ABHANDLUNGEN

Aspects of the Court of Justice of the European Communities of Interest from the Point of View of International Law

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The Court of Justice of the European Communities, founded in 1952 and renewed in 1958 in an enlarged setting, has achieved undeniable success in the settlement of disputes: a continuous stream of cases dealing with very varied subject-matters has made it possible to create a case law which is already substantial; the impact of this case law is perceptible not only in the life of the Community institutions, but also within the Member States; finally, the Court's work has given rise to an important movement of study and reflection. This success — which must not, of course, conceal the problems remaining and the difficulties encountered on the way — must be attributed to the simple fact that for once, within a multinational grouping, law has been given a chance to play its part. It is just for this reason that the experiment is interesting from the point of view of the development of the judicial settlement of international disputes.

For any appraisal in such a perspective of the functioning and the work of the Court, it is necessary to bear in mind two preliminary considerations so as to guard against generalisations inappropriate to the needs of international law.

In the first place, attention must be called to the fact that a considerable part of the volume of cases coming before the Court is much closer to certain topics of internal law than to those of international law. This remark applies to all the spheres in which the Community has assumed direct

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responsibility for management and control over various sectors of the economic and social life of the Member States, for example, in the field of competition and regulation of the agricultural markets, in certain sectors of internal taxation or, again, in the sphere of labour and social security. Here, the role played by the Court resembles much more closely that of an administrative or social court, as the case may be, rather than that of an international court.

Secondly, it must be borne in mind that even as regards the inter-State relationships which have been formed within the Communities, the Court acts within the context of a legal and institutional structure profoundly different from the conditions prevailing elsewhere in international life. It forms part of a highly evolved institutional complex, based on representative principles and a distribution of power which are not those of general international law. The details of the judicial system are closely bound up with these structural elements, so that here also it may seem rather hazardous to make extrapolations on the needs of a law resting on structural elements which are quite profoundly different.

The following explanations must be understood in the light of these two reservations. They deal first with certain structural aspects of the Community judicial system, then with the system for bringing actions and its resources, and conclude with a brief analysis of the different kinds of proceedings insofar as these may be of interest from the point of view of the settlement of international disputes.

I. Structural Aspects

1. The internal structure of the Court and its methods of work call for little comment. The provisions of the Treaty, the Statute and the Rules of Procedure, have given the Court a solidly established organisation permitting it to fulfil its task efficiently in a minimum of time (the length of proceedings is about nine months for proceedings *inter partes* and six months for preliminary rulings).

Extensive powers have been conferred on the President for everything concerning the general activity of the Court and the progress of pending proceedings; since the President is elected by the Judges themselves, there is a guarantee that this task shall be accomplished in an atmosphere of collegial confidence. For each case, the President designates a Judge Rapporteur whose task is to make a close study of the dossiers entrusted to him and to prepare, at the appropriate moment, the draft decision; this arrangement also has proved highly conducive to the effective progress of cases. In the

same context, there should be mentioned the role of the Advocates General who, by adopting a public standpoint, powerfully assist in preparing the solution of cases.

The collegial character of the Court of Justice is strongly marked, notably by the effect of the rule of secrecy of deliberation which, in its turn, excludes any form of dissenting opinion. This arrangement is in contrast with the judicial customs of certain States and with the Statute of the International Court of Justice. However, in the Community context, particularly having regard to the fact that the mandates of the judges are for a limited time (six years), this rule is considered indispensable for guaranteeing the independence of the Court and of its individual members. Moreover, the system has an impact on the quality of the decisions in the sense that it favours a spirit of synthesis which, in its turn, leads to balanced and measured decisions, even if their homogeneity may sometimes suffer thereby; it may be thought that, taking all things into account, at any rate at the present stage of evolution, this style of decision is better adapted to the realities of a multinational complex than decisions constructed on the principle of thesis and antithesis.

2. The influence of the judicial element is also considerably reinforced by the fact that the Court of Justice has its place as an institution in the structure as a whole. As it is expressed in Article 4 of the EEC Treaty, the Court participates, together with the other institutions — Parliament, Council and Commission — in the "implementation of the tasks entrusted to the Community". In this way, it is very closely bound up with the functioning of the institutional apparatus as a whole. In this connection, the following aspects are particularly noteworthy.

For everything concerning the observance of their obligations by the Member States and, in a more general way, the solution of all kinds of disputes, the Community constitution has assigned varied tasks to the Commission: it is the Commission which, as it is expressed in Article 155 of the EEC Treaty, must "ensure the application of the provisions of the Treaty". In the context of this general task of surveillance, it may bring actions against Member States in cases of default in the obligations imposed by the Treaty; similarly, in all cases of preliminary rulings, under Article 20 of the Statute of the Court (EEC Statute), the Commission is called upon to express its views. In carrying out these tasks, the Commission exercises functions which are not dissimilar to those of the "Attorney General" of a State. Owing to its supranational position and the close contacts it maintains with national administrations, the Commission is capable of furnishing the Court with sound and objective legal submissions, which powerfully

favour the development of a solid case law well suited both to the needs of Community law itself and to the national law of the Member States.

The Council also has the right to intervene in cases of preliminary rulings each time that one of its acts is in question (EEC Statute, Article 20); its role is thus analogous to that of the Commission, but the cases in which it participates in this way in the administration of justice are much less numerous.

The European Parliament, for its part, is currently considering the possibilities of taking a more active part in proceedings before the Court of Justice. In any case, the Statute confers on it a right of intervention (EEC Statute, Article 37). It has recently taken an opinion on the question whether it is open to it to bring an action for failure to act against the Council.

To appreciate properly the scope of the judicial system created by the Treaties establishing the Communities, it is thus important to bear in mind that the Court of Justice is not isolated in carrying out its functions, but may rely on the support of the other institutions and particularly the Commission.

II. The System of Actions and its Resources

The Court operates under a system — both procedural and substantive — which places at its disposal a variety of resources.

1. The Treaties establishing the Communities have created several complementary, one might even say parallel, kinds of proceedings before the Court, of which each corresponds to a distinct situation. This diversification of the kinds of actions has notable advantages.

First, it may be noted that the system of actions is fairly complete, since the authors of the Treaties strove to include every kind of foreseeable litigation: action for a declaration of default on the part of a State, action for annulment (a kind of action which has a variety of uses, as we shall shortly see), action for indemnity, action for a preliminary ruling.

Practice has shown that these kinds of proceedings may be concurrent, with a view to ensuring an optimal sanction for Community law. Thus, there are already relatively numerous examples where the behaviour of a State, not in accordance with the rules of Community law, has given rise to an action on the initiative of the Commission for a declaration of default on the part of the State, and subsequently to parallel actions by private parties before the national courts, perhaps giving rise to a request for a preliminary ruling. The Court has emphasised that this concurrence of different kinds of proceedings favours the efficacy of Community law: consequently, it has rejected the objections of inadmissibility which have been

raised on certain occasions, by the Member States concerned, to this convergence of judicial remedies [1]).

It is in the judgment dated 5th February 1963, Case 26/62, *Van Gend and Loos*, that the Court adopted its standpoint on the question of the concurrent character of the action for default and the action for a preliminary ruling. In this case, the Belgian and Dutch Governments, observing that the action brought before the national judge essentially complained that the Governments of the Benelux countries had, by a modification of the customs tariff, violated a provision of the EEC Treaty, challenged the view that such a violation could be submitted to the judgment of the Court by a procedure other than that for a declaration of default on the part of a State; in their opinion, the matter could not be brought before the Court by the preliminary rulings procedure of Article 177 of the EEC Treaty. The Court, after emphasising the differences of purpose between these two kinds of action, added that

> "the vigilance of individuals interested in safeguarding their rights provides an effective control additional to that which Articles 169 and 170 entrust to the diligence of the Commission and the Member States" [2]).

In Case 31/69, *Commission* v. *Italian Republic* (agricultural refunds), decided by judgment dated 17th February 1970, the Italian Government put forward the inverse argument: where the question arose of failure on the part of a Member State to implement a Community Regulation, the action for a declaration of default on the part of a State was not admissible

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[1]) Here are some illustrations of this parallelism between actions on the ground of default on the part of a State and claims brought, in consequence of the same default, by private parties before national courts. Case of the Italian tax on export of works of art: Case 7/68, *Commission* v. *Italian Republic*, Judgment dated 10th December 1968, Recueil XIV, p. 617; C.M.L.R. (1969) 1. Case 18/71, *Eunomia* v. *Ministry of Public Education;* request for preliminary ruling by the Tribunale di Torino, Judgment dated 26th October 1971, Recueil XVII, p. 811. An English translation has been published by the Court of Justice.

Case of the Italian statistical duty: Case 24/68, *Commission* v. *Italian Republic*, Judgment dated 1st July 1969, Recueil XV, p. 193; Case 43/71, *Politi* v. *Ministry of Finance*, request for preliminary ruling by the Tribunale di Torino, Judgment dated 14th December 1971, Recueil XVII, p. 1039; Case 84/71, *Marimex* v. *Ministry of Finance*, request for preliminary ruling by the Tribunale di Torino, Judgment dated 7th March 1972, Recueil XVIII, p. 89.

Case of the Italian duty of 0.5 % for administrative services: Case 8/70, *Commission* v. *Italian Republic*, Judgment dated 18th November 1970, Recueil XVI, p. 961; Case 33/70. *S.A.C.E.* v. *Ministry of Finance*, request for preliminary ruling by the Tribunale di Brescia, Judgment dated 17th December 1970, Recueil XVI, p. 1213; C.M.L.R. (1971) 123; and the *Politi* and *Marimex* cases cited above.

[2]) Recueil IX, p. 1.

while an action was open to private parties before the national courts. The Court rejected this argument, stating that

> "the availability of proceedings before national courts cannot in any way prejudice the bringing of the action referred to in Article 169, since the two actions pursue different objects and have different effects" [8]).

2. Another characteristic of the system of varied actions established by the Treaties of Paris and Rome is a diversity of possible alignments of litigants, due to the fact that access to the Court is open, in different ways, not only to States but also to the common institutions and to private parties. This procedural rule has resulted in a wide variety of litigation, since each of these parties conducts the proceedings from his own point of view. Under the Treaties, it is possible to encounter the following procedural situations:

— the action on the ground of default on the part of a State arises in the form of two possible alignments: Commission against Member States and litigation between States (we shall shortly see that the second hypothesis has up to now remained purely theoretical);

— actions for annulment may lead to three different alignments: Member States against the Commission or the Council; interinstitutional litigation between Council and Commission (up to now there has been only one example of this); or actions by private parties against the institutions, Council or Commission;

— finally, in actions for preliminary rulings under Article 177 of the EEC Treaty, there is always a contentious situation arising out of an action before a national court. Apart from actions exclusively between private parties, it is noticeable that a substantial proportion of the proceedings brought before the Court under this heading involve actions by private parties against the public administration. Hence, requests for preliminary rulings bring before the Court contentious situations which could never be brought there by the direct actions available under the Treaty.

This brief analysis makes it clear that States are in reality more often brought before the Court of Justice than one might think from a superficial observation of the kinds of action available. Such is the case for the action for annulment, as will be seen in greater detail shortly. Moreover, the cases of preliminary rulings often reflect a conflict between a private party and the national authorities arising out of the non-observance by the latter of their Community obligations. Thus, the fact that the Court has been thrown

[8]) Recueil XVI, p. 25.

open to actions by the common institutions, and within certain limits to those of private parties, has had the effect of considerably strengthening judicial control over the international behaviour of the Member States. Many problems which, in current international life, would have given rise at the most to diplomatic claims, have thus been resolved by judicial means.

3. A third factor of capital importance for the rule of law consists in the fact that all the kinds of actions provided for by the Treaties are accessible by unilateral statement of claim. It is only for "connected disputes" that the Treaties (see for example Article 182 of the EEC Treaty) provide for a voluntary jurisdiction: it is highly symptomatic that up to now the States have never made use of this possibility. Hence, all the actions brought up to now before the Court, without exception, have been by unilateral statement of claim.

As for the requests for preliminary rulings, which in reality are merely an incident in a proceeding pending before the courts of the Member States, they are referred by decision of the national judges before whom, in their turn, proceedings have been brought by unilateral statement of claim. While the referral is optional for judges in general, it is compulsory for courts of last instance. Having regard to this obligation, private parties are thus assured of obtaining access to the Court when they raise, in the appropriate manner, a problem of Community law before the national judge.

4. The Court of Justice gives judgments which are executory in relation to private parties (to the extent that they impose pecuniary obligations, see Articles 187 and 192 of the EEC Treaty) and binding in relation to Member States (Article 171 of the same Treaty). The Treaties do not provide — apart from a timid attempt in Article 88 of the ECSC Treaty — measures of execution against States. This is certainly a weakness, but the weakness is not peculiar to Community law. Even judicial decisions given under a national system against the public authorities, for example by a constitutional or administrative court, cannot as a general rule be executed by any means of constraint against the State.

Practice has shown, however, that the system nevertheless contains an effective sanction in relation to the State: when, by the default of a Member State, the rights of individuals have been injured, the interested parties may — by virtue of the doctrine of direct effect of Community law — bring before their national courts actions seeking restitution or damages. Cases of this kind have recently become more numerous and several such cases have been brought before the Court of Justice for preliminary rulings; each time, it has affirmed the obligation on national judges to protect, even against the State, the rights conferred on individuals by Community law. Thus, the

disregard of its obligations by a Member State may result in its being ordered by the national courts to make restitution or pay damages.

This is not the place to expound all the case law on the "direct effect" of Community law. The cases of interest in this connection are those which show how direct effect may form a basis for obligations of restitution or damages resting on the State. Such cases are those above cited: *Eunomia* (restitution of an export duty on works of art); *S.A.C.E., Politi* and *Marimex* (restitution of a "duty for administrative services" and a statistical duty on imports) [4]).

Among decisions of national courts, there must be mentioned in this connection the *Fromagerie Franco-Suisse* case, decided by judgment of the Cour de Cassation of Belgium on 27th May 1971 [5]). This judgment makes definitive the obligation of the Belgian State to refund a tax on import of milk products incompatible with the EEC Treaty and recognised as such by judgment of the Court of the Communities dated 13th November 1964, *Commission* v. *Grand Duchy of Luxembourg and Kingdom of Belgium*, Cases 90 and 91/63 [6]).

5. Finally, it is interesting to show the advantages involved in the fact that, in the exercise of its judicial functions, the Court is able to draw upon the resources of a complete legal system.

This wide conception of the role of the Court has been implanted by the Treaties themselves: thus, Article 164 of the EEC Treaty provides that the task of the Court is to ensure "respect for law" in the interpretation and application of the Treaty; the same wide concept of the Community legal order reappears in Article 173 of the same Treaty where it is stated that the control of legality entrusted to the Court shall be exercised in the light, not only of the Treaty, but also "of any rule of law relating to its application".

Hence, in seeking to resolve disputes by the judicial process the Court may take into consideration every relevant legal factor, whatever its nature and its source. Thus, it has made extensive use of the general principles of law and of the idea of "legal convergence" between the national laws of the Member States, that is to say, the method of comparative law.

It is in this spirit that it has been able, in particular, on points where the

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[4]) See also the judgment dated 17th May 1972, Case 93/71, *Leonesio* v. *Italian Ministry of Agriculture*, affirming that a debt based on a Community regulation — in that case a premium for the slaughtering of cows — is enforceable against the State, Recueil XVIII, p. 287.

[5]) Text and Note on the decision in Cahiers de Droit Européen 1971, p. 561.

[6]) Recueil X, p. 1212; C.M.L.R. (1965) 58.

Treaties are silent, to lay the foundations of a protection of fundamental rights in the Community legal order.

The most recent statement of principle by the Court of Justice on this subject is found in the judgment dated 17th December 1970, Case 11/70, *Internationale Handelsgesellschaft*, where it is stated that

> "respect for fundamental rights forms an integral part of the general principles of law for which the Court of Justice ensures respect; the protection of these rights, while based on the constitutional traditions common to the Member States, must be ensured in the setting of the structure and objectives of the Community" [7]).

III. Analysis of the Different Kinds of Proceedings

It is interesting now to review, one by one, the different kinds of proceedings to see to what extent they open up perspectives from the point of view of the judicial settlement of international disputes. It will be seen that practically all the kinds of proceedings are suggestive from this point of view.

1. The kind of action which is closest to the idea of international litigation is obviously that which has been established for the case of d e f a u l t o n t h e p a r t o f M e m b e r S t a t e s in the obligations resting on them under the Treaties. This is the first time in international life that a judicial procedure has been established with a view to ensuring an independent and systematic control over the behaviour of States in regard to obligations they have assumed. Several aspects of this litigation deserve attention. Let us take the procedure most frequently used, that of the EEC Treaty.

By Article 169 of this Treaty, the Commission, after having requested the State concerned to explain its action, issues a formal opinion in which it indicates to this State the steps to be taken to comply with the Treaty. It is only in case of refusal to comply within the time limits with this formal demand that the Commission may bring the matter before the Court of Justice. Published statistics show that the majority of proceedings undertaken are concluded to the Commission's satisfaction during this preliminary procedure; only the cases which could not be settled in this way are finally brought before the Court of Justice.

It should be mentioned that by Article 170 of the EEC Treaty the initiative for an action for default may be taken equally by a Member State. In reality, this is rather a form of action for failure to act than an autonomous

[7]) Recueil XVI, p. 1125.

action, as appears from the fact that the action by a Member State can only, in the preliminary stage, have the effect of imposing an obligation on the Commission to formulate its opinion. It is only in case of inaction on the part of the Commission that the applicant State has the right to bring the matter directly before the Court. It is significant to observe that up to now this procedure has never been utilised. Clearly, Member States prefer to leave it to the Commission to take action rather than to involve themselves in actions against another State. Moreover, it must be borne in mind here that, having regard to the intensification of trade within the Community, the behaviour of a Member State contrary to its Community obligations usually has the effect of damaging simultaneously the interests of several Member States or even of all Member States, so that the only adequate reaction to the breach of law is in fact that of the organ representative of the whole.

One must rejoice at this state of affairs, since the interposition, in the procedures for default on the part of a State, of an independent organism as defender of the common interest, has the effect of introducing into this kind of litigation an element of objectivity and avoiding the political tensions which might all too easily arise from a situation where States confronted each other in direct litigation.

At this point, it may be interesting to have a synopsis of the subject-matter of the actions for default on the part of a State decided up to now. The major part of the judgments given concern interference by Member States with freedom of trade and with the conditions of competition within the Common Market. More precisely: the maintenance or introduction of protective duties, the discriminatory application of internal taxation, the application of prohibitions on imports, the application of a tax on exports, the establishment of a preferential re-discount rate in favour of the national economy, the admission free of duty of goods from a non-Member State. There are also judgments on the question of default concerning transport rates and functioning of the agricultural markets: delay by a Member State in payment of agricultural refunds and delay in drawing up a register of vineyards. Finally, there may be mentioned one case of an action for default under the Euratom Treaty, for the non-fulfilment by a Member State of obligations relating to the supply of fissile material.

2. The action for annulment — of which Article 173 of the EEC Treaty affords the model, visibly inspired by the experience of actions before administrative courts — might at first sight appear to have no relationship with the kind of litigation familiar to international courts. Yet, if one looks a little more closely at this judicial remedy, bearing in mind the

whole range of alignments between litigants to which it may give rise, it is apparent that this is in reality an action with a multiplicity of uses.

The action for annulment involves in fact an aspect of purely administrative litigation: this is the case whenever an application is made by a private party against a Community decision which concerns him. But the same kind of action also brings before the Court other forms of litigation of a very different nature, resembling litigation of an international type.

a) Under this heading must be mentioned, first, actions for annulment brought by a Member State against an act of the Council or the Commission. Here, the applicant State is in conflict with the Community, represented as the case may be by the Council or the Commission and, in the past, by the High Authority. It is even possible that through the defendant institution the action is aimed at another Member State [8]).

b) Article 173 also provides the possibility of actions brought by one of the two institutions mentioned — Council and Commission — against the other. The litigation arises, in this case, between the Community, represented by the organ responsible for safeguarding the common interest, and the collectivity of the Member States, acting through the intermediary of the Council, the organ representative of the States [9]).

c) Finally, attention must be drawn in this context to a kind of proceeding close to the action for annulment, namely, the "action for failure to act" governed, in accordance with rules which are not identical, by Articles 35 of the ECSC Treaty and 175 of the EEC Treaty. An examination of the proceedings brought on the basis of these provisions shows that on more than one occasion they have been used by the Member States, or even by

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[8]) Here are some illustrations of this kind of litigation: Case 13/63, *Italian Republic* v. *EEC Commission*, Judgment dated 17th July 1963. The action sought the annulment of a decision of the Commission authorising the French Republic to adopt safeguard measures with a view to protecting the French refrigerator industry against Italian imports, Recueil IX, p. 335. Case 32/65, *Italian Republic* v. *Council of the European Communities*, Judgment dated 13th July 1966. By this action, Italy requested annulment of a regulation of the Council regarding competition, in the elaboration of which she had herself participated, Recueil XII, p. 563. Case 28/68, *Kingdom of the Netherlands* v. *High Authority*, Judgment dated 8th September 1968. The action sought annulment of a decision of the High Authority authorising certain special rates for the German Federal railways, Recueil XIV, p. 1.

[9]) Up to now there has been only one example of this kind of litigation, which, while being as yet an isolated case, nonetheless affords a wealth of material. It is Case 22/67, *Commission* v. *Council*, decided by judgment dated 31st March 1971, Recueil XVII, p. 263; C.M.L.R. (1971) 335. The conflict resolved by this judgment raises a problem of direct concern to international law, namely, the capacity of the Community as regards the conclusion of agreements with non-Member States and the distribution of authority in this sphere between the Community and its Member States.

private parties, to obtain a declaration of an obligation on the part of the Community executive — High Authority or Commission — to intervene against a Member State with a view to inducing that State to observe its engagements. Even though such actions have only rarely been successful, they are not lacking in interest from the point of view of the establishment of judicial control over the international behaviour of States [10]).

3. As for the actions for indemnity, which at first sight might seem confined to the sphere of the administrative responsibility of the Community, practice shows also that this kind of proceeding may be used by private parties to raise the question of the responsibility of the Community executive for failure to use its powers of surveillance and injunction so as to guarantee the observance by Member States of their Community obligations. Hence, this action is close to the action for a failure to act. Up to now, however, such actions have not yet led to important results [11]).

4. Finally, there must be mentioned in this context requests for preliminary rulings on interpretation, provided for by Article 177 of the Treaty. This kind of proceeding is becoming more and more used, to such an extent that a large part, if not indeed the majority, of the cases brought before the Court belong to this type of litigation.

Once again, since these actions have their origin in judicial proceedings commenced before national courts, one might be led to think that their interest would be of a purely internal character. Yet practice shows that this

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[10]) As an example of an action for failure to act, brought by a Member State against the Commission and aimed indirectly against another Member State, there may be cited Case 59/70, *Kingdom of the Netherlands* v. *Commission*, Judgment dated 6th July 1971, Recueil XVII, p. 639. By this action for failure to act, the Dutch Government complained that the Commission had taken no action against certain provisions in the French Fifth Plan for Economic and Social Development, allegedly contrary to the provisions of the ECSC Treaty. The action was dismissed as out of time. As an example of the use of the action for failure to act by a private party with a view to putting pressure on a Member State, there may be cited Case 30/59, *Gesamenlijke Steenkolenmijnen in Limburg* v. *High Authority*, Judgment dated 23rd February 1961, on the subject of the "pit-face bonus" paid to miners by the German State and tolerated by the High Authority, Recueil VII, p. 1. This action, which was successful, was aimed indirectly against the Federal Republic of Germany, so much so that the latter intervened in the proceedings.

[11]) As an illustration of this proceeding, the following cases may be cited: Cases 5, 7 and 13 to 24/66, *Kampffmeyer and Others* v. *Commission*, Judgment dated 14th July 1967. The action concerned a claim for indemnity following a safeguard measure in the agricultural sphere granted in irregular conditions by the Commission to the Federal Republic of Germany, Recueil XIII, p. 317. Case 4/69, *Lütticke* v. *Commission*, Judgment dated 28th April 1971. In this case, damages were claimed from the Commission for having neglected to see that certain internal taxation of the Federal Republic of Germany was in accordance with the requirements of the Treaty, Recueil XVII, p. 325. The action was dismissed as unfounded.

kind of proceeding may serve to clarify the legal position in cases where a private party is involved in a dispute with the State on the subject of the application of the provisions of Community law, sometimes on major legal issues.

In the context of this kind of proceeding, the Court of Justice has thus had to deal, from varying points of view, with problems relating not merely to the substantive meaning of provisions of Community law, but also to its efficacy. Consequently, it is in judgments of this kind that there are to be found the major contributions made by case law to the construction of the Community legal order. For another reason, too, this kind of procedure has assumed a capital importance in the development of the law: owing to the direct communication it establishes between the Court and national courts, it has made it possible to arouse in the latter the consciousness of contributing directly to the application of Community law.

In the extensive case law based on Article 177, there may be cited, as an illustration of the foregoing, the principal judgments which have served to define the relationships between Community law and the internal law of the Member States. The referrals which have given rise to these decisions were each time occasioned by a conflict raised before the national judges between the provisions of these two orders, and it was with a view to resolving this conflict that the national judges put to the Court of Justice questions relating to the direct effect and the rank of Community law.

The fundamental decision on the question of d i r e c t e f f e c t is the judgment dated 5th February 1962 in Case 26/62, *Van Gend and Loos*. In this case, the Dutch judge, faced with a conflict between a provision of the EEC Treaty and the national customs tariff (in that case the Benelux tariff), asked the Court of Justice about the direct effect of the Community provision invoked, since this effect would, in its turn, determine the solution of the conflict. It is in this judgment that the Court affirmed that the EEC Treaty

> "amounts to more than an agreement which creates only mutual obligations between the contracting States; ... the Community constitutes a new legal order in international law, for the benefit of which the States have limited, albeit in restricted spheres, their sovereign rights, and of which the subjects are not only the Member States but also their citizens" [12]).

Under the inspiration of this initial decision, the doctrine of direct effect has been developed and set out more precisely. Certain national courts having raised objections, basing their argument on the practical difficulties

[12]) Recueil IX, p. 1; C.M.L.R. (1963) 105.

which this line of cases was liable to raise on the national level, the Court replied that

> "the complexity of certain situations within a State cannot alter the legal nature of a directly applicable Community provision, more particularly since Community law must apply with the same force in all the Member States" [13]).

The fundamental pronouncement of the Court on the autonomy and primacy of Community law may be found in the judgment dated 15th July 1964, Case 6/64, *Costa* v. *ENEL* [14]). In this judgment the Court affirms that

> "the executive force of Community law cannot vary from one State to another in deference to subsequent domestic legislation without endangering the attainment of the aims of the Treaty; ... the law stemming from the Treaty, an autonomous source of law, could not, by virtue of its specific original nature, be over-ridden by domestic legal provisions, however framed, without disregard for its character as Community law and without the legal basis of the Community itself being called into question; the transfer by the States from their domestic legal order to the Community legal order of the rights and obligations arising under the Treaty carries with it a clear limitation of their sovereign rights, against which a subsequent unilateral law incompatible with the Community cannot prevail".

In its turn, this judgment has inspired a whole series of decisions culminating in the judgment dated 17th December 1970, Case 11/70, *Internationale Handelsgesellschaft* [15]), which led the Court to affirm the protection of fundamental rights in the Community legal order, and consequently the non-application of the corresponding provisions of national constitutions; the Court said on this subject:

> "the validity of a Community act, or its effect in a Member State, cannot be called in question by pleading that there has been infringement of fundamental rights in the form given them by the constitution of a Member State or of the principles of a national constitutional structure",

it being understood, as is indicated above, that the Court will itself ensure respect for fundamental rights in the Community legal order by drawing upon the constitutional traditions common to the Member States.

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[13]) Case 28/67, *Molkereizentrale*, Judgment dated 3rd April 1968, Recueil XIV, p. 211; C.M.L.R. (1968) 187; in the same sense, Case 13/68, *Salgoil*, Judgment dated 19th December 1968, Recueil XIV, p. 661; C.M.L.R. (1969) 181.

[14]) Recueil X, p. 1141.

[15]) Recueil XVI, p. 1125.