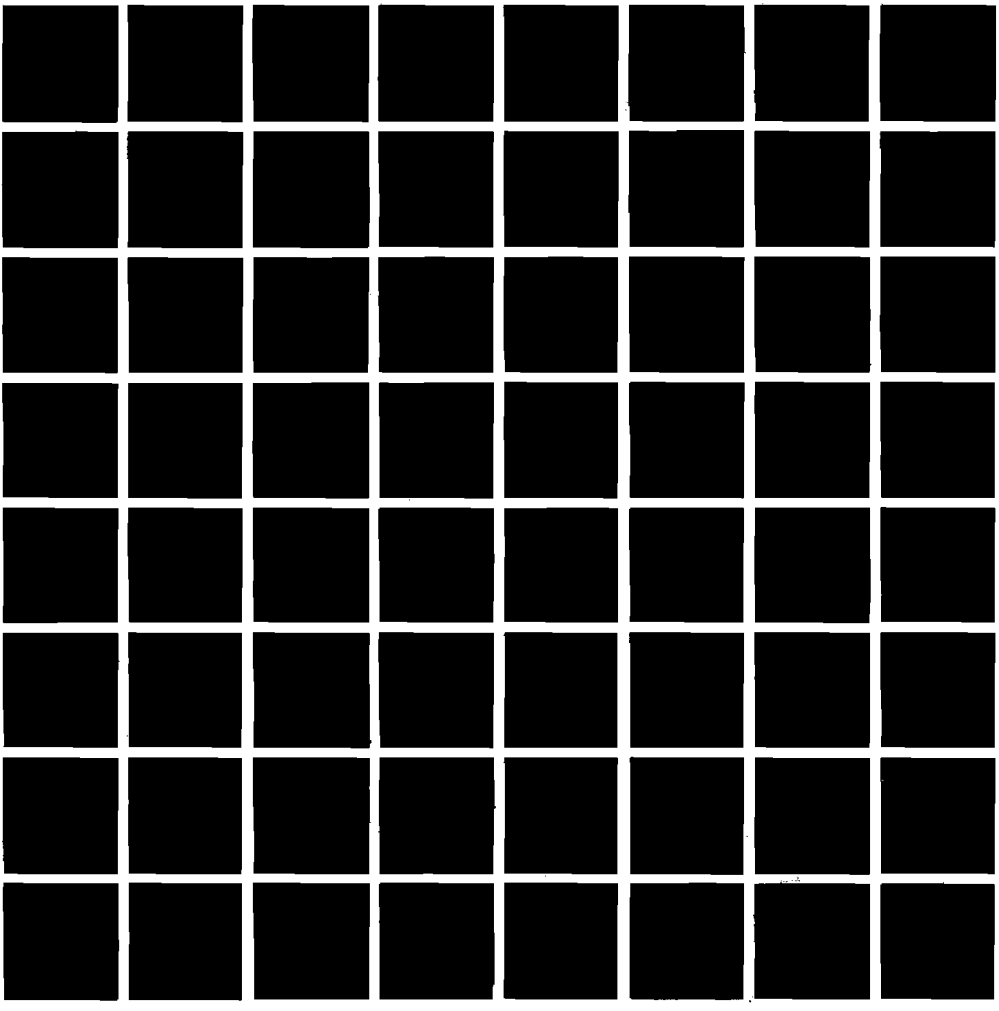
The Court of Justice of the European Communities



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The Court of Justice of the European Communities

The Court of Justice is an essential part of the machinery of the European Community. It is the EEC's supreme court, acting as protector of the Paris and Rome Treaties and champion of Community law. This law regulates the relationships between the European institutions, the Member States and their nationals, and ranges from the general rules laid down in the Treaties (the Constitution of the European Community), to regulations adopted by the Council and Commission and a number of diplomatic agreements between Member States which are also regarded as sources of Community law.

As a relatively new legal system, Community law is not always widely understood and can therefore be difficult to implement since everyone tends to interpret it to suit his own interests. The job of the Court of Justice is to ensure that this law is observed and that it is interpreted uniformly and consistently throughout the Community. Without the Court, there would be no European law, and without European law the Community would cease to exist.

The basic principles underlying the European legal structure, the primacy of European laws and their immediate application throughout the Community were not clearly defined in the Treaties; it has been the Court which has defined and formally affirmed these principles through its decisions.

It is also the Court which, to a large extent, has made freedom of movement of persons and goods within the Community a reality and it has played a very important role in the development of Community social, agricultural and commercial law.

The Court of Justice's effectiveness is based on its independence. It remains aloof from doctrinal controversy and conflicting national interests. In twenty-five years, it has not only fulfilled its task but has also provided Community law with the impetus and the scope that will cause it to be associated from now on with progress and innovation.

I. The Court's powers

The Paris and Rome Treaties use identical terms to define the general purpose of the Court: "The Court of Justice shall ensure that in the interpretation and application of the Treaties the law is observed." Thus the Court has two functions:

- An *advisory* function whereby the Court may be asked to deliver opinions on an external agreement the Community plans to conclude with States or international organisations. These opinions are binding;
- A *judicial* function which is by far the more important of the Court's two functions:

— *The Court has jurisdiction in proceedings brought against States which fail to fulfil their obligations under the Treaties or Community regulations.* The Treaty of Rome, for example, provides for the free movement of goods in the Common Market. It prohibits discrimination against a product on the ground of its origin, and abolishes customs duties and taxes of equivalent effect. A Member State, therefore, that adopts protectionist measures in favour of its national products in a particular field is acting illegally. As a rule, the other Member States or the European Commission are not slow to object. If the State in question fails to react and does not repeal the disputed measures, the matter will be referred to the Court for a ruling. The same would apply to a country which refused to adopt measures that were compulsory under Community law (new rules concerning health, trade, social matters, etc.). Such proceedings are called *proceedings for failure to fulfil an obligation.*

The procedure may be initiated by the Commission in its capacity as guardian of the Treaties, or by the Member States. In fact, the latter have rarely exercised this right for obvious reasons of courtesy and diplomacy, and it is the Commission that has been responsible for nearly all the initiatives taken in this field.

Where a Member State has failed to fulfil an obligation, the Court does not have the power of a federal court to annul the legal instruments of federated states. Its role is more like that of an international court: It establishes the breach of an obligation and requests the State concerned to remedy it. Only that State can take the measures necessary for the Court's judgment to be enforced. Apart from a certain amount of hesitation on the part of the Italians in the early years of the Common Market, all Member States now comply with the Court's judgments.

— *The Court of Justice reviews the legality of Community acts.* It is well known that the Council and Commission of the European Communities have power to make laws and regulations. Their powers are strictly defined in the Treaties: they can act only in certain fields

and under certain conditions. If the Council adopts legislation that is contrary to the provisions or the spirit of the Treaties, if it fails to comply with the prescribed procedure, or if it exceeds its rights or the limits at present imposed on it—for example by legislating on defence or foreign policy—the Member States or the Commission may request the Court to annul the legislation in question. If, on the other hand, the Commission adopts a regulation in a field exclusively reserved to the Council, either the Council or the Member States may refer the matter to the Court. Finally, if the Council or Commission enact legislation addressed exclusively to a private party, or if a private party is specifically affected by it, he may challenge it before the Court. This would apply in the case of legislation relating to a particular product manufactured or grown by one person only. It also applies, in the context of the ECSC Treaty, to coal and steel undertakings which are subject to certain rules and obligations imposed by the Commission. Such proceedings are called *proceedings for annulment.*

The Council or Commission may also be brought before the Court if they fail to act in situations in which they are legally required to do so. Such proceedings are referred to as *proceedings for failure to act.*

If the Court considers these actions admissible and well founded, it declares the illegal act void or rules that the failure to act is illegal. However, the institution against which proceedings are brought must first have been called upon to remedy the situation and given two months in which to do so.

— *The Court settles disputes involving the liability of the Community.* In such cases, the Court is empowered to consider the facts of the case and to give rulings on points of law. The Community may incur civil liability for damage caused by its institutions or servants in the performance of their duties including car accidents, accidents due to poor maintenance of buildings and equipment, and accounting errors etc. If this happens, the Community is required to make good such damage in accordance with the general principles common to the laws of the Member States, and the Court is fully competent to decide whether the liability is well founded and to assess the amount of compensation. Such proceedings are known as *proceedings involving unlimited jurisdiction.*

— *Cases relating to failure to comply with Community anti-trust legislation* also fall within this category. The Court may be called upon to give a ruling on penalties which the Commission has imposed on undertakings guilty of failing to observe the principle of free competition or abusing their dominant position on the European market. The Court may annul or modify administrative sanctions, i.e. mitigate or increase them where appropriate. Thus, the Commission's spectacular decisions imposing very heavy fines on Community sugar producers accused of

dividing up European markets between them to prevent competition were partly annulled on the grounds that they were ill-founded.

— *Disputes between the Community and its officials* also take the form of proceedings involving unlimited jurisdiction. At present, in view of the increasing number of such cases, there is talk of creating a new court of first instance which should help to reduce pressure on the staff in Luxembourg.

— Sometimes the Court acts as a *court of arbitration.* In such cases, it does so pursuant to arbitration clauses contained in contracts governed by public or private law and concluded by the Community or on its behalf. In such cases, its jurisdiction must be precisely stipulated in the contract in question.

— *The Court provides the sole official interpretation of the rules of Community law.* At the request of national courts called upon to decide issues of Community law, the Court can provide a legal opinion which has the force of *res judicata.* All national courts are entitled to ask the Court of Justice for its opinion—a procedure known as a *request for a preliminary ruling.* Such a request is compulsory when the court called upon to apply Community law is a court of final appeal, i.e. where there is no further judicial remedy under national law.

This procedure is becoming increasingly important. After a hesitant start (there were fewer than ten such rulings a year in the early sixties, then between ten and fifteen a year up to 1969), the Court is now giving more than sixty-five preliminary rulings each year. The following are examples of the types of question likely to be referred to the Court of Justice for a preliminary ruling:

— clarifying the meaning and scope of the provisions of the Treaties or of Council or Commission regulations;
— deciding which national law is referred to by a particular provision of Community law;
— determining the period of validity of a Community rule;
— deciding which legal instruments or measures are governed by Community or national law;
— determining whether a Community rule is sufficient in itself or whether it must be defined or supplemented by national laws.

Requests for preliminary rulings are undoubtedly one of the most important types of proceedings that the judges in Luxembourg have to deal with. In order to understand their precise scope, it is necessary to bear in mind the nature of the Treaties establishing the Communities. They are not international treaties of the traditional type creating rights and obligations only for the States themselves. The Community Treaties vest many individual rights in nationals of the Member States. Such rights then form an integral part of the body of national law in each

State and private individuals may invoke them if necessary in their national courts. It is therefore essential that interpretation of Community laws should be uniform and that Danes, Germans, French, Irish, Italians, Belgians, Luxemburgers, Dutch and British should all receive equal treatment under any new legislation.

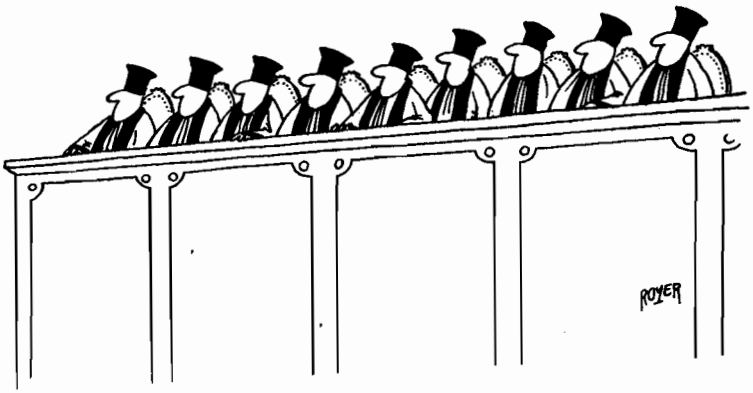
II. How does the Court operate?

The Court of Justice consists of nine judges—a number which enables decisions to be taken by a majority—assisted by four Advocates-General and a Registrar. These judges all possess the qualifications required for appointment to the highest judicial offices in their own countries and are further selected on the grounds of their impartiality.

The procedure for appointing judges and advocates-general is the same as that for members of the European Commission, that is agreement by the nine Member States. The European Treaties do not contain any provision relating to the nationality of the judges, so in theory it would be possible to imagine a European Court of Justice consisting exclusively of judges of one nationality. In practice, however, a balance is maintained between the States represented within the Community. The judges and advocates-general are appointed for six years and may be reappointed. In order to ensure a measure of continuity in the proceedings of the Court, a partial replacement takes place of two advocates-general and four or five judges alternately every three years. Up until now all retiring judges and advocates-general have been reappointed. The judges choose a President from amongst themselves for a term of three years. Mr. Robert Lecourt was elected President in 1967 and re-elected in 1970 and 1973.

The judges are assisted in their duties by the advocates-general whose role it is to make their own reasoned and impartial submissions in open Court (advocates-general represent the general interest and receive instructions from no one) on each case brought before the Court of Justice. These submissions contain a complete analysis of the facts and points of law involved, an examination of the relevant legislation, opinions of writers on the subject, the case law in point, and frequently a comparative study of the different national laws. The advocate-general also suggests to the Court a legal solution to the dispute.

Each judge and advocate-general is free to appoint his own legal secretary who carries out investigations and research into questions of Community and comparative law raised in cases brought before the Court, and they also appoint the Registrar of the Court for a renewable



term of six years. Since the Court was set up in 1952, the post of Registrar has been filled by Albert Van Houtte, who is under the same obligations and enjoys the same privileges and immunities as the judges and advocates-general. His position is in a way that of general secretary to the Court and he is responsible for the acceptance, transmission and custody of all documents and for effecting service. All pleadings are entered in his register and he is responsible for drawing up the minutes for each hearing. The Registrar is also responsible for Court administration. He ensures that the budget is implemented and supervises the management and operation of each department in which task he is assisted by an assistant registrar and a director of administration.

The Court sits in plenary session to hear cases brought before it by a Member State or by one of the institutions of the Community or to give preliminary rulings on important questions. Preparatory inquiries and less important matters, however, are dealt with in chambers each consisting of four judges and two advocates-general.

It is the responsibility of the President, who does not belong to any chamber, to assign cases to the chambers. Each chamber has its own president appointed yearly by mutual agreement of the nine judges.

The Court has an administrative service employing two hundred and fifty people working in its ultra-modern building at Kirchberg in Luxembourg. There are six administrative departments:

— a personnel department responsible for recruitment, promotion and general questions affecting officials;

— a financial department which administers the budget;
— a department responsible for offices and equipment;
— a translation department which has to cope with a very heavy translation burden (the Community has six official languages and each judgment has to be translated into each of them);
— an information department with various functions, including the organisation of courses on European law intended mainly for practising lawyers (judges, lawyers, teachers, students), the regular publication of brochures on the activities of the Court, the briefing of journalists etc.;
— a documentation department which keeps all publications concerned with European law. The department administers a library containing approximately 20,000 works and is at present preparing the computer storage of all Court decisions.

III. Court procedure

Who may address the Court of Justice?

— *The Community States and Institutions* are represented in Court by agents who are generally members of their legal services and who may also be assisted by an adviser or lawyer.

— *Private individuals* must instruct lawyers qualified to practise before a court in the Community countries. However, where the law of their Member State so permits, teachers of law may also address the Court. This is the case with university teachers in Germany.

The Court's working *languages* are the six official languages of the Community and Court publications are produced in these languages. The languages to be used in a case is normally chosen by the plaintiff (known as the applicant).

However, where the defendant is a Member State or a natural or legal person having the nationality of a Member State, the language of the case is the official language of that State unless that State has more than one official language in which case the applicant may choose between them.

The Court may also authorise the use of another official language of the Community at the joint request of the parties concerned in the case.

In the case of a request for a preliminary ruling, the language of the case is that of the national court or tribunal which refers the matter to the Court. The texts of documents drawn up in the language of the case are authentic.

Court procedure involves two successive stages—written and oral—and varies depending on whether direct proceedings or requests for a preliminary ruling are involved.

— *In the case of direct proceedings*, the matter must be brought before the Court by means of a written application sent to the Court Registrar by registered post. The application must contain the names of the parties, the subject matter of the dispute, a brief statement of the grounds on which the application is based and the submissions of the applicant. To be admissible, applications must also be lodged within the legal time limits laid down in the Treaties.

Once it has been received, the application is entered in the Court register and the President nominates a Judge-Rapporteur whose duty it is to follow closely the progress of the case. The application is then served on the opposing party who has a month in which to lodge a statement of defence. The applicant has a right of reply (one month) and the defendant a right of rejoinder (with a further time limit of one month). After the latter document has been lodged, the Court decides on the basis of a report produced by the Judge-Rapporteur whether or not a preparatory inquiry is necessary. This would involve the appearance of the parties, requests for documents, oral testimony, experts' reports etc.

On the completion of the preparatory inquiry—where this has been necessary, or if not, after the final pleading has been lodged—the President fixes the date of the public hearing. The oral part of the procedure may then begin and the case is conducted by the parties before the judges. All points of view and all arguments may again be put before the Court. The Advocate-General makes his submissions after the oral addresses, reconsiders the entire case, studies the facts and the legal aspects of the dispute in detail and proposes *his* solution to the problem.

The oral procedure ends there, and the case is adjourned for discussion by the judges. Judgment is delivered on average four weeks later. Generally, eight to ten months elapse between the lodging of an application and the Court's final judgment which, in view of the linguistic problems and the consultations needed, is very reasonable, especially when compared with the duration of proceedings before most EEC national courts. An application for revision of a judgment may be made within ten years if a decisive fact which was unknown when the judgment was given is discovered.

In the case of an application to suspend the operation of a Community measure, the President of the Court may give judgment by means of a summary procedure. A prerequisite for this procedure is that the applicant must at the same time bring proceedings against the measure in question. The suspension order has only an interim effect

and is without prejudice to the decision of the Court on the substance of the case.

— *In the case of requests for a preliminary ruling* where issues are often simpler, the Court gives judgment even more quickly, the entire procedure usually taking between five and seven months. When the Registrar receives a request for an interpretation from a national court (no particular form is prescribed for the submission of such a request), he has it translated into all the Community languages, then notifies it to the parties involved in the original proceedings and to the Commission and the Member States. They are given two months in which to submit their observations. A Judge-Rapporteur makes a preliminary study of the case and decides whether a preparatory enquiry may be necessary. That is the end of the written procedure and the oral stage may then begin. The parties concerned, the Commission and the Member States may then all appear in court and put forward once again their points of view, this time in the light of the observations that have been made on the case.

After the advocate-general has made his submissions, the judgment is delivered fairly quickly and is notified immediately by the Registrar to the relevant national court. The parties concerned, the Member States, the Commission and the Council then have two months in which to submit any written observations to the Court, but the judgment has the force of *res judicata*. The costs of a case are always paid by the unsuccessful party.

The procedure outlined above is relatively simple and was devised by the judges themselves who were naturally concerned with facilitating their own task as well as that of the parties involved.

IV. The Court's activities

The Court of Justice's decisions represent a not inconsiderable source of Community law. The Court has not only to protect existing European law but to innovate and it must bear in mind not only the actual wording of the Treaties, but also their spirit and aims.

At institutional level, this means the creation and implementation of the principle of direct applicability of the rules of Community law in the legal systems of the Member States. This is what lawyers call the self-executing effect of the Treaties. The Court lost no time in taking this principle further when it affirmed the primacy of Community rules over conflicting national rules, even retrospectively. This decision is undoubtedly the keystone of the entire Community system. Very important work has also been carried out in connection with commercial, social and agricultural law. This will be considered later.

A. At institutional level

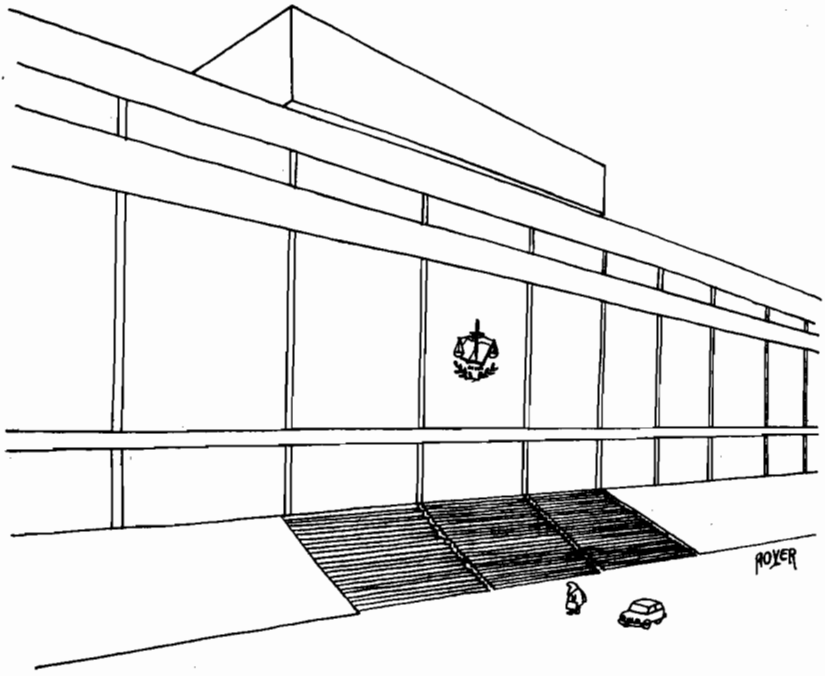
Direct applicability of Community law in the Member States

After the Treaties were ratified the Court had to decide a number of cases in which the chief question was: is European law directly applicable as such to the nationals of the Community? If they are to be able to invoke its provisions in a national court, must the Community rule have been incorporated into the national law of the State concerned?

International law holds that only States may be bound by an international treaty, not their nationals. But according to the Court's case law, the complete opposite holds true in the European Community. The Court argues that the Treaty, the purpose of which is to organise a common market, applies not only to the signatory States but also by definition to the persons who operate that market, i.e. the producers and consumers, in other words, all nationals of the Community. In the Court's view, moreover, this is clearly shown in the provisions of the Treaties themselves and the possibility of referring questions for a preliminary ruling proves that national courts can apply Community law as such in their judgments.

The only limits that the Court recognises to the direct applicability of European law relate to provisions which are not sufficient in themselves and which require supplementary legislation by the Member States for their implementation. In all other cases, whatever the nature of the measure, the rules of European law are self-executing. At least ten basic judgments were necessary to arrive at this conclusion since some countries were reluctant to accept this loss of sovereignty.

It is interesting here to examine a case which aroused tremendous interest and which is basic to this entire field. On 9 September 1960, the Dutch company Van Gend and Loos, which has imported an aqueous emulsion of ureaformaldehyde from Germany for use in the manufacture of glue, received a claim from the Dutch customs authorities for duty at a rate higher than the rate current for this type of emulsion at the time when the Treaty of Rome entered into force. The higher rate was based on an agreement concluded between the Benelux countries on 25 July 1958, in which aqueous emulsions has been transferred from a category of products taxed at 3 per cent to another category taxed at 8 per cent. The glue manufacturer protested to his national authorities on the grounds that the Treaty prohibited the Common Market countries from increasing the customs duties that they applied among themselves on 1 January 1958 (date of entry into force of the Treaty). The argument was rejected and the industrialist appealed to an administrative court. The latter then asked whether the provisions of the Treaty of Rome which, in normal circumstances, are



addressed only to Member States, could vest rights in individuals. The question involved an interpretation of the Treaty and the court suspended its proceedings and referred the matter to the Court of Justice.

The German, Belgian and Dutch Governments immediately submitted their observations on the matter to the Court. In their view, only Member States or the Commission could bring alleged infringements of the Treaty before the Court. The Treaty, they maintained, conferred rights and imposed obligations only on the signatory States and certainly not on private individuals who must remain subject to their national law. The Court immediately rejected this argument. It ruled that by providing that any court or tribunal could apply to it for an interpretation of the provisions of Community law, the Treaty did not intend to draw any distinction between parties. Private individuals, therefore, had the right, just as much as States, to avail themselves of European law. The Court pointed out that although the provisions of the Treaty addressed literally to Member States, they "produce direct effects and create individual rights which national courts must protect".

Thus, with its judgment on a case involving glue and the definition of chemical products, the Court established the principle of the direct

applicability of Community law in the legal systems of the Member States.

Primacy of Community rules over conflicting national rules

When the Common Market was first set up, courts in the Member States and the Court in Luxembourg were confronted with Community legislation which often conflicted with law in the Member States.

Some courts claimed that ratification of the Treaties by their governments was unconstitutional, and others that since the Treaties had been ratified by the passing of laws, they could be repealed by subsequent laws to the contrary. Two years after the first judgment establishing the direct applicability of Community law, a judge in Milan asked the Court for an interpretation of the Treaty in a case which was destined to clarify the situation in the event of conflict between Community law and opposing national rules. The case was that of Costa v. E.N.E.L.

The story began with an Italian lawyer, Flaminio Costa, a shareholder in the Edison Volta company, who considered that he had suffered injury through the nationalisation of the facilities for the production and distribution of electricity in his country. Mr. Costa refused to pay a bill for a few hundred lira presented by the new nationalised company, E.N.E.L. Summoned before a court in Milan, he submitted in his defence that the nationalisation law was contrary to the Treaty of Rome; and the judge in the case therefore approached the Court of Justice. In the meantime, the Italian constitutional court had intervened in connection with the law establishing E.N.E.L. In its view, the situation was straight-forward: as the Rome Treaty had been ratified by an ordinary law, the provisions of a later conflicting law would have to take precedence over those of the Treaty. Here it applied a legal principle known as "sequence of laws in time". In Luxembourg, the judges took a different view. In their opinion, the Member States, in ratifying the Treaty, had definitively waived the right to exercise their sovereignty in areas governed by the Treaties. Hence they were not entitled to allow subsequent national rules to override Community rules in these areas: to do so would be contrary to the common intent of the parties, the ultimate aims of the Treaties, and indeed their nature. Later on, judges had to give rulings in other cases on conflicts between Community law and the national constitutions. They considered that Community law itself was essentially constitutional and, on the basis of analogy with federal systems, they regarded the law deriving from the Treaties as supreme.

Thus the principle of "direct applicability" was supplemented by the principle of the "primacy" of Community law over conflicting

national rules, even where the latter are of later date or constitutional. These decisions undoubtedly constitute the keystone of the Community system.

B. In connection with economic legislation

Amongst its other functions, the Court of Justice is the judge of an economic Community, and it is natural therefore that the most important of its work should have been in the area of economic law. Its first concern was to combat, by a series of uncompromising decisions, the last attempts at protectionism by the Member States.

When customs duties or intra-Community trade were finally abolished, most of the Governments of the Member States were not yet mentally prepared to face up to the economic competition of their partners, and they reacted by introducing taxes, restrictions and even import bans. They displayed a fertile imagination, and a host of taxes—special, specific or statistical—sprang into being, together with sanitary inspection fees, landing dues, packing charges, export duties on works of art and more besides. These cases all gave rise to proceedings against the States concerned for failure to fulfil obligations under the Treaty. The Court was not deceived: in its view, these taxes were equivalent in effect to customs duties and it outlawed them wherever they had a discriminatory effect, however slight. One particular instance was that of an *ad valorem* tax of a third of one percent on imports of rough diamonds, the revenue from which was assigned to a diamond workers' welfare fund to provide the workers with certain additional social welfare benefits.

After the clamp-down on "charges having equivalent effect", the Member States tried introducing discriminatory administrative measures designed to restrict imports of certain products into their territory. One example here is a recent case relating to the free movement of Scotch whisky.

The Belgian Government made whisky importers subject to special administrative formalities designed to exclude all imports which did not come directly from Scotland. Since, for practical reasons to do with the centralisation of consignments, the majority of Scottish exports to the continent are routed through France, the measure was equivalent to a quantitative restriction, and the Court condemned it.

In all such situations, judges have taken the same firm line as in cases of tax discrimination and through these decisions on matters affecting competition, the Court has an important role to play in the development of European commercial law.

The first concern in drafting the Treaties was to safeguard free competition within the Common Market.

Businesses must be seen by the consumer to be in free competition, rather than to be joining forces against him. Community law provides for the automatic nullity of restrictive practices or agreements between undertakings that may affect the mechanisms of competition. It is also opposed to any abuses which might result from a position of dominance in the market.

This is a very wide-ranging commitment and the Court has taken numerous decisions in the field of competition. The majority of these have concerned not as one might suppose the large companies engaged in international trade, but rather the small firms whose activities are often confined to one area and sometimes even one town or district. The cases in which the Court has had to give rulings embrace a wide variety of industrial and commercial activities involving radios, colouring matters, quinine, cement, metal containers, sugar, beer, perfumes, lighters, household appliances, etc.

Most of the Court's decisions are concerned with competition as a means of achieving market integration and unity and as a safeguard for the consumer.

It was on these criteria that it based itself in a case involving a German recording company which sold its products in Germany at a fixed price higher than that at which they were sold in other Community countries by agents with sole distribution rights in their own national territories. Another German company, which had managed to obtain the records from one of the foreign agents, had re-imported them and was selling them in Germany at a price appreciably lower than that fixed by the manufacturer. The latter considered that this competition was contrary to the German laws protecting copyright and instituted proceedings. The case came before the Court, which decided

that, copyright or no copyright, it was not permissible to prohibit the marketing in one member country of products released for sale in the territory of another member country even if the selling prices were higher in the first country than those charged in the other countries. The Court maintained that practices such as these, wich tended to perpetuate the isolation of national markets, were contrary to the principle of the free movement of goods within the Common Market.

In another case, the Court supported the European Commission when it imposed fines on seven German companies for raising the price of aniline several times in succession.

These companies had also had to face penalties imposed by the German authorities under national law, but the Court pointed out that, in order to achieve the ultimate objectives of the Treaty, application of a national system of competition law was admissible only in so far as it did not prejudice the uniform application of the rules of the Treaty throughout the Common Market.

It is not only against the concerted practices of European firms that the Court levels its sights; foreign companies and multinationals operating within the Community are equally subject to its judgments and decisions.

A final example to illustrate this fact is that of a Belgian company which concluded a sole agency agreement with a Japanese firm for the sale of Japanese lighters in Belgium and France. A firm in Nice subsequently imported 18,000 of these lighters into France and the Belgian company instituted proceedings in France for unfair competition. The case was referred for a preliminary ruling to the Court of Justice which decided that competition would be adversely affected by the sole agency agreement if the party to whom sole rights had been granted were to prevent parallel imports, but where, on the other hand, a sole agency agreement had a measure of flexibility and allowed the possibility of parallel imports or exports, there should be no sanctions.

Accordingly, the French judge before whom the case had been brought in the first instance declared the Belgian company's action inadmissible.

The Court has also been called upon to examine the effect of the Common Market on the protection of literary and artistic rights. Such rights confer upon their holders an exclusive position which, although legitimate in itself, may be the subject of restrictive practices or result in the operation of a monopoly. The Court has issued warnings to companies with *de facto* copyright monopolies who abuse their dominant position by demanding (as happened in Belgium) the assignment of all an author's copyrights for an unlimited period without distinguishing between his works.

Again, in another field, the Court stated that the sole purpose of patents was to prevent fraudulent imitations and that they should not be used or abused for reasons of commercial policy, which was the standard practice of pharmaceutical companies who wished to keep an exclusive hold over national markets.

Community case law in the commercial field has given a powerful impetus to the development of the common market. There are numerous examples to demonstrate that once there is a rule applicable in the nine countries, legal integration results in *de facto* integration of the day-to-day practice of business firms and courts.

C. On social law

The social objective of the European Treaties is "the constant improvement of the living and working conditions of the European peoples", and the European Court has taken numerous decisions in this field.

The case law resulting from Community social law is much more plentiful than that pertaining to competition law. The most frequent beneficiaries in this field have been Italian workers: by far the most numerous plaintiffs in cases referred to the Court of Justice. This is no doubt due to the fact that Italy supplies a great many migrant workers to the rest of Europe.

One of the first points the Luxembourg judges had to clarify was the actual definition of a "worker". If the Member States were to be left to decide unilaterally what was meant in the Treaty by the term "worker", the concept might well lose all substance.

The Court wished to interpret the term very broadly and in a number of judgments it has therefore defined workers as those who benefit, under any designation whatsoever, from a national system of social security, irrespective of whether they are employed or self-employed.

Although it is quite explicitly laid down in the Treaties, the judges have quite often had to reaffirm the principle of the free movement of workers, especially in their early judgments. Many of the Member States were proving reluctant to apply the principle and it was therefore essential to clear up any doubts.

Non-discrimination—the corollary of the free movement of workers—is also guaranteed by the Community in the Treaties, and much hard work has been done by the Court to ensure that this principle is observed:

— One case involved an Italian worker in Germany who had been recalled to his own country to do his military service. Having completed

it, he returned to Germany to take up his old job, but met with a refusal on the grounds that under German law only German nationals enjoyed this right. The case came before a national court and was referred to the Court of Justice, where the European judge rejected any discrimination based on nationality.

— Another case involved a German worker, whose past employment record brought him within both the German and the French social security schemes, and who had gone to work in Algeria in 1951, when that country was part of the French Republic. In 1959, he contracted poliomyelitis, and on this ground was awarded a disability pension in Algeria in 1962. Having returned to Germany, he invoked Community rules on social security to request that the French authorities assume responsibility for his disability pension, as Algeria did not consider that it was liable for payment of a pension based on an event that had occurred prior to its independence.

The Court ruled that the worker should be treated in the same way as a French national in the same situation and should therefore be covered by French social security arrangements. Community regulations lay down the principle that a pension remains valid even if the beneficiary is resident in the territory of a Member State other than that in which the institution liable for payment is situated.

— Still on the subject of non-discrimination, the Court also took a decision declaring that an action brought before the Belgian Conseil d'Etat in the Italian language by an Italian worker was admissible.

The Community judges' interpretation of European social law has been approved by the Council of Ministers which in 1974 incorporated nearly all its underlying principles into a Regulation. This regulation is a powerful argument against those critics who maintain that the Community is only concerned with the Europe of big business.

D. On the common agricultural policy

The agricultural common market is undoubtedly the area in which Europe has made its greatest strides towards integration, and this is due in no small measure to the decisions of the Court. The Treaty of Rome contains only very general provisions on agriculture and these have had to be supplemented by countless regulations. Owing to the complexity of the market and to monetary difficulties, the system is cumbersome and frauds are common. It soon became apparent that the future of the Treaty in this sector rested with the courts.

Oddly enough, it is not farmers who have been the subject of the agricultural cases at the European Court, but traders. Very often com-

mercial transactions in agricultural products have given rise to legal proceedings at the European Court.

The Community judges endeavour in their decisions to uphold objectives and guidelines of agricultural policy as defined in the Treaty and they completely reject any unilateral action, arguing that the common organisation of the market must not be open to disruption from any one Member State.

The Court has had to find the Italian Government at fault on a number of occasions because, for instance, it failed to draw up a viticultural land register, which under Community law it was required to do, or because it failed to take the necessary action to implement the system of subsidies for slaughtering cows within the time allowed it, or because it introduced statistical taxes on agricultural products from other Member States, and imposed an administrative tax of 0.5 per cent on importers of these products.

One of the agricultural objectives of the Treaties is to ensure that farmers obtain remunerative and stable prices for products subject to Community preference. An optimum price is therefore laid down for these products, and a protective levy imposed on goods entering the Common Market from the rest of the world at a lower price. If there is excess production, Community authorities may order denaturation measures or export subsidies. In short, there is a series of measures designed to regulate each product market and this too has given rise to litigation.

It might be a German semolina manufacturer who brings an action for damages against the Council and the Commission for having acted improperly in the management of the durum wheat market.

Another case might involve a dealer who exports 108 metric tons of sausages from Germany to Yugoslavia, and applies for an export subsidy; but on analysis the product turns out to be composed of fats and low-grade meat offals and as they cannot therefore be sold in the Community as "sausages", no export subsidy can be granted.

Or again, it might be an importer who orders a consignment of frozen caribou meat from Greenland, and is surprised when the customs charge the duty payable on ordinary meat. Believing that the meat should be classed as game, which is duty-free, he institutes proceedings which ultimately come before the Court; the latter then has to define the concept of "game". And so it goes on...

As a matter of interest, it is worth noting that agricultural litigation originates mainly in Germany and the Netherlands. Oddly enough, the countries where farmers are most numerous—France and Italy—are those where the smallest number of cases originate.

Annexes

1. Proceedings brought before the Court in 1975

The cases brought before the Court of Justice in 1975 totalled 130, broken down as follows:

1. Proceedings brought by the Commission against France and Italy for failure to fulfil obligations	2
2. Proceedings brought by the Federal Republic of Germany	1
3. Proceedings brought by natural or legal persons	
— against the Commission	30
— against the Council	0
— against the Council and the Commission	2
Direct proceedings	35
4. Proceedings brought by officials	26
5. Requests to the Court of Justice from national courts for preliminary rulings interpreting Community legislation or determining its validity	69

The origin of these requests was as follows:

Germany — 26 requests, consisting of:
- 2 from the Bundesgerichtshof
- 4 from the Bundesfinanzhof
- 2 from the Bundessozialgericht
- 18 from other courts.

Belgium — 7 requests from courts of first instance or appeal courts, viz:
- 1 from the Cour de Cassation
- 6 from other courts.

Denmark — 1 request from a court of first instance.

France — 15 requests, consisting of:
- 2 from the Cour de Cassation
- 13 from other courts.

Italy — 14 requests, from courts of first instance or appeal courts:
- 1 from the Corte Suprema di Cassazione
- 13 from other courts.

Luxembourg — 1 request from a supreme court.

Netherlands — 4 requests consisting of:
- 1 from the College van Beroep
- 1 from the Tarief Commissie
- 2 from other courts.

United Kingdom — 1 request from a supreme court.

The following are some of the subjects to which these requests relate:

Subject	No. of cases [a]
Common customs tariff (Art. 3 of the Treaty of Rome)	11
Free movement of goods (Art. 9-11)	5
Customs duties (Art. 12-17)	4
Industrial property (Art. 36)	6
Agricultural market (Art. 38-47)	30
Free movement of workers (Art. 48)	5
Social security for migrant workers (Art. 51)	14
Freedom to provide services (Art. 59-60)	1
Restrictive practices, dominant positions (Art. 85-90), aid granted by Member States (Art. 92-94)	6
Quantitative restrictions (Art. 30-35)	1
National monopolies (Art. 37)	3
Internal taxation (Art. 95-99)	3
Approximation of laws (Art. 100-102)	1
Social policy (Art. 111-122)	1

[a] Do not attempt to relate these totals to the figures given on the previous page: in the breakdown by subject matter, some of these cases appear under several headings simultaneously.

These figures indicate:

— an appreciable increase in the number of cases (approximately 14 per cent) by comparison with 1974;

— a marked increase (100 per cent) in the number of requests for preliminary rulings;

— a better balance in the national origin of such requests and more variety in the subject matter;

— a marked reduction in the number of proceedings brought by officials by comparison with previous years;

— some very interesting decisions by national courts on points of Community law.

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