6 Community Law in the Member-States

Community law now constitutes an integral part of the member-countries' legal system. The courts in those countries must implement Community law in litigation within their own jurisdiction where Community law requires. A number of treaty provisions impose, in binding and self-sufficient terms, obligations on the member-states, the acceptance of which confers both rights and obligations on individuals which must be upheld by the municipal courts in those states.

Moreover, the Treaty rules impose on the member-states clear and unconditional obligations to refrain from certain acts (and there is no requirement that any steps need be taken by the Community or by the member-states before these obligations must be complied with).

There is, thus, no discretion allowed to the member-states in respect of certain Articles in the Treaty, for example Article 12, by which they must refrain from introducing any new customs duties on trade between themselves; Article 53 by which they allow freedom of establishment of nationals, of companies and other bodies; Article 37 which excludes discrimination by State monopolies; Article 95 which proscribes the imposition of internal tax changes which might afford indirect protection to like domestic productions; or Articles 31 and 32 which abolish quotas.

On the other hand, consultation rather than specific prohibition has been ruled with regard to Article 93 on existing forms of state aids; Article 102 on legislative disparities; and Article 97 on the averaging of turnover tax for the purpose of calculating the tax both for export and import, although with the wider use of tax on value added, it would seem that this item is no longer relevant.

The supremacy of Community law over Municipal law in the member-states is becoming increasingly established particularly in the field of 'Competition'. When the member-states signed the Treaty, they accepted a definite restriction of their sovereign rights which could not be undone by any subsequent unilateral act. France endeavoured to establish the principle that 'lex posterior' (in one
particular case) should prevail irrespective of the meaning or scope of Community law, but the Court of Justice of the Community confirmed not only the supremacy of Community law but that individual decisions made by the Commission must override internal decisions in the member-states, in the application of the Community Rules of Competition.

Article 177 of the Treaty is the effective instrument to ensure the uniform application of Community law.

The nature of Community law, as an integral part of the law in the member-countries, is such that uniform interpretation of Community law must be guaranteed whichever national court is required to implement it. This is the purpose of Article 177 of the E.E.C. Treaty, which is of capital importance to the development of Community law, and gives the Community Court of Justice jurisdiction to give preliminary rulings concerning (a) the interpretation of the E.E.C. Treaty, (b) the validity and interpretation of measures taken by the institutions of the Community and (c) the interpretation of the statutes of bodies set up by a formal measure of the Council, where those statutes so provide.

To mid-1970, seventy-two cases concerning the interpretation of the Treaty (or its provisions) or the validity of acts of Community institutions had been submitted to the Court under Article 177. They include matters as important as the direct applicability of certain Treaty provisions, the supremacy of Community law and the interpretation of Article 85 as regards exclusive dealing agreements.

Article 177 is the procedural counterpart of the fundamental principle that Community law is of general application.

The essential feature of this procedure is co-operation between Municipal courts and the Community's Court of Justice. A request for a ruling under Article 177 can be made only by a national court and not by individual litigants. The Court confines itself to construing Community law: it refuses to consider the facts at issue in the national court.

Recourse to Article 177 has become more and more frequent over the years, not only by lower courts but also by a number of supreme courts. In some of the member-countries, however, the courts seem still to hesitate to use this procedure.

In this context, mention should also be made of the problem of the acte clair, that is the question how far supreme courts are entitled to refrain from submitting a matter of interpretation to the court on