# Synopsis of the work of the Court of Justice of the European Communities in 1972

LUXEMBOURG 1973

## FOREWORD

This synopsis of the work of the Court of Justice of the European Communities is intended for judges, advocates and practitioners generally, and teachers and students of Comunity law.

It is issued for information only, and obviously must not be cited as an official publication of the Court, whose judgments are published only in the *Recueil de la Jurisprudence*.

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 bureaux of the European Communities at the following addresses :

BONN
Zitelmannstrasse 11
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BERLIN - 31
Kurfürstendamm 102
Deutschland

BRUXELLES - 1040
200, Rue de la Loi
Belgique

1457-COPENHAGEN-K
Grammel Torv, 4

DUBLIN
41 Fitzwilliam Square
Ireland

's-GRAVENHAGE
Alexander Gogelweg 22
Nederland

PARIS - XIVe
61-63, Rue des Belles-Feuilles
France

LONDON, S.W. 1
23, Chesham Street
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Centre européen
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Luxembourg

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*The Community Court of Justice is 20 years old*

This synopsis of the work of the Court of Justice in 1972 comes off the press, almost to the day, 20 years after the Court of Justice of the European Coal & Steel Community, then just installed in the Villa Vauban in Luxembourg, received its first case.

This anniversary encourages a brief reminiscence. Quantitatively, this appears in the statistical tables annexed at the end of this booklet. Qualitatively, 20 years of case law illustrate the distance covered in two decades on the path of European integration.

The figures concerning references for preliminary rulings, particularly, give a reassuring indication of the practical penetration of Community law into the national legal systems.

At the moment that it has just welcomed the judges who, on the Bench of the European Court, will bear witness to an enlarged Community and a Community law directing itself henceforth to about 250 million citizens, the Court of Justice has also changed its address.

Having left the old town, it is installed in its new building on the Plateau de Kirchberg, where the builders have taken care to provide a place for the high-ranking judges of Denmark, Ireland and the United Kingdom who have joined their colleagues of "the Six".

Despite its change of decor and its new face, the Court of Justice nevertheless continues to apply the same law : that of a Community of peoples dedicated to the work of peace and justice.

December 1972/January 1973

# I — CASES DECIDED BY THE COURT IN 1972

## Judgments given

During 1972 the Court of Justice of the European Communities has given 84 judgments : 44 concerned direct actions and 40 related to cases referred to the Court for a preliminary ruling by the national courts of Member States.

## Documentation

The written procedure in these cases runs to some 20,000 pages, of which 14,000 have been translated by the Language Department into the official languages of the Community. Moreover, during the year the Language Department has commenced the translation of the Court's case law into English and Danish. This work, covering 20 years of decided cases, is clearly far from being completed.

## Hearings

These cases gave rise to 153 public hearings.

## Lawyers

During these hearings, apart from the representatives or agents of the Council, Commission and the Member States, argument was heard from :

— 18 lawyers of the Federal Republic of Germany
— 10 Belgian lawyers
— 10 Italian lawyers
— 6 Luxembourg lawyers [1]
— 4 Dutch lawyers
— 3 French lawyers

Total 51 lawyers of the six Member States.

[1] This figure does not include the Luxembourg lawyers who are sometimes chosen as "addresses for service" by the lawyers of parties having no such address at the seat of the Court.

## Duration of Proceedings

Proceedings lasted for the following periods of time :

In cases originally begun before the Court, the average duration has been 10 months, the shortest being 5 months and the longest having been exceptionally prolonged to 12 months owing to procedural incidents — particularly expert evidence.

In cases arising from questions referred by national courts for a preliminary ruling, the average duration has been from 5 1/2 to 6 months (including judicial vacations), the shortest having taken 3 months and the longest, exceptionally, 9 months.

## Trends in Case Law

In 1972, the judgments of the Court of Justice have dealt with the following matters :

### *Direct actions*

1. *In an action brought by the Commission,* the Court of Justice has given only one judgment in 1972 finding that a Member State had failed to fulfil an obligation imposed on it by the EEC Treaty (non-execution of a previous judgment of the Court of Justice). Whilst noting that at the date judgment was given this State had put an end to the infringement, the Court recalled that the effect of Community law, as found with the authority of *res judicata,* imposes automatically on national authorities a prohibition upon applying any national legislation imcompatible with the Treaty and, where appropriate, the obligation to take all steps necessary to give full effect to Community law.

2. *In actions brought by several companies* on which fines had been imposed for infringements of Article 85 of the EEC Treaty (impairment of competition), the Court of Justice found that a concerted practice existed between the undertakings covering all the price increases which took place in 1964, 1965 and 1967 in the sector of aniline dyestuffs. The judgment confirmed the fines, except in the case of one fine which it reduced by 10,000 units of account. Several of these companies, which had their registered offices outside the Common Market, challenged the authority of the Commission to impose sanctions in respect of their conduct. The judgment also confirmed the authority of the Commission to impose sanctions on conduct prohibited by the Treaty which produces its effects within the Common Market.

3. *In an action brought by an association of undertakings against the Commission,* the Community Court had occasion to pronounce on the validity of a decision of the Commission declaring the fixing of compulsory prices and indicated prices for cement sold within a Member State incompatible with Article 85 [1] of the EEC Treaty. This action was dismissed on the grounds that a cartel agreement extending to the whole of the territory of a Member State has, by its very nature, the effect of consolidating the partitioning of the market on a national basis, thus impeding

the economic interpenetration aimed at by the Treaty and ensuring protection for national products.

4. *In other actions brought by private parties,* the Court of Justice had occasion to rule on a number of questions concerning the agricultural markets and customs duties.

5. *In actions brought by officials,* 16 judgments have been given.

### *Preliminary rulings*

Dealing with preliminary questions referred to it by the courts of the Member States, the Court of Justice has, in 1972, given 30 judgments interpreting provisions of Community law concerning *inter alia* the Common Customs Tariff, the origin of products coming from outside the Common Market, import subsidies and export refunds on agricultural products, freedom of movement and social security for migrant workers.

In dealing with these questions, the Community Court has had occasion to give several rulings on the direct applicability of certain provisions of Community law.

Although the Court cannot be committed by any views expressed therein, an extract from the General Report of the Commission, concerning the judgments given in 1972, will be found at the end of this booklet. (Annex IV.)

### Decisions by national courts on Community law

This summary of Community case law would be incomplete without some mention of the more important decisions given by national courts applying Community law. True, it is not always possible — despite the efforts made for several years in this direction — to obtain a complete acquaintance with such decisions. However, a promising start has been made on a central collection owing to the cooperation of the Library and Documentation Division of the Court of Justice with a very large number of national courts. [1]

The table below indicates the comparative numbers of Community cases decided directly by national courts, supreme or otherwise, in 1972 which have come to the notice of this Division :

| Member State | Supreme Courts | Other Courts | Total |
|---|---|---|---|
| Germany | 38 | 37 | 75 |
| Belgium | — | 5 | 5 |
| France | 5 | 1 | 6 |
| Italy | 4 | 9 | 13 |
| Luxembourg | — | 1 | 1 |
| Netherlands | 12 | 2 | 14 |
| Total | 59 | 55 | 114 |

[1] The staff of the Court of Justice are very interested in receiving a copy of any decision given by national courts on points of Community law, at the following address :
Court of Justice of the European Communities,
Case Postale 96, Luxembourg.

| Member State | Number | Courts of origin | | |
|---|---|---|---|---|
| Germany | 75 | 38 judgments have been given by supreme courts : | Bundesfinanzhof | 28 |
| | | | Bundessozialgericht | 4 |
| | | | Bundesverwaltungsgericht | 4 |
| | | | Bundesgerichtshof | 2 |
| | | 37 have been given by appeal courts or courts of first instance : | Oberlandesgericht | 1 |
| | | | Arbeitsgericht Rheine | 1 |
| | | | Finanzgericht Munich | 2 |
| | | | Finanzgericht Hamburg | 7 |
| | | | Finanzgericht Berlin | 5 |
| | | | Finanzgericht Rhineland-Palatinate | 2 |
| | | | Hessisches Verwaltungsgericht | 6 |
| | | | Hessisches Finanzgericht | 7 |
| | | | Landessozialgericht | 1 |
| | | | Landgericht Frankfurt | 1 |
| | | | Sozialgericht Freiburg | 1 |
| | | | Verwaltungsgericht Cologne | 1 |
| | | | Verwaltungsgericht Frankfurt | 2 |
| Belgium | 5 | 5 judgments given by courts of first instance : | Rechtbank v. Koophandel Antwerp | 1 |
| | | | Arbeidsrechtbank Hasselt | 1 |
| | | | Tribunal de Commerce Liège | 1 |
| | | | Tribunal de Travail Brussels | 2 |
| France | 6 | 5 judgments given by supreme courts : | Court of Cassation | 5 |
| | | | 1 judgment of the Court of Appeal of Paris | 1 |
| Italy | 13 | 4 judgments given by supreme courts : | Supreme Court of Cassation | 4 |
| | | 9 judgments or decisions of appeal courts or courts of first instance : | Court of Appeal of Milan | 1 |
| | | | Tribunal of Brescia | 3 |
| | | | Tribunal of Turin | 1 |
| | | | Civil and Penal Tribunal of Turin | 1 |
| | | | Tribunal of Trent | 1 |
| | | | Tribunal of Biella | 1 |
| | | | Pretura di Conegliano | 1 |
| Luxembourg | 1 | 1 given by the Court of Appeal : | Conseil sup. des Ass. sociales de Luxembourg | 1 |
| Netherlands | 14 | 12 judgments given by supreme courts : | Hoge Raad | 1 |
| | | | College van Beroep v.h. Bedrijfsleven | 9 |
| | | | Centrale Raad v. Beroep | 2 |
| | | 2 judgments of courts of first instance : | Arrondissementsrechtbank Breda | 1 |
| | | | Arrondissementsrechtbank Arnhem | 1 |

These decisions are sometimes of considerable interest, not only by reason of their subject matter but also by reason of the principles they lay down on the relationship between Community law and national law.

Here are some examples taken from the judgments of national courts :

*French Conseil d'Etat (Judgment dated 5th November 1971)*

A French company had sought the annulment of implied decisions of rejection by the Minister of Agriculture and the National Inter-trade Cereals Office to a request for indemnity representing the amount of the deposit lodged with a view to export of cereals and not reimbursed by reason of the failure to carry out such exports. (The lodging of a deposit, and the loss of it where export is not carried out, are prescribed by a Community Regulation.)

Having failed in its request at first instance (Administrative Court of Caen), the company brought an appeal to the Conseil d'État — Litigation Section.

In its judgment, the supreme administrative court held, *inter alia,* that it follows from the principle of direct applicability that where provisions of a Community Regulation applied by a Member State or one of its organs are vitiated by irregularity, it is the responsibility of the Community itself that is involved according to the procedural and substantive rules proper to it.

*Supreme Court of Cassation (Italy) (Judgment dated 8th June 1972)*

On an appeal by a company against a judgment of a court of appeal concerning the repayment of taxes collected on cognac imported from France, the Court of Cassation confirmed the principle whereby directly applicable Community rules form part of the law of the Italian State without any limitation and without any requirement that they must be compatible with previously existing Italian legislation, since these rules have acquired an immediate and automatic effectiveness, and create subjective rights for private parties without any need for adapting the internal order to the Community order.

*Supreme Court of Cassation (Italy) Jugdment dated 8th June 1972*

The judgment of the Italian Court of Cassation (full court) dated 8th June 1972, No 1771 (Ministry of Finance v. S.p.A. Filatura del Piave), draws a clear distinction between the effect, in relation to a subsequent national law, of a directly applicable rule of GATT and a rule of Community law, and recognizes that, unlike the GATT provision, Community rules "have a legislative character and a value higher, in the legal order of the State, than incompatible national laws, which must be disregarded since the public administration, private parties and the judge are bound by the Community rule." [1]

[1] cf. *Giustizia Civile,* 1972, p. 1820.

*Hoge Raad (Netherlands) (Judgment dated 14th June 1972)*

In proceedings concerning a case of double taxation of a German worker living in Belgium but employed in the Netherlands, the Dutch supreme court declared that a Member State of the Community does not commit any infringement of the principle of non-discrimination laid down by Article 7 of the EEC Treaty by failing to extend the application of a double taxation convention, concluded with a Member State, to the citizens of another Member State.

*Tribunal de Commerce of Charleroi (Belgium)*
*(Judgment dated 5th November 1971)*

Giving judgment in a case seeking to prohibit a person infringing a trade mark from making any use of the description he had borrowed, the court, whilst accepting the request, nevertheless declared (by analogy with a preliminary ruling given by the Court of Justice in another case) that the exercise of a trade mark may fall under the prohibitions of Article 85(1) whenever it appears as the object, the means or the consequence of a cartel agreement affecting in a noticeable manner trade between Member States and restricting competition within the Common Market.

*Tribunal de Travail (Labour Court) of Nivelles (Belgium)*
*(Judgment dated 3rd December 1971)*

In a case concerning the fixing of unemployment benefits, the court, referring expressly to a previous judgment of the Court of Justice, held that unemployment benefits are not included in the concept of remuneration.

*Verwaltungsgericht (Administrative Court) of Cologne (Federal Republic of Germany) (Judgment dated 22nd February 1972)*

In a case concerning the legal character of aids granted by Member States, the Administrative Court had occasion to define as follows the criteria on which the direct applicability of certain Community provisions depend :

1. The provision must be of such a nature as to create direct legal relations between the Member States and their citizens :

2. The obligations arising from the Treaty for the Member States and liable to create subjective rights for private parties must be set out in a clear unambiguous manner ; subject to this condition, it does not matter whether the provision is addressed to the Member States alone or whether it is addressed also to private parties :

3. It follows that the provision in question must tend to create, on the part of the Member States and the Community institutions, absolute obligations, and that there must not exist, as regards the States or the institutions, any discretionary power in the application of the provision :

4. Consequently, the provision must be capable of being applied without any need for the States or the Community institutions to take any kind of implementing measures.

## II — EVOLUTION OF COMMUNITY LITIGATION IN 1972

84 new cases were registered in 1972, of which 19 were direct actions by institutions, Member States or private parties, 23 actions by officials, 40 cases referred for a preliminary ruling and 2 applications for interim measures.

The following table shows the evolution of litigation between 1953 and 1972.

*Number of cases begun each year*

| | | |
|---|---|---|
| 1953 — 4 | 1960 — 23 | 1967 — 37 |
| 1954 — 10 | 1961 — 26 | 1968 — 32 |
| 1955 — 9 | 1962 — 35 | 1969 — 77 |
| 1956 — 11 | 1963 — 105 | 1970 — 80 |
| 1957 — 19 | 1964 — 55 | 1971 — 96 |
| 1958 — 43 | 1965 — 62 | 1972 — 84 |
| 1959 — 47 | 1966 — 31 | |

The 84 new cases registered in 1972 may be divided up as follows :

*Direct actions :* 19, divided as follows :

| | |
|---|---|
| — Actions brought by the Commission against Member States : | 4 |
| — Action brought by the Commission against the Council : | 1 |
| — Action brought by Member States against the Commission : | 1 |
| — Actions brought by private parties against the Commission : | 13 |
| — Interim measures : | 2 |
| Total : | 21 |
| *Actions brought by officials :* | 23 |
| Total : | 44 |
| *Cases referred for preliminary rulings :* | 40 |
| Total : | 84 |

### ANALYSIS OF THIS LITIGATION

#### Actions brought by the Commission against Member States

The Commission brought 4 actions against 2 Member States for a declaration that they had failed to fulfil their obligations, for failure to execute Community

provisions concerning marketing of forest reproductive material, rationalisation of fruit production in the Community, premiums for slaughtering of cows and premiums on investments in the coal sector.

The evolution of actions brought on the ground of default by Member States during the last six years is as follows :

1967 : 0 1968 : 3 1969 : 11 1970 : 2 1971 : 2 1972 : 4

### Action brought by the Commission against the Council

Only one action has been brought by the Commission against the Council, concerning the Staff Regulations.

### Actions brought by Member States

In 1972 Member States have not only continued to neglect the procedure which permits them to seek from the Court of Justice declarations of default against other Member States, but have been equally reticent in bringing actions against the Community institutions. Only one action of this kind has been brought, against the Commission, concerning the assumption by the European Agricultural Guidance & Guarantee Fund of liability for refunds paid on gifts of food to third countries.

The evolution of this type of case may be shown as follows

| | | |
|---|---|---|
| 1965 : 3 | 1968 : 1 | 1971 : 1 |
| 1966 : 2 | 1969 : 4 | 1972 : 1 |
| 1967 : 1 | 1970 : 1 | |

### Actions by private parties against the Institutions

This number has increased slightly in relation to the preceding year : 13 instead of 10.

*Table of the last six years :*

1967 : 4 1968 : 3 1969 : 20 1970 : 9 1971 : 10 1972 : 13

### Preliminary Rulings

The number of references for preliminary rulings, which doubled (from 17 to 32) between 1969 and 1970, continues to increase : 40 such cases were registered in 1972.

The reference for a preliminary ruling, which is an index both of judicial cooperation between the Court of Justice and the national courts of the Member

States and of the integration of Community law into national law, has undergone in the course of a decade the following evolution :

1 case in 1961 (1st reference)
5 cases in 1962
6 cases in 1963
6 cases in 1964
7 cases in 1965
1 case in 1966
23 cases in 1967
9 cases in 1968
17 cases in 1969
32 cases in 1970
37 cases in 1971
40 cases in 1972

Of the 40 cases referred for preliminary rulings in 1972, 15 came from supreme courts :

*Germany*

| | |
|---|---|
| Bundesverwaltungsgericht (Federal Administrative Court) | 2 |
| Bundesfinanzhof (Federal Fiscal Court) | 1 |
| Bundessozialgericht (Federal Social Court) | 3 |

*Netherlands*

| | |
|---|---|
| Centrale Raad van Beroep (Supreme Social Court) | 1 |
| College van Beroep voor het Bedrijfsleven (Supreme Commercial Court) | 8 |
| Total : | 15 |

25 references for preliminary rulings came from courts of first instance or appeal courts.

The subject matter of the questions referred for preliminary rulings in 1972 is :

— the Common Customs Tariff;
— the agricultural markets;
— freedom of movement for workers and social security for migrant workers;
— aids granted by States;
— procedural questions in connection with references for preliminary rulings;
— the Association between the European Economic Community and the Associated African and Malagasy States.

As in the previous years, the agricultural markets and social security for migrant workers (24 + 10 cases out of 40) easily hold first place among the questions referred.

These cases originated thus :

| Member State | Number | Courts of origin | | |
|---|---|---|---|---|
| Germany | 6 | from supreme courts : | Bundesverwaltungsgericht | 2 |
| | | | Bundesfinanzhof | 1 |
| | | | Bundessozialgericht | 3 |
| | 14 | from courts of first instance or appeal. | | |
| Belgium | 4 | from courts of first instance | | |
| France | 1 | from a court of first instance | | |
| Italy | 4 | from courts of first instance | | |
| Luxembourg | — | no reference | | |
| Netherlands | 9 | from courts of last instance : | Centrale Raad van Beroep | 1 |
| | | | College van Beroep voor het Bedrijfsleven | 8 |
| | 2 | from courts of first instance | | |
| Total | 40 | | | |

## III — DEVELOPMENT OF INFORMATION ON COMMUNITY LAW

While the judicial activity of the Court of Justice continues to attract the attention of judicial, legal and economic circles within the Community, and about 50 correspondents of the Press and of news agencies have followed the public hearings of the Court, particularly in the competition cases, the accession of Denmark, Ireland and the United Kingdom, which became certain during 1972, continued to arouse the interest of legal and economic circles in these States. Hence, in 1972, the range of visits, individual or collective, to the Court has attained even greater diversity.

Moreover, just as in 1969, the Court of Justice and the Legal Service of the Commission brought together in Luxembourg, in 1972, 25 editors-in-chief of legal reviews and law reports, including, for the first time, law reporters from Great Britain, Ireland and Denmark.

The students of the Ecole Nationale d'Administration of France (Section for advanced legal studies) came for a week to study the proceedings of the Court of Justice.

The teachers of the Ecole Nationale de la Magistrature of France (Bordeaux) studied the proceedings of the Court of Justice for a week in May (first half) and a week in October (second half).

As happens each year, the Court of Justice, with the agreement of the Ministers of Justice of the Member States and at the request of some of them, has held two study days at the seat of the Court with high-ranking national judges. Those taking part were :

29 German judges
12 Belgian judges
30 French judges
30 Italian judges
4 Luxembourg judges
12 Dutch judges
11 British judges
6 Danish judges
4 Irish judges

Those taking part in the seminar for national judges were :

10 German judges
6 Belgian judges
10 French judges
10 Italian judges
2 Luxembourg judges
6 Dutch judges

In addition, German judges taking part in a study meeting of the Stresemann Foundation (Federal Republic of Germany) and the legal secretaries of the Constitutional Court of Karlsruhe visited the Court.

The Court of Justice also welcomed the President and Members of the European Court of Human Rights.

Thus, 251 high-ranking national judges have been welcomed at the Court of Justice in 1972.

In response to an invitation from the national judicial authorities, the Court visited Dublin, after having welcomed in Luxembourg the leading members of the Irish judiciary.

In October 1972 the Court of Justice, in response to an invitation from the Bundesfinanzhof (Federal Fiscal Court), paid a visit to that high-ranking German court in Munich.

Thus the Court of Justice received 86 visits, *a total of 897 + 251 = 1148 visitors*. Details are shown in the following tables :

## Visits to the Court of Justice of the European Communities, Luxembourg, in 1972

| | Germany | Belgium | France | Italy | Luxembourg | Netherlands | United Kingdom | Ireland | Denmark | Third Countries | Mixed Groups (*) | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Individual visits and seminars | — | — | 1 | — | — | — | 2 | 1 | 2 | 6 | — | 12 |
| Advocates | — | 2 | 1 | 1 | — | — | 13 | 4 | — | 9 | — | 30 |
| Students | 35 | 50 | 177 | — | — | 132 | 1 | — | 12 | 96 | — | 503 |
| Journalists | 8 | 2 | 1 | — | — | 1 | 12 | — | 1 | 5 | 191 | 221 |
| Mission from third States | — | — | — | — | — | — | — | — | — | 26 | — | 26 |
| Group seminars * | — | — | — | — | — | — | — | — | — | — | 105 | 105 |
| Total | 43 | 54 | 180 | 1 | — | 133 | 28 | 5 | 15 | 142 | 296 | 897 |
| High-ranking Irish judges | | | | | | | | | | | | 7 |
| High-ranking Norwegian judges | | | | | | | | | | | | 16 |
| Judges' study days | | | | | | | | | | | | 65 |
| Legal Secretaries of the Constitutional Court of Karlsruhe | | | | | | | | | | | | 12 |
| Seminar for judges | | | | | | | | | | | | 45 |
| Stresemann Institute — Germany | | | | | | | | | | | | 30 |
| Second meeting of judges | | | | | | | | | | | | 76 |
| Total | | | | | | | | | | | | 251 |
| Grand Total | | | | | | | | | | | | 1 148 |

(*) Trainees from the Commission and other mixed groups where the nationality of the participants was not stated.

The decisions of the Court have been published during 1972 by the following journals :

| | |
|---|---|
| *Germany* | Außenwirtschaftsdienst des Betriebsberaters |
| | Deutsches Verwaltungsblatt |
| | Europarecht |
| | Neue Juristische Wochenschrift |
| | Die Oeffentliche Verwaltung |
| | Vereinigte Wirtschaftsdienste (VWD) |
| | Wirtschaft und Wettbewerb |
| | Zeitschrift für das gesamte Handels- und Wirtschaftsrecht |
| *Belgium* | Cahiers de Droit européen |
| | Journal des Tribunaux |
| | Rechtskundig Weekblad |
| | Jurisprudence commerciale de Belgique |
| | Revue belge de droit international |
| | Revue de droit fiscal |
| | Tijdschrift voor Privaatrecht |
| *France* | Annuaire français de droit international |
| | Droit social |
| | Le Droit et les Affaires |
| | Gazette du Palais (4 special editions) |
| | Jurisclasseur périodique (The judicial week) |
| | Recueil Dalloz |
| | Revue critique de droit international privé |
| | Revue internationale de la concurrence |
| | Revue trimestrielle de droit européen |
| | Sommaire de sécurité sociale |
| | La vie judiciaire |
| *Italy* | Diritto dell'economia |
| | Foro italiano |
| | Foro Padano |
| | Giurisprudenza italiana |
| | Rivista di diritto europeo |
| | Rivista di diritto internazionale |
| | Rivista di diritto internazionale privato e processuale |
| *Luxembourg* | Bulletin du Cercle François-Laurant |
| | Bulletin de la Conférence Saint-Yves |
| | Pasicrisie luxembourgeoise |

*Netherlands* Administratieve en Rechterlijke Beslissingen
Ars Aequi
Common Market Law Review
Nederlandse Jurisprudentie
Rechtspraak van de Week
Sociaal-economische Wetgeving

Among the publications of third States may be mentioned the "Common Market Law Reports", which publishes all the judgments of the Court of Justice, the "Common Market Reporter" (United States) and the "Schweizer Juristenzeitung". Since May 1972 the "Times" and the Danish weekly "Weekend Avisen" regularly publish summaries of the judgments of the Court.

## Composition of the Court of Justice since 1st January 1973

| | |
|---|---|
| *President* | LECOURT (Robert) |
| *Presidents of Chambers* | MONACO (Riccardo) - First Chamber<br>PESCATORE (Pierre) - Second Chamber |
| *Judges* | DONNER (André)<br>MERTENS DE WILMARS (Josse)<br>KUTSCHER (Hans)<br>O DALAIGH (Cearbhall)<br>SØRENSEN (Max)<br>MACKENZIE STUART (Alexander John) |
| *Advocates-General* | ROEMER (Karl)<br>TRABUCCHI (Alberto)<br>MAYRAS (Henri)<br>WARNER (Jean-Pierre) |
| *Registrar* | VAN HOUTTE (Albert) |

*ANNEX II*

## Former Presidents of the Court of Justice

| | |
|---|---|
| PILOTTI (Massimo) † | — President of the Court of Justice of the European Coal and Steel Community from 4 December 1952 to 6 October 1958 |
| DONNER (André) | — President of the Court of Justice of the European Communities from 7 October 1958 to 7 October 1964 |
| HAMMES (Charles-Léon) † | — President of the Court of Justice of the European Communities from 8 October 1964 to 8 October 1967 |

## Former Members of the Court of Justice

| | |
|---|---|
| PILOTTI (Massimo) † | — President and Judge at the Court of Justice from 4 December 1952 to 6 October 1958 |
| SERRARENS (P.J.S.) † | — Judge at the Court of Justice from 4 December 1952 to 6 October 1958 |
| VAN KLEFFENS (A.) | — Judge at the Court of Justice from 4 December 1952 to 6 October 1958 |
| CATALANO (Nicola) | — Judge at the Court of Justice from 7 October 1958 to 8 March 1962 |
| RUEFF (Jacques) | — Judge at the Court of Justice from 4 December 1952 to 18 May 1962 |
| RIESE (Otto) | — Judge at the Court of Justice from 4 December 1952 to 31 January 1963 |
| ROSSI (Rino) | — Judge at the Court of Justice from 7 October 1958 to 7 October 1964 |
| DELVAUX (Louis) | — Judge at the Court of Justice from 4 December 1952 to 8 October 1967 |
| HAMMES (Charles-Léon) † | — Judge at the Court of Justice from 4 December 1952 to 8 October 1967, President of the Court from 8 October 1964 to 8 October 1967 |
| LAGRANGE (Maurice) | — Advocate-General at the Court of Justice from 4 December 1952 to 7 October 1964 |
| STRAUSS (Walter) | — Judge at the Court of Justice from 1 February 1963 to 6 October 1970 |
| GAND (Joseph) | — Advocate-General at the Court of Justice from 7 October 1964 to 6 October 1970 |
| DUTHEILLET DE LAMOTHE (Alain) † | — Advocate-General at the Court of Justice from 2 October 1970 to 2 January 1972 |

## Summary reminder of the 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, the Member States or private parties in 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) it desires to put to the Court of Justice. This document is addressed by the registry of the national court to the registry of the Court of Justice,[1] accompanied in appropriate cases by a dossier designed to make known to the Court of Justice the background and limits of the questions posed.

After a period of two months during which the Commission, the Member States and the parties to the national proceedings may address observations to the Court of Justice, they will be summoned to a hearing at which they may submit oral observations, through their agents in the case of the Commission and the Member States, or through lawyers who are members of a Bar of a Member State, or, in certain circumstances, solicitors.

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

### *B—Direct actions*

The matter is brought before the Court by an application addressed by a lawyer to the Registrar (Luxembourg-Kirchberg, Case Postale 96) by registered post.

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

The application should indicate :

— 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 a brief statement of the grounds on which the application is based ;
— the submissions of the applicant ;
— an indication of the nature of any evidence founded upon ;
— the address for service in the place where the Court has its seat, with an indication of the name of the person who is authorised and has expressed willingness to accept service.

[1] Court of Justice of the European Communities, Kirchberg, Case Postale 96, Luxembourg. Telephone : 47621 ; Telegrams : CURIALUX ; Telex : CURIALUX 510, Luxembourg.

The application should also be accompanied by the following documents :

— the measure the annulment of which is sought, or, in the case of an application against an implied decision, documentary evidence of the date on which an institution was requested to act ;

— a document certifying that the lawyer is a member of the Bar of one of the Member States or, as the case may be, a solicitor ;

— 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 authorised 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 the defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them, followed by a reply on the part of the applicant and finally a rejoinder on the part of the defendants.

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

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

# COMMUNITY LAW

## EXTRACT

from Chapter VII of the General Report of the Commission for 1972

*Community case law*

*574.* The Court of Justice has again stated, particularly in its judgments of 7 March 1972 and 17 May 1972 [1] that a Community regulation by reason of its very nature and its function in the system of sources of Community law, produces immediate effects and as such is capable of conferring rights on individuals which national legal systems have the obligation to protect. When it is a matter, in particular, of financial claims against the State, the exercise of these rights may not be made subject to national implementing provisions other than those which the Community regulation might require, in other words the State may not oppose payment by producing arguments from its legislation or administrative practice.

This effectiveness of Community law may, moreover, not vary according to the various fields of national law—in the particular case decided by the Court of Justice, criminal law—within which its effects are felt. [2]

*575.* The Court has reaffirmed the supremacy of Community law over conflicting municipal law. In the abovementioned judgments of 7 March and 17 May 1972 it pointed out that the effect of regulations, as provided for in Article 189 EEC, is opposed to the application of any provisions of the internal legal order, even subsequent ones, incompatible with the Community regulation. Moreover, the decision of 13 July 1972 [3], which censures the non-execution by a Member State of a judgment of the Court establishing the lack of conformity between a national provision and Community law, is particularly noteworthy, as it clearly lays down :

(i) that the effect of a directly applicable Community rule implies for the national authorities an automatic prohibition on applying a conflicting municipal provision and, where appropriate, the obligation to take all action to facilitate the full implementation of Community law;

(ii) that this full effect applies, at the same time and with identical effects, throughout the whole extent of the Community's territory without it being possible for the Member States to place any obstacles whatsoever in the way, and

(iii) that the attribution by the Member States to the Community of the rights and powers corresponding to the provisions of the Treaty involves a definitive limitation of their sovereign rights against which the invocation of provisions of municipal law of whatever nature shall be of no avail.

[1] CJEC, 7 March 1972 (S.p.a. Marimex/Ministry of Finance of the Italian Republic, 84-71) *Rac.* 1972, p. 89 ; CJEC, 17 May 1972 (Leonesio/Ministry of Agriculture and Forests of the Italian Republic, 93-71). See earlier CJEC 14 December 1971 (Politi/Ministry of Finance of the Italian Republic, 43-71) *Rac.* 1971, p. 1039.

[2] CJEC 21 March 1972 (Attorney General of the Italian Republic/SAIL, 82-71), *Rac.* 1972, p. 119.

[3] CJEC 13 July 1972 (EC Commission/Italian Republic, 48-71).

*National case law*

*576.* It is the task of the courts of the Member States to apply Community law and we may note that they are showing an ever greater awareness of this role. Indeed, it is the manner in which these courts interpret and apply the provisions of community law which in the long run determines the efficacy of the Community legal order. This is why municipal case law is of such importance for the development of Community law, particularly as regards the direct applicability of Community provisions and their supremacy over national law.

577. This is also the case in particular with regard to the legal nature of the Community order.

The national courts have continued, as in the past, to recognize expressly the independence and autonomy of the Community legal order and to draw from it the legal consequences which have been reflected in the direct application and supremacy of various provisions of Community law.

In its judgment of 22 February 1972 [1] the Cologne Administrative Court followed in noteworthy fashion the constant jurisprudence of the Court of Justice. According to it, "a public authority of a particular kind... has been born; it is autonomous and independent of the public power in the individual Member States; its acts need neither to be ratified by the Member States nor may they be annulled by them". This "inter-State organ endowed with sovereignty" constitutes "an autonomous legal order" which is attached neither to municipal law nor to international law.

An increasing number of Italian courts have also recognized and unambiguously confirmed this autonomy of the Community legal order. The judgment of the Italian Court of Cassation of 8 June 1972 [2] is specially worthy of mention in that it expressly recognizes the autonomy of the Community legal order as limiting the sovereignty of the Member States, and in particular their power to legislate. The Milan Appeal Court pronounced itself to the same effect in its judgment of 12 May 1972 in the case of SAFA/the Italian tax administration. [3] After having compared the legal nature of the traditional international treaties and the EEC Treaty, the Court comes to the conclusion that the fundamental distinction resides in the directly applicable provisions of the EEC Treaty. Similarly, the judgment of the Civil Court of Brescia of 16 December 1951/5 January 1972 [4] in the matter of Sandrini/Ministry of Agriculture and Forests, made a distinction between the EEC Treaty and other international treaties which follows similar lines "... the Community provisions must be considered as a supranational legal order".

*578.* The independence of the Community legal order and the objectives it pursues can be achieved only by the primacy of Community law. On this point the abovementioned decisions show a remarkable identity of viewpoint and this deserves

[1] Not yet published.
[2] Isobella/Ministry of Finance, 97 *Il Foro Italiano,* 1963 (No. 7-8/1972).
[3] Not yet published.
[4] 97 *Il Foro Italiano,* I, 1388 (No. 5/1972).

stressing. According to the judgment of the Administrative Court of Cologne on 22 February 1972 already mentioned, Community law has primacy over municipal law and even, implicitly, over subsequent national law. The judgment of the Administrative Court of the Saar of 26 November 1971 (tax for plant health check) [1] goes even further in this direction, since it expressly mentions the supremacy of Community law over subsequent municipal law. It bases this supremacy on the directly applicable provisions of Articles 9 and 13 of the EEC Treaty. The Court refers to the judgment of the Court of Justice of 17 December 1970 (SACE Spa) [2] and not to the judgment of 15 July 1964 (ENEL). [3]

Whereas, in its abovementioned Isolabella judgment of 8 June 1972, the Italian Court of Cassation stresses supremacy at least with respect to earlier laws, it would seem that the Brescia Civil Court wished to go still further. It decided "... that the conflicts arising between Community norms and national norms must be settled in conformity with the principle of the supremacy of Community law, which is based on Article 189 of the EEC Treaty".

To this judgment may be contrasted that of the Rome Civil Court of 18 May/11 November 1971 in the matter of ICIC/Ministry of External Trade which contests the supremacy of the EEC Treaty over subsequent national norms. In this case the Court refers to the ENEL judgment of the Italian Constitutional Court of 24 February/7 March 1964, [4] which considers the conflict between the EEC Treaty and a subsequent law as a mere conflict between two ordinary laws so that supremacy is given to the subsequent national law.

*579.* The direct applicability of a provision of Community law is only then meaningful if the national courts are prepared not to apply the provisions of contrary municipal law. Several decisions of the courts of the Member States also reveal in this respect a more or less uniform attitude and are inclined to recognize the supremacy of Community law and its direct applicability in the domestic legal order.

Particularly interesting is the judgment of the French Court of Cassation (Criminal Chamber) of 7 January 1972 in the Guerrini case, [5] which, on the basis of Article 55 of the French Constitution, taken in conjunction with Article 189 of the EEC Treaty, recognized the supremacy of a regulation and its direct applicability. In the opinion of this supreme judicial authority the Community regulation automatically entails abrogation of the municipal norm which conflicts with it.

By its abovementioned judgment of 26 November 1971, the Administrative Court of the Saar took a similar decision concerning the prohibition in Articles 9 and 13 of the EEC Treaty against the introduction of new import and export duties or taxes of equivalent effect. According to this court, this prohibition applies without any restriction and its application does not depend on any internal legislative act.

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[1] *18 Aussenwirtschaftsdienst des Betriebs-Beraters,* p. 141-144/1972.
[2] CJEC, Coll. 1970, p. 1213.
[3] CJEC, Coll. 1964, p. 1141.
[4] XIX. *Il Foro Padano-Giurisprudenza,* 9 (No. 3/1964).
[5] *Recueil Dalloz Sirey,* I, p. 497-501, No. 30/1972.

The decisions of the Italian courts mentioned above also reveal a similar attitude. In conformity with the Isolabella judgment of the Italian Court of Cassation of 8 June 1972, the prohibition of Article 95 of the EEC Treaty is directly applicable without revoking or amending any contrary municipal law. In the same way the Milan Appeal Court decided, in its judgment of 12 May 1972 (in the SAFA case), that Article 13 of the EEC Treaty had automatically deprived of effect the law which was in conflict with it.

The direct applicability of Community regulations in municipal law is generally recognized even in the cases where national implementing measures are required. In its judgment of 16 December 1971, the Brescia Civil Court confirmed the direct applicability of a regulation even when the Member State omitted to take the implementing measures laid down by such regulation— the provision of the necessary financial resources in the specific case at issue. The Court made it perfectly clear that, in its opinion, this omission could not in any way be an obstacle to the direct applicability of the regulation. It will be noted that this judgment was rendered before the Court of Justice had had the occasion to solve this question in the same way. [1]

However, the abovementioned judgment of the Civil Court of Rome of 19 May/11 November 1971 is diametrically opposed to what has just been said, since it expressly recognizes as valid the usual practice of including a Community regulation in an Italian norm. The interpretation of a regulation in conformity with Article 177 of the EEC Treaty would be automatically withdrawn from the jurisdiction of the Court of Justice once a national law took over the substantial content of a regulation or replaced this regulation as a source of law.

In this context mention must further be made of the judgment of the French Court of Cassation of 10 November 1970, in the case of the French Republic against von Saldern *et al.* Although the Court did not decide that the Community regulations (on the customs value of goods and export of capital) were applicable to the particular case, it felt obliged to point out that "these regulations concern only the Member States... and may not be extended beyond these limits". [2]

## THE GUARANTEES FOR THE UNIFORM APPLICATION OF COMMUNITY LAW

### *Uniform interpretation and application*

*580.* Except where there is explicit or implicit reference back to municipal law, the legal concepts used by Community law must be interpreted and applied uniformly throughout the Community without any possibility for the Member States to derogate from this uniformity. [3]

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[1] CJEC, 17 May 1972 (Leonesio/Ministry of Agriculture and Forests of the Italian Republic, 93-71), *Rac.* 1972, p. 287.
[2] 7 *Revue trimestrielle de droit européen,* 1971, p. 504.
[3] CJEC 1 February 1972 (Hagen OHG/Einfuhr- und Vorratsstelle für Getreide und Futtermittel, 49-71) and (Wünsche OHG/Einfuhr- und Vorratsstelle..., 50-71), *Rec.* 1972, pp. 23 and 53.

*The execution by the States of their obligations*

*581.* In the same way as in past years, control of the proper application of Community law by the Member States has, this year again, made up an important part of the administrative activities carried out by the Commission. At the beginning of 1972, 109 cases in which proceedings for infringement of the Treaties had been officially initiated were pending with the Commission's departments. During the year about 40 of these cases could be closed after the Member States had put an end to the alleged infringement. On the other hand a roughly equivalent number of new procedures had been initiated by the end of the period of reference, so that a little more than one hundred procedures were again pending at the end of the year.

As has been the case hitherto, the bulk of the infringements concern the EEC field. In the ECSC sphere only one procedure was added to the list in 1972. As regards Euratom there was a very important decision from a general point of view of the Court of Justice on 14 December 1971 concerning an infringement of the Treaty [1] but there have been no new procedures.

The number of infringements in respect of which the Commission, despite the formal opening of a procedure, and also the dispatch of a motivated opinion, encounters persistent resistance from the Member States, happily continues to be very small. During the year under reference only three cases have been to the Court of Justice. [2] If none the less a relatively important number of proceedings are pending before the Commission, and their completion often requires much time, [3] this is due less to fundamental divergences of views on the tenor and scope of Community law than to the cumbersome nature of the national legislative procedures which, even when a solution of principle has already been found, often drag out for years. Contrary to what happened during the early years of the Community, it is now simply a matter in the vast majority of cases of expediting as far as possible the national procedure for the adaptation of internal provisions to Community law. The growing awareness by national courts of their role in the application of Community law and the increasingly marked tendency to ensure the direct effect of this law, particularly in litigation between Member States and their subjects, could contribute to the acceleration of the process of adaptation.

*582.* The judgment of the Court already mentioned in case 48/71 [4] is also important in this respect. It puts the final point to a case so far unique in the history of the Communities in which a Member State, after more than two years, had not executed a decision of the Court of Justice [5] noting its failure to act, and in which the Commission had consequently found itself obliged to institute a new procedure for infringement against the Member State in question [6] basing itself this time on a

[1] Case 7/71, *Rec.* 1971, p. 110. See *Fifth General Report,* Nos. 586 and 599.
[2] Case 30/72 (*OJ* No. C 75, 12 July 1972, p. 11) and case 39/72 (*OJ* No. C 81, 25 July 1972, p. 9).
[3] See points A 4 and 5 and ol the Commission's reply to written question No. 501/79 by Mr. Vredeling (*OJ* No. C 73, 18 June 1970, p. 1).
[4] CJEC, 13 July 1972 (Commission/Italian Republic).
[5] CJEC 10 December 1968 (Commission v. Italian Republic, 7-68) *Rac.* 1968, p. 633.
[6] *Fifth General Report,* No. 600, p. 473.

violation of Article 171 of the EEC Treaty. In this procedure, by reason of the direct applicability of the provision infringed which had been established in another case, [1] the Court of Justice decided that for the removal of the export tax in question, a national law was not absolutely necessary, but that a simple administrative instruction could also order that the tax be not charged.

The Court of Justice confirmed the supremacy of Community law over all conflicting national norms and held that "the argument that its infringement can be ended only by the adoption of constitutionally appropriate measures to rescind the provision instituting the tax" is tantamount to a negation of this supremacy. According to the judgment quoted, the prohibition on applying a national provision recognized to be incompatible with Community law flows automatically, for the competent national authorities, from the effect of the Community law as judicially recognized with respect to the Member State in question.

At the last minute, that is to say at the end of the oral procedure, the Member State in question then rescinded with retroactive effect the tax in dispute by a decree law, afterwards ratified by the Parliament, which provided that the taxes already paid would be refunded on request to the parties concerned.

## SOURCES OF COMMUNITY LAW : INSTRUMENTS ENACTED BY THE INSTITUTIONS

*583.* A decision which indicates clearly and coherently the essential *de facto* and *de jure* elements on which it is based can be considered as sufficiently motivated. For this reason, a Commission decision inflicting a fine on an undertaking for infringement of the rules of competition does not necessarily have to express an opinion on all the arguments advanced by this undertaking in its defence. [2]

Neither is the Commission obliged to set out in the grounds for its decision all the arguments it could later invoke in the event of an action brought against such decision. Similarly, the absence of an argument concerning the bases of the Commission's powers which is not of a nature to impair the legality of a decision does not vitiate the latter for deficiency of motivation. [3]

The fact that a decision made with respect to several distinct undertakings adopts a position on arguments put forward by some of these only, without specifying their identity, does not constitute a defect which can vitiate the legality of such decision. [4]

In order to fulfil its function a time-limit for prescription must be fixed in advance. The fixing of this time-limit and of its implementing procedures is, how-

[1] CJEC 26 October 1971 (Eunomia di Porro/Ministry of Education of the Italian Republic, 18/71), *Rac.* 1971, p. 811.
[2] CJEC 14 July 1972 (Casella Farbwerke Mainkur/Commission, 55-69, and Farbwerbe Hoechst/Commission, 56-69).
[3] CJEC 14 July 1972 (Imperial Chemical Industries/Commission, 48-69, Geigy/Commission, 52-69, Sandoz/Commission, 53-69).
[4] CJEC 14 July 1972 (Badische Anilin- und Sodafabrik/Commission, 49-69, Azienda Colori Nazionali/Commission, 57-69).

ever, solely for the Community legislator to decide, as the Court had pointed out in three judgments of 15 July 1970. [1] But even in the absence of any text, the Court held in the judgments of 14 July 1972 that the requirement of legal certainty precludes the Commission indefinitely postponing the exercise of its power to inflict fines for infractions.

Irregularities in the procedure of notification of an individual decision do not affect the act itself and may not vitiate it. Their only effect can be, under certain circumstances, to prevent the time-limits for appeal against the act beginning to run. But once the undertaking has had cognizance of the text of the decision and has made use of its rights of appeal within the usual time-limits, the question of any irregularities in notification is immaterial and the undertaking may not use them as an argument. [2]

There is nothing to prevent the Commission from publishing in the *Official Journal* an individual decision inflicting a fine on undertakings for infringements of the rules of competition provided that such publication does not constitute divulgence of business secrets of these enterprises. [3]

## EXTRACONTRACTUAL LIABILITY OF THE COMMUNITY

*584.* The Community's non-contractual liability within the meaning of Article 215, paragraph 2 (EEC) for the damage suffered by private individuals, in the case of normative acts involving economic policy measures, may only be engaged if there is an adequately substantiated violation of a higher rule of law protecting such persons. [4]

The Court has also pronounced on the Community's liability towards its agents as regards the supply of erroneous information. Save exception, the adoption of an incorrect interpretation of the Staff Regulations does not necessarily constitute an error in law and the fact that the administration has invited the parties concerned to obtain information from the competent departments does not necessarily oblige it to guarantee the accuracy of the information supplied and to assume liability for any damage that inaccurate information might cause. On the other hand, the fact that the departments are tardy in correcting this information, after the error of interpretation has been discovered, is an error calculated to involve the liability of the Community. [5]

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[1] CJEC (Chemiefarma v. Commission, 41-69, Buchler v. Commission, 44-69, Boehringer Mannheim, 45-69), *Rec.* 1970, pp. 661, 733 and 769.
[2] CJEC 14 July 1972 (Imperial Chemical Industries/Commission 48-69, Geigy/Commission, 52-69, and Sandoz/Commission, 53-69).
[3] CJEC 14 July 1972 (Francolor/Commission, 54-69) and, earlier in the same sense, CJEC 15 July 1970 (Chemiefarma/Commission, 41-69) *Rec.* 1970, p. 661.
[4] CJEC 13 June 1972 (Compagnie d'approvisionnement, de transport et de crédit and Grands Moulins de Paris v. Commission, 9 and 11-71) and earlier in the same sense CJEC 2 December 1971 (Aktien-Zuckerfabrik Schöppenstedt/Council, 5-71) *Rec.* 1971, p. 975.
[5] CJEC 13 July 1972 (Heineman/Commission, 79-71).

*585.* In its judgment of 13 June 1972, [1] and in conformity with a position already expressed in its decisions of 28 April 1971 and 2 December 1971, [2] the Court has confirmed that the action for damages under Articles 178 and 215 (EEC) was created as an autonomous procedure with its own particular function within the system of possible actions and was made subject to conditions fitted to its specific object. This procedure differs from an action for annulment in that it aims not at suppressing a particular measure, but at making good the damage caused by an institution in the exercise of its functions.

This principle of the autonomy of an action for damages in relation to an action for annulment also applies to actions by European civil servants. [3]

*586.* In two judgments of June 1972, [4] the Court basing itself on Article 184 (EEC) (exception of illegality), decided on the legality of a regulation concerning complaints by officials, made pursuant to Article 91 of the Staff Regulations, against decisions applying the same.

## 2. Interpretation and application of the basic rules of Community law

*587.* The case law of the Court of Justice in the past year contains many important elements, notably in the matters dealt with below.

### *Free movement of goods*

#### *The concept of measures having equivalent effect to quantitative restrictions*

*588.* In the system instituted by the EEC Treaty, the prohibition of quantitative restrictions on exports or imports needs to be complemented by the prohibition of measures having an effect equivalent to such quantitative restrictions. There could be no true Common Market if only measures which were obviously or customarily included in the expression quantitative restrictions — quotas and outright import and export bans — were abolished : just as important is the abolition of all other measures calculated to preclude or restrict trade, however described. "Measures having equivalent effect" have therefore to be defined with reference to their effect on imports or exports. Just as a quantitative restriction precludes imports or exports in excess of the permitted amounts (which may even be nil), so a measure having equivalent effect partly or wholly precludes imports or exports which might otherwise take place.

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[1] Compagnie d'approvisionnement, et transport et de crédit, and Grands Moulins de Paris/Commission, 9 and 11-71.
[2] Lütticke/Commission, 4-69, Rec. 1971, p. 325, and Aktien-Zuckerfabrik Schöppenstedt/Council, 5-71, *Rec.* 1971, p. 975.
[3] Heinemann/Commission, 79-71.
[4] Bertoni-Sabbatini/European Parliament, 20-71, and Baudin-Chollet/Commission, 32-71.

Nevertheless, not every measure which restricts trade in this way is to be stigmatized as a "measure having equivalent effect", for some measures are in any event specifically referred to in the Treaty (customs duties, charges, aids), while others are *per se* permitted, being the visible or hidden expression of powers expressly or tacitly retained by the Member States : this is so, for instance, where there are no Community trade rules or customs clearance procedures. A measure which is lawful as being within Member States' powers, cannot be held unlawful by reason of its restrictive effect on imports or exports if this effect is an inevitable concomitant : such measures are to be treated as having equivalent effect to quantitative restrictions only if their restrictive effect on trade is greater than is necessary to their purpose (the purpose having, of course, to be in accordance with Community law).

*589.* Clearly Member States' rights may have to be relinquished as Community integration proceeds. For this reason the same situations may wear different aspects at different stages in this process. This is the case with the automatic granting of import and export licences under the TLA system. Prohibition of imports or exports save by licence necessarily has a restrictive effect on trade, even if the licence is issued automatically and at once : although a mere formality, licensing is a compulsory preliminary which, while not actually restricting trade, does nevertheless complicate and could discourage it. During the transitional period the arrangement together with the application of exceptions to the free movement of goods within the Community, may have been a justifiable means of controlling trade.

At the present point in time, however, Articles 30 and 34(1) EEC contain a complete prohibition on all quantitative restrictions and measures having equivalent effect in trade between Member States, so that, subject to the exceptions specified in Community law itself, even purely formal insistence on the obtaining of a licence is now incompatible with the terms of these Articles. Automatic licensing may on the other hand still be in order in dealings with third countries, inasmuch as the prohibition on quantitative restrictions and measures having equivalent effect vis-à-vis third countries, is not absolute with respect to the common agricultural and the common commercial policy.

The Court found to this effect in consolidated cases 51-54/71.[1]

*Charges with effect equivalent to customs duties*

*590.* According to Article 9 of the EEC Treaty, the Community is based on a customs union; this includes the prohibition, as between Member States, of customs duties and all charges having equivalent effect. This prohibition, which is of capital importance for the free movement of goods, has already been the subject, during past years, of about twenty judgments of the Court of Justice, the majority of which deal more especially with the concept of charges having an effect equivalent to customs duties, that is to say the definition and the application

[1] CJEC, 15 December 1971 (International Fruit Company/Produktschap voor Groenten en Fruit, consolidated cases 51-54/71), *Rec.* 1971, p. 1107.

of this term and also the often difficult problem of its delimitation vis-à-vis "internal taxation" referred to in Article 95 of the EEC Treaty.

One of the most recent judgments of the Court of Justice, decided in 1972,[1] concerns the interpretation of the prohibition of charges with effect equivalent to customs duties in a field of considerable economic importance, namely the pecuniary charges claimed by the Member States for health control on imports of cattle and meat. In this judgment, the Court refuted the argument that justification of the control measures themselves by Article 36 of the EEC Treaty would also bring with it the lawfulness of the related charges. Nor did it accept the argument that these charges would constitute the appropriate counterpart for services rendered by the national administrations. According to the Court, such pecuniary taxes could not escape the prohibition on charges with effect equivalent to customs duties unless they were part of a general system of internal dues systematically subjecting national products and imported products according to the same criteria. The Court therefore concluded that "pecuniary charges imposed for reasons of health control on products crossing the frontier, which are determined according to special criteria not comparable with the criteria used in fixing the pecuniary charges on similar national products, are to be considered as charges of effect equivalent to customs duties".

## *The common agricultural policy*

### *Relationship between Tariff provisions and agricultural Regulations*

*591.* The principle that the rules governing the common organization of the agricultural markets are autonomous was unequivocally confirmed by the Court in case 92/71.[2] The agricultural regulations (e.g. Article 9(2) of Regulation No. 865/68) admittedly provide that the rules for the interpretation and implementation of the Common Customs Tariff are to apply to the tariff classification of products subject to the agricultural market organizations set up by the regulations in question. Nevertheless, in the Court's view, while this classification determines the charging of duties, it can have no more than guidance value as to the charging of levies. Taken together with an earlier judgment of 17 June 1971,[3] the judgment in case 92/71 affords a striking illustration of the separate status of the agricultural legislation : both dealing with the same provision in the Tariff, concerning the meaning of products with or without added sugar, the two judgments embody two different interpretations according to whether the point at issue is the charging of customs duties or of agricultural levies.

The judgment in case 92/71 in any event merits attention for its breadth of scope, in that it shows certain meanings and definitions in the Tariff to be legal fictions (not open to rebuttal), and states that some of the Tariff's provisions

[1] CJCE, 14 December 1972 (S.p.A. Marimex/Administration des finances de l'État italien, 29/72).
[2] CJEC, 26 April 1972 (Interfood/Haupzollamt Hamburg, case 92/71), *Rec.* 1972, p. 231. See also CJEC, 21 March 1972, case 82/71, discussed in secs. 574 and 597.
[3] CJEC, 17 June 1971 (Gebrüder Bagusat/Hauptzollamt Berlin-Packhof, case 3/71), *Rec.* 1971, p. 577.

are doing double duty in that they apply to both customs charges and the application of the market organizations.

*The non-discrimination principle*

*592.* The Court in a judgment of 13 June 1972[1] found that there had been no discrimination contrary to Article 40 EEC in the Council's having only partly offset the effects of the devaluation of the French franc on the prices of imports from third countries, and then offset in full the effects of the widening of the margins of fluctuation of the mark and guilder on the prices of Community products exported to third countries. After pointing out that in any case a Regulation could not be questioned by reason of subsequent circumstances the Court ruled that the economic situations resulting from the devaluation of the French franc and from the widening of the margins of fluctuation of the mark and guilder were "sufficiently different to exclude the discrimination alleged", and that in consideration of the aims of the common agricultural policy it was right and proper to support exports to third countries more than imports from them.[2]

*Refunds on exports to third countries*

*593.* In case 85/71, the issue was whether the refund rates laid down in the Community legislation during the period of establishment of the common market organizations were simply maxima below which Member States might go if they wished, or whether they had to be applied as they stood.

The Court had already found in previous cases that during the transitional period the Member States were at liberty to grant or withhold refunds, and on the strength of this had concluded that they were also "entitled to make additional conditions as to the granting of the refund provided for in the Community Regulations",[3] as for example "to make the refund payable only on certain types of a product presenting further characteristics and over above those required by the Community Regulations."[4] The judgment in case 87/71[5] sets the seal on these precedents by establishing that Member States were entitled during the transitional period to fix lower refunds than those indicated in the Community Regulations, and moreover during that period, "in which they retained jurisdiction in commercial policy," were "entitled to grant different refunds in respect of different third countries." The Court thus upheld the view usually put forward, that the Member States still held the essential powers of decision in economic and commercial policy during the transitional period for the common organization of the agricultural markets.

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[1] CJEC, 13 June 1972 (Compagnie d'Approvisionnement, de Transport et de Crédit and Grand Moulins de Paris/Commission, consolidated cases 9 and 11/71).
[2] The non-discrimination principle is also exemplified in CJEC, 2 December 1971 (Aktien-Zuckerfabrik Schöppenstedt/Council, case 5/71), *Rec.* 1971, p. 975.
[3] CJEC, 27 October 1971 (Firma Rheinmühlen/Einfuhr und Vorratsstelle für Getreide und Futtermittel, case 6/71), *Rec.* 1971, p. 823.
[4] CJEC, 15 December 1971 (Firma Brodersen/Einfuhr und Vorratsstelle für Getreide und Futtermittel, case 21/71), *Rec.* 1971, p. 1069.
[5] CJEC, 23 March 1972 (Firma Kampfmeyer/Einfuhr und Vorratsstelle für Getreide und Futtermittel, case 85/71), *Rec.* 1972, p. 213.

*594.* In its judgment in case 94/71[1] the Court ruled on the conditions as to the form and due date of submission of applications for refunds on exports of sugar in the final stage of the common market organizations.[2] The judgment was to the effect that, while a written application was necessary, excessive "red tape" must be avoided. The document in which the declarant stated his intention to export the products in question and to claim a refund — as under Article 1 of Regulation No. 1041/67 — contains all the particulars needed for the national authorities accepting it to appreciate that the refund was being applied for, subject to exportation taking place : it was of no moment that the exporter did not actually undertake to export without fail. At the same time, for internal organizational reasons, States might feel obliged to require exporters to submit, in addition to this document, a refund application in the set form appropriate under the country's own law. Should the exporter fail to do this, however, the State can not penalize him by declaring him to have forfeited his right of refund under the Community legislation : to allow it to do so would not be consonant with the need that the legislation should apply uniformly and exporters be treated alike irrespective of the frontier by which their products are exported.

*Import levies*

*595.* The rate of levy chargeable on any import is that applicable for the day of its importation (see e.g. Article 15(1) of Regulation No. 120/67/EEC, for cereals). In the Court's view,[3] "day of importation" must necessarily bear the same meaning in all the Member States, as otherwise different rates of levy could be charged on goods which were economically in the same position at the same date and the entry of which into the Community had comparable effects on the market. This meaning of "day of importation" arises from the purpose of the levy system, which is to avoid repercussions on the internal market of world price movements. The relevant point of time for determining the rate of levy is that from which the import exercises an influence in the Community market — that is from which, having finally entered that market, it comes into competition with home products. In a word, it was the juncture when the import is definitively put into free circulation. Goods placed in bond are put into free circulation only upon their release from bond : hence the levy chargeable in their case must be that for the day of the release from bond. [4]

The details of the actual steps or customs procedure whereby release from bond is effected (date of declaration of release from bond and deletion from the bonded warehouse's books, and date of physical removal of goods) is, however, the Court found, entirely a matter of domestic law. As to principles, the judgment forms a notable addition to the Court's case law on the demarcation of Community

[1] CJEC, 6 June 1972 (Schlüter and Maack/Hauptzollamt Hamburg-Jonas, case 94/71).
[2] i.e. from 1 July 1967.
[3] CJEC, 15 December 1971 (Firma Schleswig-Holsteinische landwirtschaftliche Hauptgenossenschaft/Hauptzollamt Itzehoe, case 35/71), *Rec.* 1971, p. 1083.
[4] The same concept applies in determining whether the levies having been fixed in advance. "importation" is to be regarded as taking place during the period of validity of the advance-fixing certificate : if the import is released from bond after the certificate expires, the levy chargeable is to be that for the day of the release from bond and not that fixed in advance.

and national jurisdiction with respect to the common organizations of markets, but at the same time makes clear the limits to the regulatory scope of the provisions of Community law in this connection.

The important definition which the judgment contains with regard to the levy legislation — namely that "importation" presupposes definitive putting of the goods into free circulation — will need to be borne in mind in the general harmonization (not yet achieved) of customs legislation.

*Obligation on intervention agencies*

*596.* In two judgments of 1 February, 1972 [1] the Court ruled on various conditions governing offers to intervention agencies. Article 7 of Regulation No. 120/67, the Court recalled, placed these State-appointed agencies under obligation to buy in cereals harvested in the Community and offered to them. Given that offers calling for intervention created an obligation, this could only affect the agency to which they were made, after it had received notice of them. The particulars to be contained in the offer were to be inferred from the aims of the intervention system — viz, to afford producers the assurance of being able, having due regard to the regionalization of prices, to dispose of their cereals at a fair price when it was impossible to obtain a normal return by selling them commercially. Precautions did, however, have to be taken to see that there was no incentive to transport produce elsewhere simply in order to secure intervention on more favourable terms.

Accordingly, there was the corresponding obligation on the other party to state where the goods were located at the time of making the offer and to hold them at the agency's disposal there so that the latter could check that the offer was in order, the agency being thereafter responsible for giving instructions as to the future movement of the goods and the point of collection. This requirement remained relevant and useful where points of collection were indicated in advance and in general terms. It was true that the intervention system would still function normally if an offer initially incomplete but otherwise in order as to form were simply completed subsequently : nevertheless the offer could not produce results until it was so completed.

*Milk marketing centres in Italy*

*597.* In case 82/71 the Court had to decide whether the sole right held by or through certain local-level public bodies to sell a particular product in particular areas of a Member State was contrary to Article 37 EEC. As the product was an agricultural one, it had further to decide whether such right, to the extent it formed part of a national organization of a market, fell outside the scope of Article 37 by reason of the specific provisions on agriculture, and accordingly had to remain in being until such time as a common organization of the market was established in its stead. Exactly when the obligation to abolish these sole rights became operative thus depended on the Court's ruling on these two points.

[1] CJEC, 1 February 1972 (Firma F. Hagen OHG/Einfuhr und Vorratsstelle für Getreide und Futtermittel, case 49/71), *Rec.* 1972, p. 23. CJEC, 1 February 1972 (Firma Wünsche OHG/ Einfuhr und Vorratsstelle für Getreide und Futtermittel, case 50/71), *Rec.* 1972, p. 53.

The case related specifically to the milk marketing centres operating in Italy.

The Court[1] accepted that, with respect to agricultural products, the provisions in that part of the Treaty dealing with agriculture took precedence over any contrary general rules laid down for the establishment of the Common Market, and that national market organization provisions must remain in being until replaced by a common organization of the market. It ruled, however, that upon the entry into force of EEC Regulation No. 804/68, the milk and milk products market had been brought into a common organization, which, though in some respects incomplete, was nevertheless definitive. Hence, it was, at this point of time, for the Community authorities alone to decide whether any national system of organization, intervention or control in respect of the products in question should or should not be allowed temporarily to remain in being. This had been allowed in Italy's case, under EEC Regulations Nos. 804/68 and 2622/69, until 31 March 1970, and, the Court added, EEC Regulation No. 1411/71 of 29 June 1971 could be cited as evidence of the Community legislators' intention of granting Italy a further period of grace for the conversion of the milk marketing centres. However, in the intervening period there was no specific Community provision permitting derogation from the rule which required the centres' sole sales rights to be taken from them ; the national provisions sanctioning these rights therefore did not apply during that period.

### *The rules of competition*
(Articles 85 and 86 EEC Treaty)

*598.* The Court on 14 July delivered nine judgments[1] on appeals by nine dyestuffs manufacturers[3] against a Commission Decision of 24 July 1969[4] fining one of them 40 000[5] and the others 50 000 u.a. for acting in breach of Article 85(1) EEC by the introduction of concerted price increases in 1964, 1965 and 1967.

The Court dismissed all the appeals, with costs. Its sole concession was to reduce the fine on ACNA to 30 000 u.a., ACNA having joined in the concerted practice only once, in 1964.

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[1] CJEC, 21 March 1972 (Italian Public Prosecutor/SAIL, case 82/71), *Rec.* 1972, p. 119.
[2] CJEC, 14 July 1971

| | | |
|---|---|---|
| (Imperial Chemical Industries Ltd./Commission, | | case 48/69, |
| Badische Anilin- und Soda-Fabrik | do. | case 49/69, |
| Farbenfabriken Bayer AG | do. | case 51/69, |
| J.R. Geigy AG | do. | case 52/69, |
| Sandoz AG | do. | case 53/69, |
| Société Française des Matières Colorantes SA | do. | case 54/69, |
| Cassella Farbwerke Mainkur AG | do. | case 55/69, |
| Farbwerke Hoechst AG | do. | case 56/69, |
| Azienda Colori Nazionali e Affini (ACNA), SpA | do. | case 57/69). |

[3] A tenth undertaking, CIBA SA, of Basle, did not appeal.
[4] *OJ* No. L 195/11, 7 August 1969.
[5] ACNA.

What is particularly important about these judgments is that the Court for the first time gave an interpretation of the term "concerted practices" contained in Article 85(1) EEC, and a ruling as to the application of the Community's competition legislation to undertakings in third countries.

599. With regard to the first point, the appellants had argued, more or less with one voice, that for there to be a concerted practice within the meaning of Article 85, the parties concerned must effect price increases on the basis of plans which, though not necessarily of a binding nature, had been drawn up together beforehand. They asserted that each of the undertakings concerned had increased its prices independently, in the expectation that its competitors in the same position would act in the same way. What had occurred was thus a case of deliberate parallelism, which was not forbidden.

The Commission in the reasoning of its Decision had claimed it was not credible that the principal producers supplying the Common Market could without the most careful prior concentration have several times raised by the same percentages the prices of the same major range of products, at practically the same time, in several different countries in which different conditions obtained in the dyestuffs market.

In court, the Commission had submitted that concertation need not involve the devising of a joint plan to engage in concerted market behaviour : all it need involve was undertakings' keeping one another informed of the attitude they intended to take, so that each could plan its own course of action in reliance on its competitors' acting in parallel.

The Court in the main upheld the Commission's contention. Parallelism, it found, while not *per se* to be equated with concerted practices, was strongly suggestive of these when it led to competitive conditions not tallying with the normal market conditions given the nature of the products, the importance and number of the undertakings and the size of the market in question. It further found that the dyestuffs market in the Community in effect comprised five separate national markets, with different price levels not explicable in terms of the different costs and charges borne by the producers there. Expert witnesses who had testified on this point had given it as their opinion that this compartmentation was due to the need to provide consumers with on-the-spot technical assistance and ensure prompt delivery : the Court considered that it was calculated, by splitting up the operation of competition, to confine consumers to their respective national markets and prevent any general confrontation of producers throughout the Common Market.

The Court found the undertakings' practice of consecutive prices increases to be indicative of progressive cooperation between them.

It was hard to credit that the increases made in January 1964 first in the Italian and then in the Dutch and Belgian/Luxembourg markets, which had little in common as regards either price level or pattern of competition, could have been effected in the space of 48 hours to three days without prior concertation.

As to the 1965 and 1967 increases, the Court considered the undertakings had disposed in advance, among themselves, of any uncertainty as to one another's future behaviour, and hence of much of the risk ordinarily attending an independent change of behaviour in one or more markets. In effect the undertakings which triggered the increases had made it known some time beforehand that they planned to mark up their prices to a specific extent.

The Court stressed that all producers were individually at liberty to alter their prices as they saw fit and to take account in so doing of the present or foreseeable behaviour of their competitors. On the other hand it was a breach of the rules of competition for a producer to cooperate in any way with his competitors in determining a coordinated course of action with respect to the raising of prices and ensuring its success by disposing in advance of all uncertainty as to how each would react on the main aspects involved, such as the amount, subject, date and place of the increases.

*600.* Three appellant undertakings having their head offices outside the Community had argued that the Commission could not fine them for acts committed by them outside the Community.

It had been pointed out in the original Decision that Article 85(1) prohibited as incompatible with the Common Market "all... concerted practices... which have as their object or effect the prevention, restriction or distortion of competition within the Common Market", and that it was therefore immaterial whether the undertakings behind the restrictions of competition which had occurred had their head offices inside or outside the Community.

In the court proceedings, moreover, the Commission had pleaded that the three appellant undertakings had acted through their wholly-controlled subsidiaries the head offices of which were in the Community.

On this head the Court found, firstly, that the price increases in the Common Market affected competition among producers operating there, and secondly, that the appellants' determination of prices and other conditions of sale had been binding on their Community subsidiaries. Its conclusion was therefore : "this being so, the fact that these companies are formally separate, in consequence of their distinct legal personality, cannot be taken as disproving the contention that, for the purpose of the application of the rules of competition, their market behaviour is of one piece."

The Court thus ruled that the three appellant undertakings had indeed carried on concerted practices within the Common Market : accordingly, it expressed no view as to whether the rules of competition still applied to undertakings having their head offices situate in third countries if they had brought about certain effects inside the Common Market by means of restrictions of competition perpetrated outside it.

On this point it should be noted that the Court, in an earlier judgment of 25 November 1971,[1] found that what made an agreement unlawful for the purposes

[1] CJEC, 25 November 1971 (Béguelin Import co./SACL Import-Export and Marbach, case 22/71), *Rec.* 1971, p. 949 ; cf. *Fifth General Report,* sec. 617.

ot Article 85 was that it was capable of affecting trade between Member States and had as its object interference with the operation of competition within the Common Market : "the fact of one of the parties' being situate in a third country is no bar to the application of this provision, where the agreement produces its effects in Common Market territory".[1]

*601.* Two other points of importance were dealt with by the Court in a judgment of 17 October 1972. [2] The case concerned an action brought by the Dutch cement dealers' cartel against the Commission, in connection with the Commission's refusal to grant it exemption under Article 85(3) EEC.

In the first place, the Court took the view that a cartel comprising a substantial number of dealers in a given market, who were supplying that market with the aid of imported products, did "affect trade between Member States" : an agreement covering the whole of a member country had *ipso facto* the effect of consolidating country-by-country compartmentation, thereby impeding the economic interpenetration aimed at by the Treaty and affording protection to the home production of that country.

The second point covered by the Court in its judgment concerned the actual tenor of the agreement. In this particular case the dealers in the main operated a system of guide prices : the Court ruled that the fixing even of a guide price affected competition in that it enabled all parties to calculate with fair certainty beforehand what their competitors' pricing policy was going to be.

### *Social provisions of the EEC Treaty*

*602.* In addition to a number of judgments[3] in connection with the social security of migrant workers, the Court defined, in the field of free movement of workers within the Community, the scope of the prohibition on discrimination contained in Articles 48 of the EEC Treaty and 7 of Regulation (EEC) No. 1612/68. The Court stressed that each Member State must ensure to the nationals of other Member States employed on its territory the same advantages that it grants its own nationals, and in particular the social security it accords, especially against dismissal, to specific categories of workers. [4]

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[1] *Loc. cit., Rec.* 1971, pp. 959/960.

[2] CJEC, 17 October 1972 (Vereniging van Cementhandelaren/Commission, case 8/72).

[3] (a) With reference to the right to affiliate to the French voluntary old-age insurance scheme; CJEC, 22 March 1972 (Merluzzi/Caisse Primaire Centrale d'Assurance Maladie de la Région Parisienne, case 80/71), *Rec.* 1972, p. 175 ;
(b) With reference to the concept of "old age benefit" within the meaning of Article 2(1)(c) of Regulation No. 3 :
CJEC, 22 June 1972 (Frilli/Belgian State, case 1/72) ;
(c) With reference to the concept of "period of unemployment ranking as a period of employment", requiring interpretation for the purpose of determining a migrant worker's entitlement to a disability pension :
CJEC, 6 June 1972 (Murru/Caisse Régionale d'Assurance Maladie de Paris, case 2/72) ;
(d) With reference to the applicability of Regulation No. 3 to certain benefits due under German law in respect of tuberculosis :
CJEC, 16 November 1972 (Helmut Heinze, cases 14 and 16/72).

[4] CJEC, 13 December 1972 (Marsman/Ross Kamp, 44/72).

The Court also gave two important judgments [1] under Article 184 EEC with respect to the principle of equal treatment for male and female Community officials. The plaintiffs had, pursuant to Article 4(3) of annexe VII of the Staff Regulations of the European Communities, forfeited upon their marriage their entitlement to expatriation allowance—an integral part of the salary— inasmuch as their husbands, who were regarded as the head of household in each case, did not qualify for the allowance. They submitted that its withdrawal from them was illegal, being contrary both to a general principle of law prohibiting all discrimination on grounds of sex alone, and to Article 119 EEC, which contained the principle of equal pay for men and women. The Court [2] ruled that "by making continued payment of the allowance conditional on acquisition of the status of head of household ... the Staff Regulations instituted an arbitrary difference of treatment between officials."

*Conjunctural policy*

*603.* Decisions on adjustments to currency exchange rates being still a matter for the Member States, the Court has ruled [3] that the Community is not answerable for any disparity which such adjustments may produce between the position of exporters and importers in the State concerned and that of their opposite numbers in the other Member States.

True, the Court held that Member States are required by Article 103 EEC to treat their conjunctural policy as a matter of common concern, and the Council's powers under the Article include that of taking appropriate steps to cushion certain effects of devaluation or revaluation. But, although Article 103 of the EEC Treaty, thus empowers the Council to act, this provision is permissive, not mandatory, and leaves the Council a wide discretion which is to be exercised not in the individual interest of particular economic operators but in the general interest; the general interest may well not require that the effects of devaluation, especially on import prices, should be offset in full.

### 3. Information on the development of Community law

604. The Commission this year continued to provide information on the development of Community law, devoting particular attention to legal circles in the countries who were about to join the Communities.

It is well aware how important a sound knowledge of the development of Community law is both for balanced development in that field and for the progress of the Communities themselves. Furthermore, those subject to Community law, both undertakings and private individuals, should know their rights and the exact extent

[1] CJEC, 7 June 1972 (Bertoni v. European Parliament, case 20/71); CJEC, 7 June 1972 (Bauduin/Commission, case 32/71).
[2] "Having regard *inter alia*", states the judgment, "to Articles 119 and 184 EEC."
[3] CJEC, 13 June 1972 (Cie d'Approvisionnement, de Transport et de Crédit and Grands Moulins de Paris/Commission, cases 9 and 11/71).

of their obligations. Finally, as the field is one which is continually developing, national members of the judiciary and officials must be able to keep in direct touch with Community law at its source. At the same time the Commission is ready to help members of universities and the publishers of legal works as their contributions to the theory of law represent an essential element in the legal life of the Communities.

*605.* A fairly large number of colloquia and seminars were organized by various associations, mostly of a professional or academic character, both inside and outside the Community, and attended by members of the Commission's Legal Service, to study various aspects of Community law and its application in relation to the enlarged Community—competition law in February in London and in May in Paris, agricultural law and the common agricultural policy in March in London, in April at Parma, in May at Wageningen and in September at Montpellier, company law in April at Modena, in May at Brussels and in October at Liège, and tax law in May in Paris in November at Stuttgart.

The institutional development of the European Communities was the subject of an important colloquium at Bad Ems in April.

The legal problems arising in connection with the enlargement of the Community were studied at several meetings, in particular in January in Sussex, in February in Paris and in April at Liège.

It should also be pointed out that legal and university circles in the acceding States and other countries which used to be members of EFTA organized several meetings and lectures devoted to the study of Community law. Several British universities and institutions, as well as professional organizations, such as the Law Society, on several occasions throughout the year organized short courses on the application of Community law in the United Kingdom. Representatives of the Commission's Legal Service took an active part in this action aimed at providing information, giving numerous lectures which gave rise to useful discussion.

*606.* The Commission has maintained its contacts with the judiciary in various countries and with officials responsible for the application of Community law in the Member States. In November it was visited by the clerks to the judges of the Constitutional Court of the Federal Republic of Germany and by a group of pupils from the *Ecole nationale française de la magistrature,* and in July by a group of trainee officials of the German Ministry of Foreign Affairs.

The Commission received a visit in March from the national and local presidents of the Law Society and the Bar Council, and from the representatives of the British professional association of solicitors and barristers who wished to obtain information on the spot about the practical problems arising in connection with the application of Community law.

In November the Commission organized jointly with the Court a meeting in Luxembourg of the chief editors of several law reviews of the Member States and the acceding countries, who had not yet had such an opportunity to get to know

each other. The discussions were devoted to the problems of providing legal information and to the development of Community law.

As in previous years, there were many visits for purposes of information to the Headquarters of the Communities by groups of Members of Parliament, officials, members of universities, and practitioners of law, in the course of which members of the Legal Service explained various aspects of the development and application of Community law. The number of visits by groups from Great Britain, Ireland and the Scandinavian countries showed a considerable increase during the period covered by this report.

The Commission has endeavoured to associate the Legal Committee of the European Parliament with this action to inform legal circles of the acceding countries. Members of that Committee took part in June in a visit by a group of Danish Members of Parliament, in November in a visit by chief editors of a number of law reviews of the Community and of the acceding countries and in December in a visit by eminent British lawyers: barristers and solicitors.

There was also a considerable increase in the number of individual visits paid to the Commission's Legal Service by eminent lawyers from all over the world. In addition to the trainees, students and research workers who have for years been engaged in work in connection with Community law, there were many legal practitioners who wished to gain a closer knowledge of the problems connected with the application of Community law.

*607.* The Commission's work in connection with an automatic documentation system for legal documents has continued, within the limits of the means available, particularly as regards staff. Storage of documentation has proceeded.

Experiments have been made with the recording of complete texts, particularly of basic texts (treaties), and new programmes have been prepared. The use of a question-and-answer system for the documentary field covered is being tried out. Finally, contacts have been established with a view to inter-institutional collaboration in this connection and liaison with all circles interested in an extensive system of legal information retrieval. These contacts should lead to specific proposals to the Council regarding an automated documentation system for legal documents.

# TABLE 18

**Cases analysed by subject matter**
(Situation at 31 December 1972)

| Type of case | ECSC | | | | EEC | | | | | | | | Euratom | Privileges and immunities | Proceedings by staff of the institutions | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Scrap Compensation | Transport | Competition | Other[1] | Customs union | Right of establishment, freedom to supply services | Tax cases | Competition | Social security and movement of workers[2] | Agricultural policy | Transport | Other[3] | | | | |
| New cases | 169 | 36 | 55 | 19 | 56 (3) | 1 | 27 (1) | 44 (6) | 48 (11) | 135 (36) | 3 | 2 (2) | 3 | 6 | 291 (23) | 895 (82) |
| Cases struck off | 22 | 6 (1) | 15 | 9 | 9 (1) | 1 | 5 | 3 (1) | 2 | 5 (1) | — | — | 1 | — | 67 (7) | 145 (11) |
| Cases decided | 147 | 30 | 40 | 10 | 46 (4) | — | 21 | 37 (11) | 32 (8) | 100 (27) | 3 | — | 2 | 6 | 203 (40) | 687 (90) |
| Cases pending | — | — | — | — | 1 | — | 1 | 4 | 4 | 30 | — | 2 | — | — | 21 | 63 |

The figures in brackets represent the cases dealt with by the Court in 1972.
[1] Levies, investment declarations, tax charges, miners' bonuses.
[2] Free movement of workers.
[3] Costs of the preliminary ruling, procedure, staff regulations.

## *TABLE 19*

**Cases analysed by type (EEC Treaty)***
(Situation at 31 December 1972)

| Type of case | Proceedings brought under Articles | | | | | | | | | | | | Grand total[1] |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 169 and 93 | 170 | 173 | | | | 175 | 177 | | | 184 | 215 | |
| | | | By Governments | By individuals | By the institutions | Total | | Validity | Interpretation | Total | | | |
| New cases | 31 | — | 15 | 56 | 2 | 73 | 8 | 21 | 170 | 181 | 3 | 31 | 319 |
| Cases struck off | 7 | — | 4 | 4 | — | 8 | — | — | 10 | 10 | — | — | 25 |
| Cases decided | 20 | | 10 | 50 | 1 | 61 | 8** | 16 | 147 | 135 | 3 | 12 | 251 |
| In favour of plaintiff[2] | 17 | — | 1 | 7 | — | 8 | — | | | | — | — | 25 |
| Dismissed on the merits[3] | 3 | — | 8 | 22 | 1 | 31 | — | | | | — | 12 | 42 |
| Dismissed as inadmissible | — | | 1 | 21 | — | 22 | 7 | | | | 3 | — | 32 |
| Cases pending | 4 | — | 1 | 2 | 1 | 4 | — | 5 | 13 | 16 | — | 19 | 43 |

* Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities (see Table 18).
** Including one non-suit.
[1] The number of judgments may be smaller than the number under the various headings because some cases are based on several Treaty Articles.
[2] In respect of at least one of the plaintiff's main claims.
[3] This also covers proceedings rejected partly as inadmissible and partly on the merits.

## *TABLE 20*

**Cases analysed by type (ECSC and Euratom Treaties)***
(Situation at 31 December 1972)

| Type of case | Number of proceedings brought | | | | | | Total | |
|---|---|---|---|---|---|---|---|---|
| | By Governments | | By the institutions | | By individuals (undertakings) | | | |
| | ECSC | Euratom | ECSC | Euratom | ECSC | Euratom | ECSC | Euratom |
| New cases | 22 | — | 1 | 2 | 257 | 1 | 280 | 3 |
| Cases struck off | 9 | — | — | 1 | 43 | — | 52 | 1 |
| Cases decided | 13 | — | 1 | 1 | 214 | 1 ** | 228 | 2 |
| In favour of plaintiff [1] | 5 | — | — | 1 | 48 | 1 ** | 53 | 2 |
| Dismissed on the merits [2] | 7 | — | — | — | 117 | — | 124 | — |
| Dismissed as inadmissible | 1 | — | 1 | — | 49 | — | 51 | — |
| Cases pending | — | — | — | — | 1 | — | 1 | — |

* Excluding proceedings by staff and cases concerning the interpretation of the Protocol on Privileges and Immunities (see Table 18).
** Terminated by order of the Court.
[1] In respect of at least one of the plaintiff's main claims.
[2] This also covers proceedings rejected partly as inadmissible and partly on the merits.

## *TABLE 21*

### Decisions by national courts concerning Community law[1]

| Country \ Subject matter[2] | EEC Treaty | | | | | | | | | | | | | ECSC Treaty[5] | Total |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Free movement of goods | | | Agriculture | Free movement of persons and right of establishment | Social security law[3] | Transport | Competition | | | Tax provisions | Other[4] | | | |
| | Customs duties | Quantitative restrictions | Monopolies | | | | | Restrictive agreements, monopolies | Dumping | Aids | | | | | |
| Belgium | 1 | | | 1 | 1 | 10 | | 40 | | | | 3 | 2 | 58 |
| Germany (FR) | 23 | 2 | 3 | 61 | 12 | 2 | 1 | 47 | 2 | | 34 | 16 | 4 | 207 |
| France | 5 | 2 | 1 | 4 | 3 | 15 | 1 | 16 | 1 | 1 | | 3 | 2 | 54 |
| Italy | | | 1 | 3 | 1 | 3 | | 1 | | 2 | 1 | | 14 | 26 |
| Luxembourg | | | | | | | | 1 | | | | | | 1 |
| Netherlands | 4 | | 1 | 2 | 1 | 8 | | 34 | | | | 5 | | 55 |
| Total | 33 | 4 | 6 | 71 | 18 | 38 | 2 | 139 | 3 | 3 | 35 | 27 | 22 | 401 |
| Previous totals | 30 | 3 | 5 | 62 | 18 | 33 | 2 | 131 | 3 | 3 | 34 | 21 | 21 | 366 |
| New judgments | 3 | 1 | 1 | 9 | — | 5 | — | 8 | — | — | 0 | 6 | 1 | 35 |

[1] Figures are for decisions published up to 1 October 1972, excluding cases which gave rise to a reference to the Court of Justice for a preliminary ruling.
[2] The breakdown of subject matter is according to the main aspect of the judgment. Thus, cases referring to tax questions in agriculture are classified under "tax provisions".
[3] Cases concerning social security and Article 119.
[4] Cases concerning Article 7, Article 169 (effects of a judgment by the Court of Justice), Article 177 (costs, examination by a national court of its obligation to lay a request for interpretation before the Court of Justice). Article 215, 220, 227, Protocol I, 7, and association agreements with Turkey and the AAMS, relation between Community law and national law.
[5] Prices, financing, social security, competition, transport, obligation to pay, and forced execution.

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