty	2	—	2	2	—	—	—	2	—	—	—
Arts. 175 & 215 EEC Treaty	2	—	2	1	1	1	—	—	—	1	1
Arts. 178 & 215 EEC Treaty	9	—	5	5	—	7	—	—	1	25	28
Art. 228 EEC Treaty	—	—	1	1	—	—	1	—	—	1	—
Protocol and Convention on Jurisdiction	6	—	3	3	—	3	—	—	1	2	4
Art. 36 ECSC Treaty	7	—	3	3	—	2	—	—	—	11	15
Art. 40 ECSC Treaty	—	—	—	—	—	—	—	—	—	1	1
Interim Measures	8	—	6	6	—	—	—	6	—	—	2
Interpretations	1	—	1	1	—	—	—	1	—	—	—
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	—	2	—	—	—	—	—	—	—	—	2
Total	168	2	194	184	10	94	1	10	37	225	164
Cases kept on the register or adjourned *sine die*	—	—	—	—	—	—	—	—	—	8	23

TABLE 4(c)

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

Nature of Proceedings	Cases brought before the First Chamber in 1979	Cases brought before the Full Court or a Chamber and assigned to the First Chamber in 1979	Cases dealt with in 1979			Judgments and inter-locutory judgments	Orders	Cases referred to the Court or a Chamber in 1979	Cases pending	
			(a) Total	(b) By judg-ment, opinion or order	(c) By order to remove from the register				31 Dec. 1978	31 Dec. 1979
Art. 177 EEC Treaty	—	19	18	18	—	16	—	—	7	8
Art. 173 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Arts. 173 & 215 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Arts. 178 & 215 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Protocol and Convention on Jurisdiction	—	—	—	—	—	—	—	—	—	—
Interim measures	—	—	—	—	—	—	—	—	—	—
Taxation of costs	—	—	1	1	—	—	1	—	1	—
Revisions	—	—	—	—	—	—	—	—	—	—
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	1 143	—	6	4	2	3	1	5	4	1 136
Total	1 143	19	25	23	2	19	2	5	12	1 144
Cases kept on the register or adjourned *sine die*	—	—	—	—	—	—	—	—	—	—

TABLE 4(d)

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

Nature of Proceedings	Cases brought before the Second Chamber in 1979	Cases brought before the Full Court or Chamber and assigned to the Second Chamber in 1979	Cases dealt with in 1979			Judgments and interlocutory judgments	Orders	Cases referred to the Court or a Chamber in 1979	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the register				31 Dec. 1978	31 Dec. 1979
Art. 177 EEC Treaty	—	10	11	11	—	10	—	2	7	4
Art. 173 EEC Treaty	—	2	—	—	—	—	—	—	—	2
Arts. 173 & 215 EEC Treaty	—	1	—	—	—	—	—	—	—	1
Arts. 178 & 215 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Protocol and Convention on Jurisdiction	—	—	—	—	—	—	—	—	—	—
Interim measures	—	—	—	—	—	—	—	—	—	—
Taxation of costs	—	—	1	1	—	—	1	—	1	—
Revisions	1	—	—	—	—	—	—	—	—	1
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	18	—	17	15	2	15	—	5	20	16
Total	19	13	29	27	2	25	1	7	28	24
Cases kept on the register or adjourned *sine die*	—	—	—	—	—	—	—	—	—	—

TABLE 4(e)

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

Nature of Proceedings	Cases brought before the Third Chamber in 1979	Cases brought before the Full Court or a Chamber and assigned to the Third Chamber in 1979	Cases dealt with in 1979			Judgments and inter-locutory judgments	Orders	Cases referred to the Court or a Chamber in 1979	Cases pending	
			(a) Total	(b) By judgment, opinion or order	(c) By order to remove from the register				31 Dec. 1978	31 Dec. 1979
Art. 177 EEC Treaty	—	5	—	—	—	—	—	—	—	5
Art. 173 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Arts. 173 & 215 EEC Treaty	—	—	—	—	—	—	—	—	—	—
Arts. 178 & 215 EEC Treaty	—	1	—	—	—	—	—	—	—	1
Protocol and Convention on Jurisdiction	—	1	—	—	—	—	—	—	—	1
Interim measures	—	—	—	—	—	—	—	—	—	—
Taxation of costs	—	—	—	—	—	—	—	—	—	—
Revisions	—	—	—	—	—	—	—	—	—	—
Art. 179 EEC Treaty Art. 42 ECSC Treaty Art. 152 EAEC Treaty	2	8	2	—	2	—	—	—	—	8
Total	2	15	2	—	2	—	—	—	—	15
Cases kept on the register or adjourned *sine die*	—	—	—	—	—	—	—	—	—	1

TABLE 5

Judgments delivered by the Court and Chambers analysed by language of the case

1973–1979

Judgments	Danish							Dutch								
	1973	1974	1975	1976	1977	1978	1979	1973	1974	1975	1976	1977	1978	1979	1973	1974
Full Court																
Direct actions	—	—	—	—	—	—	—	1	—	2	—	2	3	4		
References for a preliminary ruling	—	—	—	1	—	2	2	9	10	6	6	17	7	11		1
Staff cases	—	—	—	—	—	—	—	—	—	—	—	—	—	—		
Chambers																
References for a preliminary ruling	—	—	—	—	—	—	—	—	—	—	—	1	1	8		
Staff Cases	—	—	—	1	—	—	—	—	2	2	2	1	1	—		—
Total	—	—	—	2	—	2	2	10	12	10	8	21	12	23		

1977	1978	1979	French							German							Italian						
			1973	1974	1975	1976	1977	1978	1979	1973	1974	1975	1976	1977	1978	1979	1973	1974	1975	1976	1977	1978	1979
	2	7	—	1	8	4	4	5	7	5	3	3	3	4	5	10	3	2	1	4	1	5	9
	6	4	6	11	14	9	17	10	12	33	17	17	19	17	20	21	5	2	8	13	10	6	8
	—	—	—	1	3	2	—	—	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—
	1	—	—	—	—	1	—	1	6	—	—	—	2	10	8	10	—	—	—	—	—	—	1
	1	—	12	9	15	17	11	12	17	1	—	1	—	1	1	—	4	1	1	1	1	—	1
	10	11	18	22	40	33	32	28	42	40	20	21	24	32	34	41	12	5	10	18	12	11	19

Lawyers

During the sittings held in 1979, apart from the representatives or Agents of the Council, the Commission and the Member States, the Court heard:

53 Belgian lawyers,
18 British lawyers,
5 Danish lawyers,
22 French lawyers,
38 lawyers from the Federal Republic of Germany,
10 Irish lawyers,
40 Italian lawyers,
9 Luxembourg lawyers,
11 Netherlands lawyers.

B — *Summary of cases decided by the Court*

It is not possible within the confines of a brief synopsis to present a full report on one year's case-law of the Court of Justice. In spite of the risk of a certain degree of subjectivity which is involved in any choice, this synopsis presents only a selection of judgments of particular importance.

(a) Community capacity to enter into international agreements

Opinion 1/78 of 4 October 1979 given pursuant to the second paragraph of Article 288 (1) of the EEC Treaty – International Agreement on Natural Rubber (not yet published).

The Commission asked the Court to give its opinion on the compatibility with the EEC Treaty of the draft International Agreement on Natural Rubber which was the subject of negotiations in the United Nations Conference on Trade and Development (hereinafter referred to as 'UNCTAD').

The Commission took that step following a divergence of view between itself and the Council on the question of the delimitation of the respective powers of the Community and of the Member States to negotiate and conclude the agreement in question.

According to the Commission, the agreement envisaged came within the context of Article 113 of the EEC Treaty relating to the common commercial policy and therefore within the *Community's exclusive powers.*

According to the Council the subject-matter of the agreement fell outside the framework of commercial policy and thus called for a division of powers between the Community and the Member States so that the agreement must be concluded according to the technique of the so-called 'mixed-type' agreement, that is to say, by the *Community and the Member States jointly.*

At the beginning of 1978 UNCTAD decided to open negotiations for the conclusion of an International Agreement on Natural Rubber. These were the first negotiations undertaken under the Nairobi Resolution on the 'Integrated Programme'.

For the purposes of these negotiations on 5 October 1978 the Commission put to the Council a 'recommendation' under which the Commission was to be auth-

orized to conduct, on behalf of the Community, negotiations in accordance with the directives laid down by the Council.

After considering that recommendation the Council approved a procedural decision under which the Community and the Member States were to be represented in the negotiations on natural rubber by a Community delegation and by nine national delegations.

The recommendation presented by the Commission was thus by implication rejected and the Commission therefore immediately lodged with the Court a request for an opinion in pursuance of Article 228 so as to clarify the divergence of views between it and the Council.

It was first necessary to determine the economic objectives and the structure of the agreement. The purpose of the agreement was to achieve a balanced growth between the supply and demand for natural rubber with a view to stabilizing its prices around their long-term trend.

That objective was to be realized by building up a buffer stock, the purpose of which was to purchase surpluses of rubber at a time when prices were declining and to sell the stocked rubber when prices were rising so as to contain the price within a margin of fluctuation determined in advance.

The question of financing the operations of the buffer stock had not been settled. Two trends were discernible: some proposed a system of financing by levies on trade in natural rubber, whilst others preferred financing by means of public funds provided by the contracting parties.

Admissibility of the request

The Council expressed doubts as to whether the request made by the Commission did not constitute an incorrect use of the procedure in Article 228 inasmuch as its aim was to obtain from the Court a solution of questions which lay outside that procedure. Referring to previous decisions the Court emphasized that under the procedure of Article 228 of the EEC Treaty, like that of Article 103 of the EAEC Treaty, it was possible to deal with all questions concerning the compatibility with the provisions of the Treaty of an agreement envisaged (Opinion 1/75, Opinion 1/76, Ruling 1/78).

The Council also raised an objection as to the alleged premature nature of the request. In fact at the time when the Commission lodged its request for an opinion the negotiations were still not in an advanced stage.

The Court ruled that it should not be overlooked that the Commission had an interest in lodging its request immediately after its disagreement with the Council as regards the question of powers to negotiate and conclude the agreement envisaged had become apparent. It was clear that questions of powers must be clarified as soon as any particular negotiations were commenced.

The subject-matter and objectives of the agreement envisaged

The problem of competence which was submitted to the Court had to be examined from two aspects:

> The first question was whether the agreement envisaged, by reason of its subject-matter and objectives, came within the concept of common commercial policy referred to in Article 113 of the Treaty.
>
> The second question – but only if the first question was answered in the affirmative – was whether, by reason of certain specific arrangments or special provisions of the agreement concerning matters coming within the powers of the Member States, the participation of the latter in the agreement was necessary.

The central question raised by the Commission's request was whether the International Agreement on Rubber came within the sphere of the 'common commercial policy' referred to in Article 113 of the Treaty. It was not disputed that the agreement envisaged was closely connected with commercial policy but, in the Commission's view, the agreement was a characteristic measure for regulating external trade and thus an instrument of commercial policy while, in the Council's view, there was a close interrelation between the powers of the Community and those of the Member States, since it was difficult to distinguish between international economic relations and international political relations.

In these circumstances the Council took the view that the agreement envisaged came not only under Article 113 of the Treaty but also under Article 116 relating to common action by Member States within the framework of international organizations of an economic character to which they belonged.

The agreement's links with commercial policy and development problems

The agreement in question was distinguished from classical commercial agreements inasmuch as it was a more structured instrument in the form of an organization of the market on a world scale. Consideration had to be given to the question whether the link which existed between the agreement envisaged and the development problems to which the Council referred might perhaps exclude the agreement from the sphere of the common commercial policy as defined by the Treaty.

The Nairobi Resolution showed that commodity agreements had complex objectives. Whilst stressing the needs of the developing countries the resolution did not overlook the needs of the industrialized countries. It sought to establish a fair balance between the interests of the producer countries and those of the consumer countries. It seemed that it would no longer be possible to carry on any worthwhile common commercial policy if the Community were not in a position to avail itself also of more elaborate means devised with a view to furthering the development of international trade.

Article 113 empowers the Community to formulate a commercial 'policy', based on 'uniform principles'. A restrictive interpretation of the concept of common commercial policy would risk causing disturbances in intra-Community trade by reason of the disparities which would then exist in certain sectors of economic relations with non-member countries.

The agreement's links with general economic policy

The Council raised the problem of the interrelation within the structure of the Treaty of the concepts of 'economic policy' and 'commercial policy' which in effect made it necessary to determine the connexion between Articles 113 and 116 in the context of the common commercial policy. The two provisions contributed to the same end inasmuch as their objective was the realization of a common policy in international economic relationships but, as a basis for action, they differed: according to Article 113 the common commercial policy is determined by the Community, independently, that is to say, acting as such, by the intervention of its own institutions whereas Article 116 was conceived with a view to evolving common action by the Member States in international organizations of which the Community was not part and in such a situation the only appropriate means was concerted, joint action by the Member States as members of the said organizations.

In this case the agreements on commodities were being negotiated within UNCTAD. The Court had already stressed in its Opinion 1/75 (OECD) that what counted with regard to the application of the Treaty was the question whether negotiations undertaken within the framework of an international organization were intended to lead to an 'undertaking entered into by entities subject to international law which had binding force'. In such a case Articles 113, 114 and 228 applied and not Article 116.

Problems raised by the financing of the agreement and by other specific provisions

Considerations still had to be given to the question whether the detailed arrangements for financing the buffer stock, or certain specific clauses of the agreement, concerning technological assistance, research programmes etc. led to a negation of the Community's exclusive competence. The Court took the view that the financial provisions occupied a central position in the structure of the agreement and raised a more fundamental difficulty as regards the demarcation between the powers of the Community and those of the Member States. The Commission had proposed that the application of the financial clauses of the agreement on natural rubber should be effected by the Community itself with a direct contribution from the Community budgets whereas the Council expressed a preference for financing by the Member States. However, no formal decision had yet been taken on this question. Moreover, there was no certainty as regards the attitude of the various Member States on this particular question.

Having regard to the uncertainty existing as regards the final solution to be adopted for this problem, the Court felt bound to have regard to two possible situations: one in which the financial burdens envisaged by the agreement would be entered in the Community budget and one in which the burdens would be directly charged to the budgets of the Member States.

In the first case no problem would arise as regards the exclusive powers of the Community to conclude the agreement in question. The mechanism of the buffer stock had the purpose of regulating trade and from this point of view constituted an instrument of the common commercial policy. It followed that Community financing of the charges arising would have to be regarded as a solution in conformity with the Treaty. The necessary decisions would be taken according to the appropriate Community procedures. If on the other hand the financing was to be by the Member States that would imply the participation of those States in the decision-making machinery or, at least, their agreement with regard to the arrangements for financing envisaged and consequently their participation in the agreement together with the Community.

It could not in fact be denied that the financing of the buffer stock constituted an essential feature of the scheme for regulating the market which it was proposed to set up. The extent of and the detailed arrangements for the financial undertakings which the Member States would be required to satisfy would directly condition the possibilities and the degree of efficiency of intervention by the buffer mechanism whilst the decisions to be taken as regards the level of the central reference price and the margins of fluctuation to be permitted either upwards or downwards would have immediate repercussions on the use of the financial means put at the disposal of the International Rubber Council which was to be set up and on the extent of the financial means to be put at its disposal.

The exclusive competence of the Community could not be envisaged in such a case.

The Court gave the following opinion:

'1. The Community's powers relating to commercial policy within the meaning of Article 113 of the Treaty establishing the European Economic Community extend to the International Agreement on Natural Rubber which is in the course of negotiation within the United Nations Conference on Trade and Development.

2. The question of the exclusive nature of the Community's powers depends in this case on the arrangements for financing the operations of the buffer stock which it is proposed to set up under that agreement.

   If the burden of financing the stock falls upon the Community budget the Community will have exclusive powers.

   If on the other hand the charges are to be borne directly by the Member States that will imply the participation of those States in the agreement together with the Community.

3. As long as that question has not been settled by the competent Community authorities the Member States must be allowed to participate in the negotiation of the agreement'.

(b) Common agricultural policy

Judgment of 29 March 1979, Case 231/78, Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland and Judgment of 29 March 1979, Case 118/78, C. J. Meijer B. V. v The Department of Trade, The Ministry of Agriculture, Fisheries and Food, The Commissioners of Customs and Excise ([1979] ECR 1387 and 1447)

These two judgments, the first in an action against the United Kingdom for a declaration that it had failed to fulfil its obligations, and the second upon a request by the High Court of Justice for a preliminary ruling, had the same disputed subject-matter in common – the application by the British Government of restrictions on potato imports from the Continent of Europe. In the United Kingdom there was an organization of the market in potatoes comprising rules on imports and exports of edible potatoes. These rules were enforced by a licensing system administered by the Department of Trade. The Ministry of Agriculture advertised in the press to inform the public when and how these licences were to be issued. On 28 December 1977 the Ministry of Agriculture announced that the ban on imports of potatoes into the United Kingdom would continue until further notice.

As regards the action against the United Kingdom for a failure to fulfil its obligations (Case 231/78) it is to be noted that the ban at issue had already been the subject-matter of correspondence between the United Kingdom and the Commission. As early as July 1975 the Commission had made its opinion known to all Member States that after the judgment given by the Court in Case 48/74 (*Charmasson v Minister for Economic Affairs and Finance*, [1974] ECR 1383) restrictions on trade involving new Member States were to be abolished by 31 December 1977 at the latest. By a letter dated 2 March 1978 the Government of the United Kingdom replied that the restrictions on potato imports were authorized by the provisions of Article 60 (2) of the Act of Accession.

The scope of the Act of Accession therefore fell to be assessed. Article 9 of the Act lays down the general rule in the following terms:

'(1) In order to facilitate the adjustment of the new Member States to the rules in force within the Communities, the application of the original Treaties and acts adopted by the institutions shall, as a transitional measure, be subject to the derogations provided for in that act.

(2) Subject to the dates, time-limits and special provisions provided for in this act, the application of the transitional measures shall terminate at the end of 1977'.

In its defence, the United Kingdom, supported by the French Republic, intervening in the case, submitted that under Article 60 (2) of the Act of Accession it was entitled to maintain the quantitative restrictions referred to until the implementation of a common organization of the market for potatoes. Article 60 (2) of the Act of Accession provides:

'In respect of products not covered, on the date of accession, by a common organization of the market, the provisions of Title I concerning the progressive abolition of charges having equivalent effect to customs duties and of quantitative restrictions and measures having equivalent effect shall not apply to those charges, restrictions and measures if they form part of a national market organization on the date of accession.

This provision shall apply only to the extent necessary to ensure the maintenance of the national organization and until the common organization of the market for these products is implemented'.

Article 60 (2) unquestionably constitutes a derogation from Article 42, the wording of which is as follows:

'Quantitative restrictions on imports and exports shall, from the date of accession, be abolished between the Community as originally constituted and the new Member States and between the new Member States themselves.

Measures having equivalent effect to such restrictions shall be abolished by 1 January 1975 at the latest'.

The parties disagreed on the interpretation of Articles 9 and 60. According to the United Kingdom and France, Article 60 (2) constituted a special provision within the meaning of Article 9 so that the time-limit of the end of 1977 was inapplicable whilst the Commission thought that Article 60 (2), if it did constitute a derogation from Article 42, could not be termed a 'special provision' within the meaning of Article 9 so that the period which it laid down shall take full effect.

The Court held that the provisions of the Act of Accession must be interpreted having regard to the foundations and the system of the Community, as established by the Treaty, and in particular, that the provisions of the Act of Accession relating to quantitative restrictions and measures having equivalent effect could not be interpreted in isolation from the provisions of the Treaty relating to those matters.

Reference should therefore be made on this point to the provisions of the Treaty governing the common agricultural policy; the time-limit for the implementation of the common agricultural policy was fixed by Article 40 as the end of the transitional period, whilst Articles 43 and 46 allowed Member States to maintain provisionally their existing national organizations of the markets.

The Court stressed that the importance of the prohibition upon quantitative restrictions and upon all measures having equivalent effect between Member States precluded any broad interpretation of the reservations or derogations in this regard laid down in the Act of Accession.

The Court also recalled its judgment in the *Charmasson* case (Case 48/74 of 2 December 1974) in which it held that after the expiry of the transitional period the operation of a national market organization could no longer prevent full effect being given to the provisions of the Treaty relating to the elimination of quantitative restrictions and all measures having equivalent effect, the requirements of the markets concerned in this respect thenceforward becoming the responsibility of the Community institutions. The expiry of the transitional period laid down by the Treaty meant that, from that time, those matters and areas explicitly attributed to the Community came under Community jurisdiction, so that if it were still necessary to have recourse to special measures, these could no longer be determined unilaterally by the Member States concerned, but had to be adopted within the framework of the Community system designed to ensure that the general interest of the Community would be protected. In the light of these findings it was possible to draw the conclusion that Article 60 (2) of the Act of Accession, although it indubitably constituted a derogation from the rule in Article 42, could not be regarded as 'a special provision within the meaning of Article 9 (2)' of that act.

The Court declared that:

'The United Kingdom of Great Britain and Northern Ireland has failed to fulfil an obligation under the Treaty, in particular Article 30 thereof, together with the Act of Accession, by not repealing or amending before the end of 1977 the provisions of its national law which have the effect of restricting imports of potatoes'.

Opinion of Mr Advocate-General Mayras delivered on 6 March 1979.

In the case concerning the request for a preliminary ruling (Case 118/78, *Meijer B. V. v Department of Trade etc.*) the facts were as follows: on 5 January 1978 Meijer, the plaintiff in the main action, which carried on business in the Netherlands as a producer, dealer and exporter of potatoes, shipped a consignment of 20 tonnes of main-crop potatoes to the United Kingdom. The customs authorities refused entry of the goods at Great Yarmouth on the ground that the ban on the importation of main crop potatoes from any source was still in force. Following that refusal the plaintiff issued an originating summons in the High Court claiming declarations to the effect that since 1 January 1978 the United Kingdom was no longer authorized to control the importation of potatoes from other Member States.

The High Court seised the Court of Justice under Article 177 of the EEC Treaty. The Court ruled:

'Article 60 (2) of the Act of Accession cannot be regarded as a special provision within the meaning of the reservation set out in Article 9 (2) of that act with the

result that by virtue of the latter provision its application terminated at the end of 1977'.

Judgment of 25 September 1979, Case 232/78, Commission of the European Communities v French Republic (not yet published)

This case may be compared with the previous judgment. It was concerned with the market in mutton and lamb which, like the market for potatoes is still not subject to a common organization of the market.

There being no common organization of the market in mutton and lamb, the market was regulated in France on a national basis. In view of the considerable influence of imports on market price formation in France, stabilization of domestic prices was sought by means of a system of restrictions on the importation of meat from non-member countries and from the new Member States, including the United Kingdom.

Complaints from trade and official circles in Britain revealed that France had continued to apply these domestic import controls after the end of 1977 to imports of mutton and lamb from the United Kingdom.

This led the Commission to make an application to the Court on 25 October 1978 for a declaration that 'the French Republic, by continuing after 1 January 1978 to apply its restrictive national system to the importation of mutton and lamb from the United Kingdom, has failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty'.

The substance of the French Government's defence was that Article 60 (2) of the Act of Accession allowed the import restrictions concerned to subsist as long as there existed no common organization of the market in mutton and lamb.

It was common ground that French imports of mutton and lamb were subject to a system of import restrictions, based on a 'threshold price, protected by a system which prohibits imports and provides for "reversements" [repayments]'.

The French Government did not contest the fact that the system ran counter to the Treaty's provisions on the removal of obstacles to the free movement of goods within the Community, but offered three arguments in its defence. The grave economic and social consequences of dismantling the national organization of the markets on the economy of certain less favoured regions, the progress being made in establishing a common organization of the market in mutton and lamb, and the unequal conditions of competition which it would create between France and the United Kingdom, whose 'deficiency payments' system subsidized, in effect, exports of mutton and lamb to France.

The Court referred to its previous case-law in *Charmasson*, 2 December 1974, in which it emphasized that after expiry of the transitional period laid down in the EEC Treaty and, where the new Member States were concerned, expiry of the transitional periods specified in the Act of Accession, the functioning of a national organization of the market must no longer prevent the provisions of the Treaty regarding the elimination of restrictions on intra-Community trade from having their full effect, since the needs of the market concerned would have been placed in the charge of the Community institutions.

Accordingly it was for the Community institutions and for them alone to adopt in due course the measures required in order to achieve a general solution, in the Community context, to the problem of the market in mutton and lamb and to the particular difficulties experienced by some areas in this respect.

If the French Republic considered that some elements in the system of control then obtaining in the sector of mutton and lamb were incompatible with Community law, there were steps which it could take either in the Council, or through the Commission, or by means of legal proceedings. But in no circumstances is a Member State authorized to adopt unilateral measures to correct or defend itself against them.

Accordingly, the Court declared that by continuing to apply after 1 January 1978 its restrictive national scheme to imports of mutton and lamb from the United Kingdom the French Republic had failed to fulfil its obligations under Articles 12 and 30 of the EEC Treaty.

Opinion of Mr Advocate-General Reischl delivered on 4 July 1979.

(c) Sea fisheries

Judgment of 3 July 1979, Joined Cases 185 to 204/78, Van Dam en Zonen and Others ([1979] ECR 2345)

Twenty or so fishing undertakings and Netherlands sea fishermen were prosecuted by the Magistrate in Economic Matters of the Arrondissementsrechtbank, Rotterdam, for infringing national regulations governing catches of sole and plaice in the North Sea. The case led the national court to refer to the Court questions on the interpretation of Article 5 of the EEC Treaty and Article 102 of the Act of Accession for the purpose of determining the compatibility with Community law of the regulations made by the Government of the Netherlands limiting catches of sole and plaice in the North Sea.

Prosecutions were instituted against 20 fishing undertakings for infringing the Netherlands regulations fixing quotas for catches of sole and plaice in the North Sea for the year 1978. Before the national court the accused relied on the defence that, as the transitional period provided for by Article 102 of the Act of Accession had expired on 1 January 1978, the adoption of measures for the protection of the

biological resources of the sea came within the jurisdiction of the Community. As a result the Netherlands was no longer competent to enact the regulations under which the prosecutions were brought.

The defendants further submitted that, even supposing the Netherlands provisions had been lawfully enacted, they would still be incompatible with Community law as constituting a discrimination against Netherlands fishermen in view of the fact that the other Member States would be applying less severe provisions in the same maritime zone.

This case led the national court to refer to the Court of Justice three preliminary questions. The first question concerned the interpretation of Article 102 of the Act of Accession and more particularly the determination of the date on which the transitional period expired.

Article 102 provides that 'From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea'. This text raised a problem because it refers to a period and not to a precise date. The expression 'sixth year after accession' may be understood as referring to the beginning or to the end of that year, that is to say 1 January or 31 December 1978. However, by reading the particular provision of Article 102 together with the general terms of Article 9 of the Act of Accession, it was possible to deduce that the period stated in Article 102 could have practical significance only if it referred to the end of the sixth year, otherwise the particular provision would be pointless since it would lay down the same period as that prescribed by the general provision.

The Court held that the period prescribed by Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expired on 31 December 1978.

It followed from that that the incidents out of which the prosecutions arose took place at a time when the transitional period stated in Article 102 had not yet expired.

The second question asked whether the measures taken by the Netherlands with regard to fishing were based on Community provisions or on obligations imposed on the Member States by the Community through the Treaty as referred to in Article 5 of the Treaty, or on powers conferred on the Member States by the Community.

The Court had already stated in its judgment of 16 February 1978 (Case 61/77 *Commission v Ireland* [1978] ECR 417) which law was applicable in that field and what was the division of jurisdiction between the Community and the Member States.

The Court replied to the second question by ruling that measures such as those contained in the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 [Decree provisionally laying down restrictions on catches of sole and plaice] and in the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 [Decree provisionally laying down quotas for North Sea sole and plaice], both of 29 December 1977, came, at the time in question, within the jurisdiction of the Member States.

A third question asked whether the contents of the aforesaid provisions of the Netherlands were compatible with Community law.

It emerged from the file in the case and from the arguments adduced by the persons being prosecuted that the Netherlands measures were being criticized on the ground that they were discriminatory as regards Netherlands fishermen since other Member States were applying less severe measures in that field. It must be pointed out that the protective measures coordinated within the framework of the Community, in consultation with the Commission, were based on a division of responsibilities between the Member States, in that, at that time, each State controlled the catches unloaded at its own ports, according to the provisions of its own national legislation on fishing quotas. The Court ruled that national provisions such as the Netherlands regulations on fishing quotas of 29 December 1977 could not be considered discriminatory when they applied uniformly to all fishermen subject to the jurisdiction of the Member State in question.

Opinion of Mr Advocate-General Reischl delivered on 6 June 1979.

Judgment of 4 October 1979, Case 141/78, French Republic v United Kingdom of Great Britain and Northern Ireland (not yet published)

The problems involved in fishing and the safeguarding of the biological resources of the sea also arose in this case between the French Republic and the United Kingdom. It resulted in the first ever declaration that a Member State had failed to fulfil its obligations following an action brought by another Member State under Article 170 of the Treaty. By an application of 14 June 1978 the French Republic asked the Court to declare that by adopting on 9 March 1977 the Fishing Nets (North-East Atlantic) Order 1977 (Statutory Instrument 1977 No 440), the United Kingdom had failed to fulfil its obligations under the EEC Treaty.

The order prohibited the carrying, in a specified area of the Atlantic and the Arctic Oceans and seas adjacent thereto, in any British or foreign fishing boat within British fishery limits, of certain small-mesh nets. It authorized the carriage of small-mesh nets for taking certain unprotected species, including prawns; however, such authorization did not apply when the protected species represented more than 20% of the catch involved.

The action brought by the French Republic originated in an incident at sea which occurred on 1 October 1977 when the French trawler 'Cap Caval' which was

fishing for prawns within United Kingdom fishery limits was boarded by British fishery protection officers. The ship's hold contained approximately 2.9 tonnes of white fish (protected) and 1.8 tonnes of prawns.

The master of the trawler was convicted by a British court of an offence contrary to the order in question, in particular for having used nets of a mesh smaller than the minimum authorized by the order.

The French Republic claimed in particular that the disputed order, which was adopted in a matter reserved for the competence of the Community, was brought into force in disregard of the requirements set out in Annex VI to the resolution adopted by the Council at The Hague at its meeting on 30 October and 3 November 1976, under which, pending the implementation of the appropriate Community measures, Member States might, as an interim measure, adopt unilateral measures to ensure the protection of fishery resources on condition that they had first consulted the Commission and sought its approval.

The French Republic argued that as these requirements were not observed by the Government of the United Kindgom the measure adopted was contrary to Community law. The position of the French Government was supported by the Commission, which intervened in the dispute.

The Government of the United Kingdom, without challenging the binding nature of Annex VI to The Hague Resolution, claimed that the order in question could not be described as a 'unilateral' measure within the meaning of that resolution since it was adopted in pursuance of the North-East Atlantic Fisheries Convention signed in London on 24 January 1959 (United Nations Treaty Series, 1964 p. 159).

For that reason the order in question did not need to be subjected to the consultation procedure laid down in The Hague Resolution.

The French Government stated, correctly, that the order in dispute was adopted in a field which came within the powers of the Community. Those powers were based on Articles 3 and 38 of the EEC Treaty and also on a series of regulations of the Council, including Regulations Nos 100 and 101/76 of 19 January 1976 and on the judgments of the Court of Justice of 14 July 1976 (Joined Cases 3, 4 and 6/76, *Kramer and Others*), of 16 February 1978 (Case 61/77, *Commission v Ireland*) and of 3 July 1979 (Joined Cases 185 to 204/78, *Van Dam and Others*).

The Commission, for its part, claimed that The Hague Resolution, which states that 'pending the implementation of the Community measures (to ensure the protection of the resources situated in the fishing zones along their coastlines), the Member States will not take any unilateral measures in respect of the conservation of the resources', made specific the duties of cooperation which the Member States assumed under Article 5 of the EEC Treaty when they acceded to the Community.

It was common ground that those requirements had not been satisfied in this case. It followed that, by not previously notifying the other Member States and the Commission of the measure adopted and seeking the approval of the Commission, the United Kingdom had failed to fulfil its obligations under Article 5 of the EEC Treaty, Annex VI to the Hague Resolution and Articles 2 and 3 of Regulation No 101/76.

The Court:

1. Declared that, by bringing into force on 1 April 1977 the Fishing Nets (North-East Atlantic) Order 1977, the United Kingdom of Great Britain and Northern Ireland had failed to fulfil its obligations under the EEC Treaty;

2. Ordered the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Opinion of Mr Advocate-General Reischl delivered on 11 September 1979.

(d) Freedom of movement for persons

Judgment of 7 February 1979, Case 115/78, Knoors v Secretary of State for Economic Affairs (Netherlands) ([1979] ECR 399)

The College van Beroep voor het Bedrijfsleven, the administrative court of last instance in matters of trade and industry, of the Netherlands asked the Court for a preliminary ruling upon a question concerning the interpretation of Council Directive No 64/427 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries.

The facts were as follows. In the Netherlands the activities of self-employed persons in manufacturing and processing industries (central heating contractor, plumber, etc.) are governed by the law of 1954 on the establishment of undertakings.

That law provides that the practice of certain of those occupations may be forbidden by general provisions of public administration in the form of decrees relating to establishment.

Such decrees impose various conditions on the grant of an authorization from the Chamber of Commerce and Industry, in particular that of skill in the trade concerned. The Netherlands law of 1954 on establishment provides that the Minister for Economic Affairs may grant exemption from a prohibition on the practice of a trade referred to in a decree relating to establishment 'if the provisions of a directive of the Council of the European Communities with regard to the establishment of natural persons and companies in the territory of one of the Member States of the European Economic Community or with regard to the provision of services by natural persons and companies in that territory of one of

the Member States of the European Economic Community or with regard to the provision of services by natural persons and companies in that territory require such exemption'. In pursuance of that provision, Mr Knoors, a Netherlands national, residing in Belgium where he carried on trade independently as a central heating contractor, made an application in the Netherlands for an exemption from the prohibition on practising in the Netherlands, as head of a business, his own trade of central heating contractor.

The Secretary of State for Economic Affairs decided against Mr Knoors's application on the ground that, as a Netherlands national, he could not be regarded in the Netherlands as being a 'beneficiary' within the meaning of Directive No 64/427/EEC of the Council concerning the freedom to provide services in respect of the activities of self-employed persons.

This dispute led the Netherlands court to submit the following question: 'Must Directive No 64/427/EEC of 7 July 1964 of the Council of the European Economic Community be interpreted as meaning that the expression "beneficiaries" as referred to and as defined in Article 1 (1) of the directive also includes persons who possess and have always possessed solely the nationality of the host Member State?'

It was argued that Directive No 64/427 which was intended to make it easier to attain freedom of establishment and freedom to provide services in respect of industrial and small craft industries, must be seen in the context of the general programme for the abolition of restrictions on freedom to provide services and of the relevant provisions of the Treaty. The Directive takes account of the difficulties arising from the circumstance that the stringency of the conditions for the taking up and pursuit of such activities varies from one State to another. It accordingly provides that where, in a Member State, the taking up and pursuit of the said activities is subject to the possession of certain qualifications 'that Member State shall accept as sufficient evidence of such knowledge and ability the fact that the activity in question has been pursued in another Member State'.

The general programme for the abolition of restrictions on freedom to provide services defines as beneficiaries the 'nationals of the Member State established within the Community' without distinction on the basis of the nationality or residence of the persons concerned.

It might therefore be taken that Directive No 64/427 was based on a broad concept of 'beneficiary' and that its provisions could be relied upon by the nationals of all Member States who fulfil the conditions for the application of the directive laid down therein, even against the State of which they are nationals.

In fact the basic freedoms (of establishment and to provide services) in the Community system could not be fully attained if the Member States could refuse to apply the provisions of Community law to such of their nationals as had availed themselves of their rights of freedom of movement and establishment to acquire

the trade qualifications mentioned by the Directive in a country other than that of which they were nationals.

The Court of Justice, considering the question referred to it, ruled that Council Directive No 64/427 of 7 July 1964 laying down detailed provisions concerning transitional measures in respect of activities of self-employed persons in manufacturing and processing industries falling within ISIC Major Groups 23–40 (Industry and small craft industries) must be understood to mean that the 'beneficiaries' referred to in Article 1 (1) of the Directive also include persons who possess the nationality of the host Member State.

Opinion of Mr Advocate-General Reischl delivered on 12 December 1978.

(e) Anti-dumping measures

Judgment of 29 March 1979, Case 119/77, Nippon Seiko and Others v Council and Commission of the European Communities ([1979] ECR 1303)

For the first time in its existence the Court of Justice was called upon to give a judgment on anti-dumping measures. The facts were as follows. By document of 15 October 1976, the Committee of the European Bearing Manufacturers' Associations, at that time without legal personality, whose members were the three German, British and French trade organizations, submitted a complaint to the Commission concerning dumping by Japanese roller bearing manufacturers. After consultation with the Member States, the Commission decided on 9 November 1976 to carry out an official anti-dumping investigation and informed the Japanese mission of this.

The investigation resulted in the imposition of a provisional anti-dumping duty on ball bearings and tapered roller bearings originating in Japan.

The Commission also carried out an investigation at the European subsidiaries (French, British and German) and in April 1977 there was an investigation in Japan at the four major producers.

All these investigations led to the adoption on 26 July 1977 by the Council of Regulation No 1778/77 imposing an anti-dumping duty on ball bearings and tapered roller bearings originating in Japan.

The applicants lodged their application against Council Regulation No 1778/77. They claimed that during the discussions which followed the entry into force of Regulation No 261/77 imposing a provisional anti-dumping duty, they had undertaken in an agreement of 20 June 1977 not to pursue practices regarded as unacceptable by the Commission and that in a telex message of 3 August 1977 the Commission said it was satisfied with the undertakings given.

In those circumstances, Regulation No 1778/77 was not justified. Generally, the applicants alleged that the dumping complained of had not been sufficiently

established in law and in accordance with the requirements both of the rules of the General Agreement on Tariffs and Trade and of the Community rules.

The action was primarily for the annulment of Regulation No 1778/77, in the alternative for its annulment in so far as it affected the applicants and, in the further alternative, for the amendment only of Article 3 of the Regulation which provided for the definitive collection of amounts secured by way of provisional duty. By the same application, the applicants claimed under Articles 178 and 215 of the Treaty that the Council and the Commission should be ordered to make good the damage allegedly suffered by the subsidiaries.

The substance of the action for annulment

It was necessary first to establish the framework of the regulations within which the relevant measures were adopted. The basic Regulation, No 459/68 of the Council of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the EEC, lays down detailed rules and the procedure for the arrangement of anti-dumping measures. The EEC system complies with the anti-dumping code of the General Agreement on Tariffs and Trade (GATT).

Article 2 of the regulation specified that in order to be subject to an anti-dumping duty,

(a) a product must be dumped; and

(b) its introduction into Community commerce must cause or threaten to cause material injury to an established Community industry or materially retard the setting-up of such an industry.

Article 3 defined the concept of dumping, providing that the 'price of the product when exported to the Community is less than the comparable price . . . in the exporting country of origin'. Article 4 limited the concept of injury.

Under Article 15 of Regulation No 459/68, the Commission might take 'provisional action' consisting in fixing a (percentage of) anti-dumping duty in respect of which payment was not claimed but importers must provide security to that amount, 'collection of which shall be determined by the subsequent decision of the Council under Article 17'.

Anti-dumping duties were imposed by regulation.

As regards the subject-matter of the dispute itself and Articles 1 and 2 of Regulation No 1778/77 at issue, the tenor of the applicant's allegation was that the basic Regulation No 459/68 did not allow both the imposition of a definitive anti-dumping duty and the acceptance of undertakings given by the producers concerned to review their prices.

The defendant institutions and the intervener replied that the contested regulation was based not only on the basic regulation but also on Article 113 of the Treaty,

which authorizes the Council to take measures to protect trade in case of dumping and gives the Council the power to adopt an *ad hoc* regulation independently of the provisions of Regulation No 459/68.

Analysis of the basic Regulation No 459/68 led the Court to find that it was unlawful for one and the same anti-dumping procedure to be terminated on the one hand by the Commission's accepting an undertaking from the exporter or exporters to revise their prices and, on the other, by the simultaneous imposition on the part of the Council, at the proposal of the Commission, of a definitive anti-dumping duty. The undertakings given by the applicants were considered to be 'unacceptable' by the Commission. Those undertakings were referred to by the Council as valid, existing undertakings. The combination of measures which were by their very nature contradictory would be incompatible with the system laid down in the basic regulation.

As regards the action in so far as it was directed against Article 3 of Regulation No 1778/77 (definitive collection of amounts secured by way of provisional duty to the extent to which they did not exceed the rate of duty fixed in the regulation), it followed from the texts that the Commission could propose a decision to collect the amounts secured only if it proposed 'Community action', that is to say the introduction of a definitive anti-dumping duty. This would seem to have been the intention of the Council when it provided that the amounts secured were to be 'definitively collected to the extent that they do not exceed the rate of duty fixed in this regulation'. The application was therefore well founded in this respect as well. It should however be observed, said the Court, that the annulment of Regulation No 1778/77 in no way affected the undertakings given by the major Japanese producers by which those producers undertook to revise their prices so as to eliminate the margin of dumping.

The action for damages

The applicants alleged that they had suffered damages as a result of Community action and they claimed compensation for it under Articles 178 and 215 of the Treaty.

Primarily, they had had to pay certain specified amounts as provisional anti-dumping duty and incur other expenditure.

As regards the payment of amounts on a provisional basis the repeal of Article 3 of Regulation No 1778/77 abolished this.

As regards the other expenses, it should be observed that the Commission is empowered to impose a provisional anti-dumping duty 'where preliminary examination of the matter shows that there is dumping and there is sufficient evidence of injury and the interests of the Community call for immediate intervention'.

This provision gives the Commission a considerable margin of discretion and the applicants did not adduce any fact capable of proving that the Commission, in exercising that power, had erred or acted unlawfully so as to make the Community liable.

The Court:

1. Annulled Council Regulation No 1778/77 of 26 July 1977 concerning the application of the anti-dumping duty on ball bearings and tapered roller bearings, originating in Japan;

2. Dismissed the action for damages.

Opinion of Mr Advocate-General J.-P. Warner delivered on 14 February 1979.

(f) Community liability for its legislative actions

Judgments of 4 October 1979; Joined Cases 241, 242, 245 to 250/78, DVG, Deutsche Getreideverwertung und Rheinische Kraftfutterwerke GmbH and Others v Council and Commission of the European Communities; Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79, Dumortier Frères S.A. and Others v Council of the European Communities; Joined Cases 261 and 262/78, Interquell Stärke Chemie GmbH K.G. and Diamalt AG v Council and Commission of the European Communities (not yet published)

All these actions for damages against the European Economic Community were brought by French, German, Belgian and Dutch undertakings, some of which produced gritz, others quellmehl.

The first product is meal used in the making of beer, the second is derived from the processing of maize or soft wheat and is primarily used in the making of bread. Both categories of undertakings were for a long time treated on the same basis as producers of cereal starch under the Community regulations on production refunds. This equal treatment was justified because of 'the interchangeability of cereal and vegetable starch on the one hand and quellmehl as well as maize groats and meal on the other'.

This summary is of the gritz cases, the argument in the quellmehl cases being almost identical.

The applicants, producers of gritz,[1] claimed that the European Economic Community represented the Council and the Commission should be ordered, pursuant to the second paragraph of Article 215 of the EEC Treaty, to compensate them for the damage which they claimed they had sustained as a result of the abolition of production refunds for maize groats and meal (gritz) for use in the brewery industry, under Regulation No 665/75 of the Council of 4 March 1975 amending Regulation No 120/67 on the common organization of the market in cereals.

In its judgment of 19 October 1977 given upon the request for a preliminary ruling from two French administrative courts ([1977] ECR 1795), the Court ruled that the disputed provisions of the Council regulations were incompatible with

[1] Joined Cases 241, 242, 245 to 250/78, 64 and 113/76, 167 and 239/78, 27, 28 and 45/79.

the principle of equality in so far as they provided for a difference of treatment in respect of production refunds between maize groats and meal for the brewing industry and maize starch. The Court further stated that it was for the institutions competent in matters of common agricultural policy to adopt the measures necessary to correct this incompatibility.

After this judgment the Council reintroduced, by regulations, the production refunds for maize gritz used by the brewery industry. The refunds were granted at the request of the applicant with effect from 19 October 1977, that is, with retroactive effect from the date of the Court's judgments in the cases concerning preliminary rulings.

The purpose therefore of the applicants' claim was to obtain compensation for the damage which they sustained as a result of the absence of refunds during the period from 1 August 1975, on which date Regulation No 665/75 was first applied, to 19 October 1977. The damage consisted in the fact that they did not receive the sums corresponding to the amounts of the refunds which would have been paid to the applicants if maize gritz had benefited from the same refunds as cereal starch.

Since by its judgment of 19 October 1977, the Court had already established that the abolition of the refunds for maize gritz together with the retention of the refunds for maize starch, was incompatible with the principle of equality, the first problem which arose was whether the unlawfulness thus established was of such a nature as to render the Community liable.

The effect of earlier case-law is that the finding that a legal situation resulting from the legislative measures of the Community is unlawful is not sufficient in itself to give rise to such liability.

The Community cannot incur such liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers.

In the circumstances of these cases, the Court was led to the conclusion that there had been on the part of the Council such a grave and manifest disregard of the limits on the exercise of its discretionary powers in the matter of the common agricultural policy.

It was necessary to take into consideration the fact that the principle of equality, which prohibits any discrimination in the common organization of the agricultural markets, occupies a particularly important place among the rules of Community law intended to protect the interests of the individual.

Next, the disregard of that principle affected a limited and clearly defined group of traders. Further, the damage alleged by the applicants went beyond the bounds of the economic risks inherent in the activities in the sector concerned. Finally, equality of treatment with the producers of maize starch was ended by the Council in 1975 without sufficient justification. For all those reasons the Court arrived at

the conclusion that the Community had incurred liability for the abolition of the refunds for maize gritz under the Council regulation adopted in 1975.

It was then necessary to go on to examine the damage resulting from the discrimination to which the gritz producers were subjected. Since the origin of the damage lay in the abolition of the refunds which should have been paid, the amount of those refunds must provide a yardstick for the assessment of the damage suffered.

The Council objected to that method of calculating the damage on the ground that the gritz producers eliminated the damage by passing on the loss resulting from the abolition of the refunds in their selling prices. In that case the price increase would take the place of the refunds, thus compensating the producer.

The applicants disputed that the loss was passed on in the way alleged. They stated that, faced with the competition from the starch producers benefiting from refunds, they chose, as a matter of commercial policy, to sell gritz at a loss in order to retain their markets, rather than raise the prices at the risk of losing those markets. The price increases referred to by the Council and the Commission were, in the applicants' submission, due to the rise in the threshold price of maize and to the increase in production costs.

The conclusion of the Court was rather that the prices of gritz charged by the applicants and of starch developed along similar lines without reflecting the absence of refunds for gritz. It followed that the loss for which the applicants must be compensated had to be calculated on the basis of its being equivalent to the refunds which would have been paid to them if, during the period from 1 August 1975 to 19 October 1977, the use of maize for the manufacture of gritz had conferred a right to the same refunds as the use of maize for the manufacture of starch.

The applicants further claimed that the Community should be ordered to pay interest. On this point the Court declared that the obligation to pay interest arose on the date of its judgment and that the rate of interest which it was proper to apply was 6%.

The Court ordered the European Economic Community to pay to the applicants the amounts equivalent to the production refunds on maize gritz used by the brewing industry which each of those undertakings would have been entitled to receive if, during the period from 1 August 1975 to 19 October 1977, the use of maize for the production of gritz had conferred an entitlement to the same refunds as the use of maize for the manufacture of starch. It further:

Ordered that interest at 6% was to be paid on the abovementioned amounts as from the date of its judgment;

Ordered the parties to inform the Court within twelve months from the delivery of the judgment of the amounts of compensation arrived at by agreement;

Ordered that in the absence of agreement the parties should transmit to the Court within the same period a statement of their views, with supporting figures;

Reserved the costs.

As regards the actions brought by French maize processors (Joined Cases 64 and 113/76, 167 and 239/78, 27, 28 and 45/79), the Court also had to examine an application for compensation for additional damage which two French undertakings claimed they had suffered. This damage consisted in particular of a substantial drop in their sales of gritz to breweries.

The Court's ruling on this point was that even if it were assumed that the abolition of the refunds exacerbated the difficulties encountered by those applicants, those difficulties would not be a sufficiently direct consequence of the illegal conduct of the Council to render the Community liable to make good the damage. In the field of non-contractual liability of public authorities for legislative measures, the principles common to the laws of the Member States to which the second paragraph of Article 215 of the EEC Treaty refers cannot be relied on to deduce an obligation to make good every harmful consequence, even a remote one, of unlawful legislation.

Opinion of Mr Advocate-General F. Capotorti delivered on 12 September 1979.

(g) Safeguarding of the fundamental rights of the individual

Judgment of 13 December 1979, Case 44/79 Liselotte Hauer v Land Rheinland-Pfalz (not yet published)

Mrs Hauer was the owner of a plot of land within the administrative district of Bad Dürkheim, a German wine-growing district.

When on 6 June 1975 she applied to the competent authority for the Rheinland-Pfalz for an authorization to plant her land with vines it was refused on the ground that the land in question was not considered suitable for wine-growing.

Mrs Hauer challenged that decision and during those proceedings, on 17 May 1976, the Council adopted Regulation No 1162/76, Article 2 of which prohibits all new planting of vines for a period of three years.

On 21 October 1976 the administration rejected her objection on the grounds of the unsuitable nature of the land and of the prohibition on planting under the Community regulation.

In the meantime Mrs Hauer had been informed by the administration that her land could have been considered suitable for wine-growing in accordance with the minimum requirements laid down by German law. Accordingly the administration declared that it was prepared to grant the authorization at the end of the period during which new planting was prohibited under the Community regulation.

The plaintiff in the main action considered that the authorization requested by her must be granted immediately because her request was submitted a considerable time before the entry into force of the contested regulation and even if that regulation were applicable to such request it should not be applied to the applicant since it infringed her right freely to pursue an occupation and her right of property which are guaranteed by Articles 12 and 14 of the Grundgesetz [Basic Law] of the Federal Republic of Germany.

In the foregoing situation the Verwaltungsgericht [Administrative Court] Neustadt an der Weinstrasse referred two preliminary questions to the Court of Justice.

The first question concerned the scope in time of Regulation No 1162/76.

The plaintiff argued that her request, which had been submitted on 6 June 1975, should in the normal course have resulted in a favourable decision *before* the entry into force of the Community regulation if the national administration had not delayed recognizing that her land was suitable for wine-growing. She maintained that that fact should have been taken into account with regard to the temporal scope of the Community regulation.

The Court, on examining the wording of the regulation, did not uphold the arguments advanced by the plaintiff. In fact, according to the wording of the regulation, 'as from the date on which this regulation enters into force' Member States may no longer grant authorization for new planting. That provision precludes taking into consideration the time when a request was submitted.

The regulation also states that the prohibition on new planting is required by an 'undeniable public interest' which consists in limiting the progress of overproduction of wine in the Community, re-establishing a balance on the market and preventing the formation of structural surpluses.

It was thus clear that Regulation No 1162/76 imposed a restriction with immediate effect on the extension of the existing area under vine cultivation.

The Court accordingly ruled in its reply to the first question that Council Regulation No 1162/76 of 17 May 1976, as amended by Regulation No 2776/78 of 23 November 1978, must be interpreted as meaning that Article 2 (1) thereof applied also to those applications for authorization of new planting of vineyards which were already made before the said regulation entered into force.

The second question concerned the substantive scope of Regulation No 1162/76 – did the prohibition on new planting also apply to land considered suitable for wine-growing according to the criteria of national law?

Article 2 contains an express prohibition on 'all new planting' without drawing any distinction based on the quality of the land in question.

The Court accordingly replied with a ruling that the Community provision was of general application regardless of any consideration concerning the nature of the land.

The guarantee of basic rights in the Community legal system

The Verwaltungsgericht, in its order making the reference, stated that if the regulation must be interpreted as laying down a prohibition of general scope the possibility must be considered that it was inapplicable in the Federal Republic of Germany because of the existence of doubt concerning its compatibility with the fundamental rights guaranteed by Articles 12 and 14 of the Grundgesetz concerning the right of property and the freedom to pursue an occupation.

In its previous judgment the Court has already emphasized that fundamental rights form an integral part of the general principles of law whose observance the Court is bound to ensure and that in so doing it is bound to have regard for the constitutional traditions common to the Member States.

The right to property

The right to property is guaranteed in the Community legal order in accordance with the constitutions of the Member States, which are also reflected in the first Protocol to the European Convention for the Protection of Human Rights. The Protocol foresees two ways in which property rights may possibly be impaired either by depriving the property owner of his right or by restraining him from using it. In this case it was uncontestable that the prohibition on new planting could not be considered to be an act depriving the owner of his property, since he remained free to dispose of it or to put it to other uses which were not prohibited. On the other hand, there was no doubt that that prohibition restricted the use of the property. In this regard the Protocol accepts in principle the legality of restrictions upon the use of property, whilst at the same time limiting those restrictions to the extent to which they are deemed 'necessary' by a State for the protection of the 'general interest'.

It was necessary to consider also the indications provided by the constitutional rules and practices of the nine Member States. It could be seen in this regard that those rules and practices permitted the legislature to control the use of private property in accordance with the general interest.

More particularly, all the wine-producing countries of the Community had restrictive legislation on the planting of vines, the selection of varieties and the methods of cultivation. It was a type of restriction known and accepted as lawful in the constitutional law of all the Member States.

It was further necessary to examine whether the restrictions introduced constituted an effective means of attaining the objectives of general interest pursued by the Community or whether, with regard to the aim pursued, they constituted a disproportionate and intolerable interference with the rights of the owner, impinging upon the very substance of the right to property.

It was clear that the policy implemented by the Community in the wine-producing sector sought to achieve both a lasting balance on the wine market at a price level profitable for the producers and fair to the consumers and to obtain an improvement in the quality of wines marketed.

The regulation complained of fulfilled a double function: on the one hand, it immediately curbed the continued increase in the surpluses (1974 was a particularly productive year); on the other hand, it gave the Community institutions the time necessary for the implementation of a structural policy designed to encourage high quality production. Moreover it must be noted that the measure introduced by the Council was of a temporary nature. It was designed to deal immediately with a conjunctural situation causing surpluses, whilst at the same time preparing permanent structural measures. Seen in this light, the measure criticized did not entail any undue limitation upon the exercise of the right to property.

The Court therefore concluded that the restriction imposed upon the use of property by the prohibition on the new planting of vines introduced for a limited period by Regulation No 1162/76 was justified by the objectives of general interest pursued by the Community and did not infringe the substance of the right to property in the form in which it was recognized and protected in the Community legal order.

The question of the freedom to pursue trade or occupational activities

According to the applicant the prohibition upon planting new vines had the effect of restricting her freedom to pursue her occupation as a wine-grower.

The Court has held in this regard that, although it is true that guarantees are given by the constitutional law of several Member States in respect of the freedom to pursue trade or occupational activities, the right thereby guaranteed, far from constituting an unfettered prerogative, must likewise be viewed in the light of the social function of the activities protected thereunder.

In this case, it must be observed that the disputed Community measure did not in any way affect access to the occupation of wine-producing or the freedom to

pursue that occupation on land at that time devoted to wine-growing. To the extent to which the prohibition on new plantings might affect the free pursuit of wine-growing, that limitation would be no more than the consequence of the restriction upon the exercise of the right to property, in such a way that the two restrictions merged. Thus the restriction upon the free pursuit of wine-growing, assuming that it existed, would be justified by the same reasons which justified the restriction placed upon the use of property. The effect of this was that no factor had been disclosed of such a kind as to affect the validity of that regulation on account of its being contrary to the requirements flowing from the protection of fundamental rights in the Community.

Opinion of Mr Advocate-General F. Capotorti delivered on 8 November 1979.

2. Meetings and visits

The Court of Justice continued its tradition of maintaining contact with judges in Member States.

As in previous years, in 1979 the Court organized study days on 26 and 27 March 1979 for judges from the nine Member States and a one week course from 22 to 26 October.

The Court was host to numerous groups of judges from national courts of the member countries of the European Communities and to a delegation of high ranking judges from the United States.

On 8 March 1979 the Court was visited by Mr Hederman, the Attorney-General of Ireland, accompanied by Mr Quigley, the Senior Legal Assistant to the Attorney-General.

The Court of Justice made an official visit to London from 17 to 19 May 1979. On that occasion it was received, among others, by Lord Hailsham of St Marylebone, Lord Chancellor, the Lords of Appeal in Ordinary of the House of Lords and by Lord Widgery, Lord Chief Justice of England.

With the prospect of the accession by Greece to the European Communities on 1 January 1981 not far away the Court of Justice was visited on 5 October 1979 by Professor Chloros, the representative of the Greek Minister responsible for relations with the European Communities. Professor Chloros was accompanied by a delegation including Mr Christoulas, the Vice-President of the Supreme Court, Mr Alexandropoulos, Judge of the Supreme Court, and Mr Choidas and Mr Kallivokas, members of the Council of State. The exchanges of views were particularly concerned with the translation into Greek of the case-law of the Court, the appointment of a team of Greek translators at the Court and closer contacts between the Court and Greek judges.

On 29 October 1979 in Strasbourg, the Court met the European Court of Human Rights for the fourth time. A delegation from the European Commission for Human Rights also participated.

During this meeting, two working sessions were held on:

(1) The temporal effect of judgments of both Courts holding that a rule of national law is incompatible with either Community law or the Convention; and

(2) Application in the case-law of both Courts of rules derived from a comparison of the laws of Member States. Papers were read by Judge Koopmans of the Court of Justice, Judge Teitgen of the European Court of Human Rights, and, at the second session, by Judge Ganshof van der Meersch of the European Court of Human Rights and by Judge Pescatore of the Court of Justice.

The Court of Justice was also represented at the celebrations to mark the 20th anniversary of the European Court of Human Rights and the 25th anniversary of the European Commission for Human Rights which took place at Strasbourg on 30 October 1979. The celebrations began with a working session introduced by a paper read by Sir Humphrey Waldock, President of the International Court of Justice, on 'The effectiveness of the system established by the European Convention on Human Rights'. At that session the President of the Court of Justice, Hans Kutscher, and the First Advocate-General at the Court of Justice, Jean-Pierre Warner, among others, gave their comments.

In order to have closer contact with the Press, on 12 and 13 November 1979 the Court organized a meeting with journalists representing the more important newspapers of the Member States. During this meeting journalists listened to papers read by the President, Hans Kutscher, and by Judge Pescatore and under the chairmanship of the Registrar they exchanged views on the means of information made available to them by the Court. They also attended a sitting of the Court.

Visits to the Court of Justice during 1979[1]

Description	Belgium	Denmark	Fed. Rep. of Germany	France	Ireland	Italy	Luxembourg	Netherlands	United Kingdom	Non-member States	Mixed groups	Total
Judges of national Courts[2]	—	4	226	86	—	1	45	31	28	77	188	686
Lawyers, trainees, legal advisers	1	—	227	34	—	4	—	—	3	—	82	351
Professors, lecturers in Community law	1	2	—	—	—	3	—	—	3	2	—	11
Members of Parliaments, national civil servants, political groups	47	96	634	6	7	—	35	24	106	31	4	990
Journalists, photographers, TV representatives	4	39	22	5	2	6	2	3	12	5	—	100
Students, schoolchildren	304	109	691	495	47	61	128	308	700	183	180	3 206
Professional associations	—	—	171	5	—	30	—	—	112	—	70	338
Others	—	—	254	112	—	—	85	—	36	44	245	776
Total	357	250	2 225	743	56	105	295	366	1 000	342	769	**6 508**

[1] In all 244 individual group visits.

[2] This column shows, for each Member State, the number of national judges who visited the Court in national groups. The column headed 'mixed groups' shows the total number of judges from all Member States who attended the study days or courses for judges. These study days and courses have been arranged each year by the Court of Justice since 1967. In 1979 the following numbers took part:

Belgium	: 13 judges	Ireland	: 13 judges
Denmark	: 10 judges	Italy	: 32 judges
Federal Republic of Germany	: 34 judges	Luxembourg	: 5 judges
France	: 34 judges	Netherlands	: 13 judges
		United Kingdom	: 34 judges

In the column headed 'Non-member States' there is included the visit of a delegation of Greek judges and of a group of American judges.

3. Amendments to the Rules of Procedure

On 26 July 1979 the Council approved the amendments which the Court had proposed be made to its Rules of Procedure in connexion with its functioning.

The amendments, which were published in the Official Journal of the European Communities of 21 September 1979, came into force on 7 October 1979.

The changes, which are of a purely technical nature, need not be considered here in detail but the following points may be made:

(1) The former version of Article 9 (1) of the Rules of Procedure provided that the Court was to set up two Chambers and decide which Judges and Advocates-General should be attached to them. By virtue of this provision each of the two Chambers was composed of four Judges and two Advocates-General.

The amended Article 9 (1) provides that the Court shall set up *Chambers* and shall decide which Judges shall be attached to them. Advocates-General are therefore no longer attached to a Chamber. Under the new rule the Court set up three Chambers with three Judges each with effect from 7 October 1979.

(2) Under the former version of Article 9 (2) of the Rules of Procedure it was the duty of the President of the Court to assign cases to one of the Chambers and to designate a Judge from that Chamber to act as Rapporteur, and the Advocate-General.

The new version of Article 9 (2) amends the article to the effect that the President now only designates the Judge-Rapporteur while under a new paragraph (2) added to Article 10 it is the duty of the First Advocate-General to assign cases to Advocates-General immediately after the President has designated the Judge-Rapporteur.

(3) Another very important amendment concerns the assignment of cases to Chambers. Whilst under the old version of Article 95 of the Rules of Procedure the Court could only assign to Chambers cases referred to the Court for a preliminary ruling which were of an essentially technical nature or concerned matters for which there was already an established body of case-law, the amended Article 95 increases the occasions when cases may be assigned to Chambers. The new provision basically provides that the Court may assign to a Chamber any reference for a preliminary ruling as well as any action instituted by a natural or legal person other than Member States or a Com-

munity institution provided that the importance of the case or particular circumstances are not such as to require that the Court give a ruling in plenary session. However, a case may not be so assigned if a Member State or an institution of the Communities, being a party to the proceedings has requested that the case be decided in plenary session.

(4) An amendment made to Article 93 (1) on intervention should also be mentioned. Whilst under the old rule an application to intervene had to be made before the opening of the oral procedure, the amended provision stipulates that an application to intervene must be made within three months of the publication of the notice which is published – in accordance with amended Article 16 (6) – in the *Official Journal of the European Communities* and which gives the date of registration of an application originating proceedings, the names and permanent addresses of the parties, the subject-matter of the dispute, the claims made in the application and a summary of the contentions and of the main arguments adduced in support.

4. Composition of the Court

The composition of the Court changed twice during 1979.

On 31 March 1979 Judge Donner left office and on 1 April Judge Koopmans took up office. The Court said farewell to Judge Donner and welcomed Judge Koopmans at a formal sitting held on 29 March 1979.

On 6 October 1979 Judge Sorensen left office and on 7 October Judge Due took up office. A formal sitting to mark this change-over was held on 8 October 1979.

In addition, on 8 October 1979 Hans Kutscher was re-elected President of the Court for three years. Mr Advocate-General Warner was designated First Advocate-General and Judges O'Keeffe and Touffait as Presidents of Chambers for the judicial year 1979/1980.

Composition of the Court of Justice of the European Communities
for the judicial year 1978/79
(from 7 October 1978 to 6 October 1979)

Order of precedence

Hans KUTSCHER, President
Josse MERTENS DE WILMARS, President of the First Chamber
Lord Alexander J. MACKENZIE STUART, President of the Second Chamber
Francesco CAPOTORTI, First Advocate-General
Andreas M. DONNER, Judge[1]
Pierre PESCATORE, Judge
Henri MAYRAS, Advocate-General
Max SØRENSEN, Judge
Jean-Pierre WARNER, Advocate-General
Gerhard REISCHL, Advocate-General
Aindrias O'KEEFFE, Judge
Giacinto BOSCO, Judge
Adolphe TOUFFAIT, Judge
Albert VAN HOUTTE, Registrar

Composition of the First Chamber

Josse MERTENS DE WILMARS, President
Andreas M. DONNER, Judge[1]
Aindrias O'KEEFFE, Judge
Giacinto BOSCO, Judge
Henri MAYRAS, Advocate-General
Jean-Pierre WARNER, Advocate-General

[1] On 31 March 1979 Judge Donner left office and on 1 April Judge Koopmans took up office. Judge Koopmans replaced Judge Donner in the First Chamber.

Composition of the Second Chamber

Lord Alexander J. MACKENZIE STUART, President
Pierre PESCATORE, Judge
Max SØRENSEN, Judge
Adolphe TOUFFAIT, Judge
Francesco CAPOTORTI, Advocate-General
Gerhard REISCHL, Advocate-General

Composition of the Court of Justice of the European Communities for the judicial year 1979/80 (from 7 October 1979)

Order of precedence

Hans KUTSCHER, President
Jean-Pierre WARNER, First Advocate-General
Aindrias O'KEEFFE, President of the First Chamber
Adolphe TOUFFAIT, President of the Second Chamber
Josse MERTENS DE WILMARS, Judge
Pierre PESCATORE, Judge
Henri MAYRAS, Advocate-General
Lord Alexander J. MACKENZIE STUART, Judge
Gerhard REISCHL, Advocate-General
Francesco CAPOTORTI, Advocate-General
Giacinto BOSCO, Judge
Thymen KOOPMANS, Judge
Ole DUE, Judge
Albert VAN HOUTTE, Registrar

Composition of the First Chamber

Aindrias O'KEEFFE, President
Giacinto BOSCO and Thymen KOOPMANS, Judges

Composition of the Second Chamber

Adolphe TOUFFAIT, President
Pierre PESCATORE and Ole DUE, Judges

Composition of the Third Chamber

Hans KUTSCHER, President
Josse MERTENS DE WILMARS and Lord Alexander J. MACKENZIE STUART, Judges

Advocates-General

First Advocate-General: Jean-Pierre WARNER
Advocates-General: Henri MAYRAS, Gerhard REISCHL, Francesco CAPOTORTI

Former Presidents and Members of the Court of Justice

Former Presidents

PILOTTI, Massimo (died on 29 April 1962)	President of the Court of Justice of the European Coal and Steel Community from 10 December 1952 to 6 October 1958
DONNER, Andreas Matthias	President of the Court of Justice of the European Communities from 7 October 1958 to 7 October 1964
HAMMES, Charles Léon (died on 9 December 1967)	President of the Court of Justice of the European Communities from 8 October 1964 to 7 October 1967
LECOURT, Robert	President of the Court of Justice of the European Communities from 8 October 1967 to 6 October 1976

Former Members

PILOTTI, Massimo (died on 29 April 1962)	President and Judge at the Court of Justice from 10 December 1952 to 6 October 1958
SERRARENS, Petrus J. S. (died on 26 August 1963)	Judge at the Court of Justice from 10 December 1952 to 6 October 1958
VAN KLEFFENS, Adrianus (died on 2 August 1973)	Judge at the Court of Justice from 10 December 1952 to 6 October 1958
CATALANO, Nicola	Judge at the Court of Justice from 7 October 1958 to 7 March 1962
RUEFF, Jacques (died on 24 April 1978)	Judge at the Court of Justice from 10 December 1952 to 17 May 1962
RIESE, Otto (died on 4 June 1977)	Judge at the Court of Justice from 10 December 1952 to 5 February 1963
ROSSI, Rino (died on 6 February 1974)	Judge at the Court of Justice from 7 October 1958 to 7 October 1964
LAGRANGE, Maurice	Advocate-General at the Court of Justice from 10 December 1952 to 7 October 1964
DELVAUX, Louis (died on 24 August 1976)	Judge at the Court of Justice from 10 December 1952 to 9 October 1967
HAMMES, Charles-Léon (died on 9 December 1967)	Judge at the Court of Justice from 10 December 1952 to 9 October 1967, President of the Court from 8 October 1964 to 7 October 1967

GAND, Joseph (died on 4 October 1974)	Advocate-General at the Court of Justice from 8 October 1964 to 6 October 1970
STRAUSS, Walter (died on 1 January 1976)	Judge at the Court of Justice from 6 February 1963 to 27 October 1970
DUTHEILLET DE LAMOTHE, Alain (died on 2 January 1972)	Advocate-General at the Court of Justice from 7 October 1970 to 2 January 1972
ROEMER, Karl	Advocate-General at the Court of Justice from 2 February 1953 to 8 October 1973
Ó DÁLAIGH, Cearbhall (died on 21 March 1978)	Judge at the Court of Justice from 9 January 1973 to 11 December 1974
MONACO, Riccardo	Judge at the Court of Justice from 8 October 1964 to 2 February 1976
LECOURT, Robert	Judge at the Court of Justice from 18 May 1962 to 25 October 1976, President of the Court from 8 October 1967 to 6 October 1976
TRABUCCHI, Alberto	Judge at the Court of Justice from 8 March 1962 to 8 January 1973, Advocate-General at the Court of Justice from 9 January 1973 to 6 October 1976
DONNER, Andreas Matthias	Judge at the Court of Justice from 7 October 1958 to 31 March 1979, President of the Court of Justice from 7 October 1958 to 7 October 1964
SØRENSEN, Max	Judge at the Court of Justice from 9 January 1973 to 6 October 1979

5. Library and Documentation Directorate

This directorate includes the Library and the Documentation Branch.

A — *The Library of the Court of Justice*

The Library of the Court is primarily a working instrument for the members and the officials of the Court.

At present it contains approximately 34 100 bound volumes (books, series and bound journals), 6 300 unbound booklets and brochures and 354 current legal journals and law reports supplied on subscription.

It may be mentioned purely as a guide that in the course of 1979 new acquisitions amounted to 820 books (1 000) volumes, 400 booklets and 10 new subscriptions.

All these works may be consulted in the reading-room of the Library. They are lent only to the members and the officials of the Court. No loan to persons outside the institutions of the Community is permitted. Loan of works to officials of other Community institutions may be permitted through the library of the institution to which the official seeking to borrow a book belongs.

The Library periodically publishes a Bibliographical Bulletin of Community Case-Law. In 1979 No 79/1 appeared in December, and No 79/2 was in preparation at the end of the year. The Bulletin may be obtained from the Office for Official Publications of the European Communities, boîte postale 1003, Luxembourg.

B — *The Documentation Branch of the Court of Justice*

The primary task of this branch is to prepare summaries of judgments, to draw up the tables (indexes) for the Reports of Cases before the Court and, at the request of members of the Court, to prepare documentation concerning Community law and comparative law for the purposes of preparatory inquiries.

The annual alphabetical index of subject-matter in the Reports of Cases before the Court appears in the six Community languages approximately seven months after the last issue of the Reports of Cases before the Court for the preceding year.

In addition in 1979 the Documentation Branch published the third booklet of the 'Synopsis of Case-Law – The EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters'. (See also Annex 4, under C II).

The Branch has started work on the drawing up of a Source Index of Community case-law which will be published under the supervision of the Registrar. The work will cover the case-law of the Court as well as a selection of the case-law of the courts of Member States on Community law.

The legal information team of the branch runs a computerized research system for the case-law of the Court of Justice. This system, which at present allows inquiries to be made on judgments delivered since 1966, is available to members and officials of the Court. In exceptional cases it provides information to outside users. It is planned to provide access to the system by means of inquiry terminals installed in Member States and linked to the Court through the Euronet data transfer network.

In the performance of its duties, the Documentation Branch uses not only the books available in the Library but also its own card-indexes of Community case-law, which contain in particular a large collection of decisions by national courts on Community law and notes on theoretical writing concerning the case-law of the Court of Justice.

6. Language Directorate

The Language Directorate of the Court provides only a written translation service. At present the Court does not have its own interpreters; those which it needs in particular for oral translation of the submissions of the parties in the course of the public hearings are lent to it by the European Parliament.

At present the Language Directorate consists of some 60 legal translators and revisers; it has a total staff of 91. Its principal task 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.

In 1979 the Language Directorate translated approximately 48 100 pages as its current work; of these, 9 100 pages were translated into French and on average 7 800 pages into each of the other languages, Danish, Dutch, English, German and Italian.

II — Decisions of national courts on Community law

A — *Statistical information*

The Court of Justice endeavours to obtain as full information as possible on decisions of national courts on Community law.[1]

The tables below show the number of national decisions, with a breakdown by Member States, delivered between 1 July 1978 and 30 June 1979 entered in the card-indexes maintained by the Library 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, known as the Brussels Convention, which has led to a considerable increase in the number of cases coming before the national courts.

It should be emphasized that the tables are only a guide as the card-indexes on which they are based are necessarily incomplete.[2]

[1] The Library and Documentation Directorate of the Court of Justice of the European Communities, boîte postale 1406, Luxembourg, welcomes copies of any such decisions.

[2] In particular they do not contain decisions which, without any legal discussion, are restricted to authorizing the enforcement of a decision delivered in another Contracting State under the Brussels Convention.

General table, by Member State, of decisions on Community law
(from 1 July 1978 to 30 June 1979)

Member States	Supreme Courts	Cases in previous column on: Brussels Convention	Courts of appeal or of first instance	Cases in previous column on: Brussels Convention	Total	Cases in previous column on: Brussels Convention
Belgium	10	1	50	26	60	27
Denmark	2	—	4	—	6	—
France	19	5	38	12	57	17
Federal Republic of Germany	68	8	97	28	165	36
Ireland	1	—	1	—	2	—
Italy	25	4	25	6	50	10
Luxembourg	2	—	—	—	2	—
Netherlands	7	1	29	3	36	4
United Kingdom	3	—	17	—	20	—
Total	137	19	261	75	398	94

Detailed table, broken down by Member State and by court, of decisions on Community law
(from 1 July 1978 to 30 June 1979)

Member State	Number	Court giving judgment	
		Supreme Courts	
Federal Republic of Germany	165	Bundesverfassungsgericht	3
		Bundesgerichtshof	10
		Bundesverwaltungsgericht	11
		Bundesfinanzhof	42
		Bundessozialgericht	2
			68

Member State	Number	Court giving judgment	
		Courts of appeal or first instance	
Federal Republic of Germany (*cont'd*)	165	Oberlandesgericht Bamberg	1
		Oberlandesgericht Bremen	1
		Oberlandesgericht Düsseldorf	3
		Oberlandesgericht Frankfurt	4
		Oberlandesgericht Hamburg	1
		Oberlandesgericht Hamm	3
		Oberlandesgericht Karlsruhe	2
		Oberlandesgericht Koblenz	1
		Oberlandesgericht Köln	1
		Oberlandesgericht Saarbrücken	1
		Oberlandesgericht Stuttgart	1
		Hessischer Verwaltungsgerichtshof	3
		Oberverwaltungsgericht Koblenz	1
		Finanzgericht Düsseldorf	3
		Finanzgericht Hamburg	20
		Finanzgericht München	10
		Finanzgericht Münster	2
		Finanzgericht Rheinland-Pfalz	1
		Hessisches Finanzgericht	5
		Bayerisches Landessozialgericht	1
		Hessisches Landessozialgericht	2
		Landessozialgericht Baden-Württemberg	1
		Landessozialgericht Berlin	1
		Landessozialgericht Nordrhein-Westfalen	1
		Landgericht Düsseldorf	1
		Landgericht Freiburg	1
		Landgericht Hamburg	2
		Landgericht Kiel	1
		Landgericht Köln	2
		Landgericht Mainz	2
		Landgericht Oldenburg	1
		Landgericht Osnabrück	1
		Landgericht Trier	2
		Landgericht Ulm	1
		Landgericht Wiesbaden	2
		Bayerisches Verwaltungsgericht	1
		Verwaltungsgericht Baden-Württemberg	1
		Verwaltungsgericht Bremen	1
		Verwaltungsgericht Frankfurt	5
		Verwaltungsgericht Münster	1
		Verwaltungsgericht Neustadt a.d. Weinstrasse	1
		Sozialgericht Gelsenkirchen	1
			97

Member State	Number	Court giving judgment	
		Supreme Courts	
Belgium	60	Cour de Cassation	10
			10
		Courts of appeal or first instance	
		Cour d'Appel de Bruxelles	3
		Cour d'Appel de Mons	2
		Hof van Beroep Antwerpen	5
		Cour de Travail de Liège	1
		Cour de Travail de Mons	1
		Tribunal de Première Instance de Bruxelles	4
		Tribunal de Première Instance de Liège	2
		Tribunal de Première Instance de Namur	4
		Tribunal de Première Instance de Neufchâteau	1
		Tribunal de Première Instance de Nivelles	1
		Tribunal de Première Instance de Tournai	3
		Arbeidsrechtbank Antwerpen	1
		Arbeidsrechtbank Hasselt	1
		Tribunal du Travail de Charleroi	2
		Rechtbank Van Koophandel Antwerpen	1
		Rechtbank Van Koophandel Brugge	1
		Rechtbank Van Koophandel Oudenaarde	12
		Rechtbank Van Koophandel Tongeren	1
		Tribunal de Commerce de Bruxelles	1
		Tribunal de Commerce de Liège	1
		Tribunal de Commerce de Tournai	1
		Justice de Paix d'Ixelles	1
			50
		Supreme Courts	
Denmark	6	Højesteret	2
			2
		Courts of appeal or first instance	
		København Byret	2
		Østre Landsret	2
			4

Member State	Number	Court giving judgment	
		Supreme Courts	
France	57	Conseil Constitutionnel	1
		Cour de Cassation	11
		Conseil d'État	7
			19
		Courts of appeal or first instance	
		Cour d'Appel de Douai	2
		Cour d'Appel de Lyon	3
		Cour d'Appel de Nancy	1
		Cour d'Appel de Paris	6
		Cour d'Appel de Pau	1
		Cour d'Appel de Rouen	1
		Cour d'Appel de Versailles	2
		Tribunal Administratif de Châlons-sur-Marne	2
		Tribunal Administratif de Nancy	1
		Tribunal Administratif d'Orléans	1
		Tribunal de Commerce de Paris	3
		Tribunal de Grande Instance de Besançon	1
		Tribunal de Grande Instance de Bonneville	1
		Tribunal de Grande Instance de Dieppe	1
		Tribunal de Grande Instance de Nanterre	2
		Tribunal de Grande Instance de Paris	5
		Tribunal de Grande Instance de Strasbourg	1
		Tribunal de Grande Instance de Troyes	1
		Tribunal d'Instance de Bourg en Bresse	2
		Tribunal d'Instance de Rouen	1
			38
		Supreme Courts	
Ireland	2	High Court	1
			1
		Courts of appeal or first instance	
		District Court Area of Cork City	1
			1

Member State	Number	Court giving judgment	
Italy	50	*Supreme Courts*	
		Corte Costituzionale	1
		Corte di Cassazione	23
		Consiglio di Stato	1
			25
		Courts of appeal or first instance	
		Corte d'Appello di Ancona	1
		Corte d'Appello di Bari	1
		Corte d'Appello di Milano	4
		Tribunale Amministrativo Regionale d'Abruzzo-Pescara	1
		Tribunale Amministrativo Regionale del Lazio	2
		Tribunale Amministrativo Regionale per la Lombardia	1
		Tribunale Amministrativo Regionale del Veneto	1
		Tribunale di Genova	1
		Tribunale di Milano	5
		Tribunale di Rieti	1
		Tribunale di Roma	1
		Tribunale di Salerno	2
		Pretura di Bra	1
		Pretura di Padova	1
		Pretura di Reggio Emilia	1
		Pretura di Suza	1
			25
Luxembourg	2	*Supreme Courts*	
		Conseil d'État	1
		Cour Supérieure de Justice	1
			2
Netherlands	36	*Supreme Courts*	
		Hoge Raad	5
		Raad van State	2
			7

Member State	Number	Court giving judgment	
		Courts of appeal or first instance	
Netherlands (*cont'd*)	36	Centrale Raad van Beroep	11
		College van Beroep voor het Bedrijfsleven	5
		Gerechtshof Amsterdam	3
		Gerechtshof 's-Hertogenbosch	1
		Tariefcommissie	1
		Arrondissementsrechtbank Amsterdam	1
		Arrondissementsrechtbank Breda	1
		Arrondissementsrechtbank Haarlem	1
		Arrondissementsrechtbank Rotterdam	4
		Raad van Beroep Zwolle	1
			29
		Supreme Courts	
United Kingdom	20	House of Lords	3
			3
		Courts of appeal or first instance	
		Court of Appeal	3
		High Court of Justice	4
		Employment Appeal Tribunal	1
		Crown Court Bristol	1
		National Insurance Commissioner	7
		Armagh Magistrate's Court	1
			17

B — *Remarks on some specific decisions*

Two of the recent decisions made by national courts on Community law merit special attention:

In its order of 25 July 1979, the Second Chamber of the Bundesverfassungsgericht [Federal Constitutional Court] stated that it had no jurisdiction to give rules of primary Community law a meaning contrary to that given to them by the Court of Justice of the Communities in a preliminary ruling. In its judgment of 26 March 1979 the Commercial Chamber of the French Cour de Cassation ruled that a settlement made between the parties, which acquired the authority of a final decision, did not free the national court from the duty to examine whether the disputed clauses in the agreement covered by the settlement complied with Article 85 (1) of the EEC Treaty.

(a) Order of the Bundesverfassungsgericht (Second Chamber) of 25 July 1979[1]

By this order made unanimously the Second Chamber of the Bundesverfassungsgericht declared a reference from the Verwaltungsgericht [Administrative Court] Frankfurt am Main inadmissible. In the course of the same proceedings in the main action that court had already requested the Court for a preliminary ruling[2] and the Court had ruled:

'The provisions of Article 93 do not preclude a national court from referring a question on the interpretation of Article 92 of the Treaty to the Court of Justice if it considers that a decision thereon is necessary to enable it to give judgment; in the absence of implementing provisions within the meaning of Article 94 however a national court does not have jurisdiction to decide an action for a declaration that existing aid which has not been the subject of a decision by the Commission requiring the Member State concerned to abolish it or that a new aid which has been introduced in accordance with Article 93 (3) is incompatible with the Treaty'.

By order of 28 July 1977 the Verwaltungsgericht Frankfurt am Main again stayed the proceedings. This time it referred to the Bundesverfassungsgericht under the procedure under Article 100 (1) of the German Basic Law (procedure for the review of rules of law as a preliminary issue) the question whether Articles 92 to 94 of the EEC Treaty are applicable in the Federal Republic of Germany as interpreted

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[1] Case 2 BvL 6/77, Europäische Grundrechte-Zeitschrift 1979, p. 547.

[2] Case 78/76 – Steinike & Weinlig, Judgment of 22 March 1977 [1977] ECR 595.

by the Court of Justice in its judgment of 22 March 1977, stating, in effect, that a national court cannot determine the incompatibility of a national law with Article 92 of the Treaty in the cases referred to by the Court. In the opinion of the court making the reference, such an interpretation was contrary to the principle of freedom of recourse to the courts provided by Article 19 (4) of the Basic Law.

The Second Chamber of the Bundesverfassungsgericht declared the reference inadmissible on the ground that, in the proceedings in that case, it was only permissible to examine whether rules or principles laid down by the Basic Law preclude the application of EEC Treaty provisions to the extent to which the examination concerns the German law ratifying the Treaty. The court which made the reference did not raise the issue whether the ratifying law was unconstitutional in approving Articles 92 to 94 of the Treaty, but sought a declaration that those articles were applicable within the Federal Republic of Germany, giving them a tenor different from that given to them by the Court of Justice. This object could not however be validly examined by seising the Bundesverfassungsgericht since it had no jurisdiction to rule upon this.

It is to be noted that in the last paragraph of the grounds on which the order was based, the Chamber expressly states that it leaves open the question whether, and and if so, to what extent (considering European political and legal developments in the meantime) the principles of its order of 29 May 1974[1] ('Solange decision') may remain fully valid for the purposes of future references to the Court on rules of secondary Community law. As is well known, in its order of 1974 the Bundesverfassungsgericht confirmed that it had jurisdiction to rule upon the compatibility of rules of secondary Community law with the fundamental rights laid down by the Basic Law.

(b) Judgment of the French Cour de Cassation (Commercial Chamber) of 26 March 1979[2]

In its judgment of 26 March 1979 the Cour de Cassation reversed a decision of the Cour d'Appel [Court of Appeal], Douai, of 2 March 1977. The facts of the case were as follows:

A patentee entered into two agreements with a company relating to the exploitation of two French patents, one concerning a dessication and incineration process for various products and the other a process for treating products by heat and chemicals in order to destroy them. The agreements contained a clause by which the company undertook not to challenge the validity of the patents. Following a dispute between the two parties a settlement within the meaning of Article 2044 of the Civil Code was agreed in which a clause was included by which the company undertook not to cancel the licences before the date on which the

[1] BVerfG., Vol. 37, p. 271.

[2] Société des Ateliers de Construction de Compiègne, La Semaine Juridique, Édition Générale, IV, Tableaux de Jurisprudence (1979), p. 191.

patents expired. The patentee sued the company for the payment of royalties and the company sought the setting aside of the agreements between them.

Dismissing the company's claim for the annulment of the clauses, the Cour d'Appel held that, since, by virtue of Article 2052 of the Civil Code, the settlement had acquired as between the parties the authority of a final decision, there were no grounds for examining the arguments of the company because the alleged nullity of several of the clauses of the agreements under the provisions of Article 85 (1) of the Treaty of Rome was covered by the settlement between the parties.

The Cour de Cassation overturned the judgment by the Cour d'Appel on the ground that whilst national law cannot prevail over the provisions of the Treaty establishing the European Economic Community, the Cour d'Appel had not given any legal basis to its decision since it had not examined whether the clause at issue appreciably affected trade between Member States of the Common Market and competition.

III — Annexes

ANNEX 1

Organization of public sittings of the Court

As a general rule, sittings of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations (from 22 December to 8 January, the week preceding and two weeks following Easter, and 15 July to 15 September) and three weeks each year when the Court also does not sit (the week following Carnival Monday, the week following Whit Monday and the week of All Saints).

See also the full list of public holidays in Luxembourg set out below.

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard *in camera* or during interlocutory proceedings.

Half an hour before the beginning of public hearings visitors who have indicated that they will be attending the hearing are supplied with relevant documents.

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg national holiday	23 June
Assumption	15 August
'Schobermesse' Monday	Last Monday of August or first Monday of September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

ANNEX 2

Summary of types of procedure before the Court of Justice

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A – References for preliminary rulings

The national court submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the registry of the national court to the Registry of the Court of Justice,[1] accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred to it.

During a period of two months the Council, the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they will be summoned to a hearing at which they may submit oral observations, through their agents in the case of the Council, the Commission and the Member States, through lawyers who are members of a Bar of a Member State or through university teachers who have a right of audience before the Court pursuant to Article 36 of the Rules of Procedure.

After the Advocate General has presented his opinion the judgment given by the Court of Justice is transmitted to the national court through the registries.

B – Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (boîte postale 1406, Luxembourg) by registered post.

Any lawyer who is a member of the Bar of one of the Member States or a professor holding a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

The name and permanent residence of the applicant;

The name of the party against whom the application is made;

The subject-matter of the dispute and the grounds on which the application is based;

The form of order sought by the applicant;

The nature of any evidence offered;

An address for service in the place where the Court has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

[1] Court of Justice of the European Communities, Kirchberg, boîte postale 1406, Luxembourg; tel. 43031; telegrams: CURIALUX; telex: 2510 CURIA LU.

The application should also be accompanied by the following documents:

The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, documentary evidence of the date on which the request to the institution in question was lodged;

A certificate that the lawyer is entitled to practise before a Court of a Member State;

Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service – which in fact is merely a 'letter-box' – may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to defendants by the Registry of the Court of Justice. It calls for a defence to be put in by them; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defence.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or agents (in the case of Community institutions or Member States).

After the opinion of the Advocate-General has been heard, the judgment is given. It is served on the parties by the Registry.

ANNEX 3

Notes for the guidance of Counsel at oral hearings[1]

These notes are issued by the Court with the object of making it possible, with the assistance of Counsel for the parties, to ensure that the Court can dispose of its business in the most effective and expeditious manner possible.

1. *Estimates of time*

   The Registrar of the Court always requests from Counsel an estimate in writing of the length of time for which they wish to address the Court. It is most important that this request be promptly complied with so that the Court may arrange its time-table. Moreover, the Court finds that Counsel frequently underestimate the time likely to be taken by their address – sometimes by as much as 100%. Mistaken estimates of this kind make it difficult for the Court to draw up a precise schedule of work and to fulfil all its commitments in an orderly manner. Counsel are accordingly asked to be as accurate as possible in their estimates, bearing in mind that they may have to speak more slowly before this Court than before a national court for the reasons set out in point 4 below.

2. *Length of address to the Court*

   This inevitably must vary according to the complexity of the case but Counsel are requested to remember that:

   (i) the Members of the Court will have read the papers;

   (ii) the essentials of the arguments presented to the Court will have been summarized in the Report for the Hearing;
   and

   (iii) the object of the oral hearing is, for the most part, to enable Counsel to comment on matters which they were unable to treat in their written pleadings or observations.

   Accordingly, the Court would be grateful if Counsel would keep the above considerations in mind. This should enable Counsel to limit their address to the essential minimum. Counsel are also requested to endeavour not to take up with their address the whole of the time fixed for the hearing, so that the Court may have the opportunity to ask questions.

3. *The Report for the hearing*

   As this document will normally form the first part of the Court's judgment Counsel are asked to read it with care and, if they find any inaccuracies, to inform the Registrar before the hearing. At the hearing they will be able to put forward any amendment which they propose for the drafting of the part of the judgment headed 'Facts and Issues'.

4. *Simultaneous translation*

   Depending on the language of the case not all the Members of the Court will be able to listen directly to the Counsel. Some will be listening to an interpreter. The interpreters are highly skilled but their task is a difficult one and Counsel are particularly asked, in the interests of justice, to speak *slowly* and into the microphone. Counsel are also asked so far as is possible to simplify their presentation. A series of short sentences in place of one long and complicated sentence is always to be preferred. It is also helpful to the Court and would avoid misunder-

[1] These notes are issued to Counsel before the hearing.

standing if, in approaching any topic, Counsel would first state very briefly the tenor of their arguments, and, in an appropriate case, the number and nature of their supporting points, before developing the argument more fully.

5. *Written texts*

For simultaneous translation it is always better to speak *freely* from notes rather than to read a prepared text. However, if Counsel has prepared a written text of his address which he wishes to *read* at the hearing it assists the simultaneous translation if the interpreters can be given a copy of it some days before the hearing. It goes without saying that this recommendation does not in any way affect Counsel's freedom to amend, abridge, or supplement his prepared text (if any) or to put his points to the Court as he sees fit. Finally it should be emphasized that any reading should not be too rapid and that figures and names should be pronounced clearly and slowly.

6. *Citations*

Counsel are requested, when citing in argument a previous judgment of the Court, to indicate not merely the number of the case in point but also the names of the parties and the reference to it in the Reports of Cases before the Court (the ECR). In addition, when citing a passage from the Court's judgment or from the opinion of its Advocate-General, Counsel should specify the number of the page on which the passage in question appears.

7. *Documents*

The Court wishes to point out that under Article 37 of the Rules of Procedure all documents relied on by the parties must be annexed to a pleading. Save in exceptional circumstances and with the agreement of the parties, the Court will not admit any documents produced after the close of pleadings, except those produced at its own request; this also applies to any documents submitted at the hearing.

Since all the oral arguments are recorded, the Court also does not allow notes of oral arguments to be lodged.

ANNEX 4

Information and documentation on the Court of Justice and its work

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Boîte postale 1406, Luxembourg
Telephone: 43031
Telex (Registry): 2510 CURIA LU
Telex (Information Office of the Court): 2771 CJ INFO LU
Telegrams: CURIA Luxembourg

Complete list of publications:

A – Information on current cases (for general use)

1. *Calendar of the sittings of the Court*

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

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

2. *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, boîte postale 1406, Luxembourg, on payment of a fixed charge of Bfr 100 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 2 000 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).

B – Official publications

1. *Reports of Cases before the Court*

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

   The volumes for 1954 to 1979 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.

   All judgments, opinions and summaries for the period 1973 to 1979 are published in their entirety in Danish.

The Reports of Cases before the Court are on sale at the following addresses:

BELGIUM:	Éts. Émile Bruylant, Rue de la Régence 67, 1000 Bruxelles.
DENMARK:	J. H. Schultz – Boghandel, Montergade 19, 1116 København K.
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FEDERAL REPUBLIC OF GERMANY:	Carl Heymann's Verlag, Gereonstraße 18–32, 5000 Köln 1.
IRELAND:	Stationery Office, Dublin 4, or Government Publications Sales Office, GPO Arcade, Dublin 1.
ITALY:	CEDAM – Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 Padova (M-64194).
LUXEMBOURG:	Office for Official Publications of the European Communities, boîte postale 1003, Luxembourg.
NETHERLANDS:	NV Martinus Nijhoff, Lange Voorhout 9, 's-Gravenhage.
UNITED KINGDOM:	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton, Hants GU34 2PJ.
OTHER COUNTRIES:	Office for Official Publications of the European Communities, boîte postale 1003, Luxembourg.

2. *Selected Instruments Relating to the Organization, Jurisdiction and Procedure of the Court (1975 edition)*

   Orders, indicating the language required, should be addressed to the Office for Official Publications of the European Communities, boîte postale 1003, Luxembourg.

C – Legal information and documentation

I — Publications by the Information Office of the Court of Justice of the European Communities

Applications to subscribe to the following four publications may be sent to the Information Office, specifying the language required. They are supplied free of charge (boîte postale 1406, Luxembourg, Grand Duchy of Luxembourg).

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

   Weekly information sheet 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. *Information on the Court of Justice of the European Communities*

   Quarterly bulletin containing the summaries and a brief résumé of the judgments delivered by the Court of Justice of the European Communities.

3. *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.

4. *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 of the European Communities.

The above four publications are published in each official language of the Communities. The general information brochure is also available in Irish and Spanish.

II — Publications by the Documentation Branch of the Court of Justice

1. *Synopsis of case-law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters* (the 'Brussels Convention')

   This publication, three parts of which have now appeared, is published by the Documentation Branch of the Court. It contains summaries of decisions by national courts on the Brussels Convention and summaries of judgments delivered by the Court of Justice in interpretation of the Convention. In future the Synopsis will appear in a new form. In fact it will form the D Series of the future Source Index of Community case-law to be published by the Court.

   Orders for the first three issues of the Synopsis should be addressed to the Documentation Branch of the Court of Justice, boîte postale 1406, Luxembourg.

2. *Répertoire de la Jurisprudence Européenne – Europäische Rechtsprechung* (published by H. J. Eversen and H. Sperl)

   Extracts from cases relating to the Treaties establishing the European Communities published in German and French. Extracts from national judgments are also published in the original language.

   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. 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 volumes of the English series are on sale at:

   Elsevier – North Holland – Excerpta Medica

   PO Box 211

   Amsterdam (Netherlands).

3. *Bibliographical Bulletin of Community case-law*

   This Bulletin is the continuation of the Bibliography of European case-law of which Supplement No 6 appeared in 1976. The layout of the Bulletin is the same as that of the Bibliography. Footnotes therefore refer to the Bibliography.

   It is on sale at the address shown at B1 above (Reports of Cases before the Court).

Information on Community law

Community case-law[1] was published during 1979 in the following journals amongst others:

Belgium:
Cahiers de droit européen
Journal des tribunaux
Journal des tribunaux du travail
Jurisprudence commerciale de Belgique
Rechtskundig weekblad
Revue Belge de droit international
Revue belge de sécurité sociale
Revue de droit fiscal
Tijdschrift voor privaatrecht
Sociaal-economische wetgeving

Denmark:
Juristen og Økonomen
Nordisk Tidsskrift for International Ret
Ugeskrift for Retsvaesen

France:
Annales de la propriété industrielle, artistique et littéraire
Annuaire français de droit international
Le Droit et les affaires
Droit rural
Droit social
Gazette du palais
Journal du droit international
Propriété industrielle, bulletin documentaire
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La Vie judiciaire

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Deutsches Verwaltungsblatt
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Europäische Grundrechte-Zeitschrift (EuGRZ)
Gewerblicher Rechtsschutz und Urheberrecht, Internationaler Teil
Gewerblicher Rechtsschutz und Urheberrecht
Juristenzeitung
Jus-Juristische Schulung
Monatsschrift für deutsches Recht
Neue juristische Wochenschrift
Die öffentliche Verwaltung

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

Federal Republic of Germany (cont'd)	Recht der internationalen Wirtschaft (Außenwirtschaftsdienst des Betriebs-Beraters) Wirtschaft und Wettbewerb Zeitschrift für das gesamte Handels- und Wirtschaftsrecht Zeitschrift für Zölle und Verbrauchsteuern
Ireland:	Irish Law Times
Italy:	Diritto comunitario e degli scambi internazionali Il Foro italiano Il Foro padano Giustizia civile Giurisprudenza italiana Rassegna dell'avvocatura dello Stato Rivista di diritto europeo Rivista di diritto internazionale Rivista di diritto internazionale privato e processuale Rivista di diritto processuale
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