OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 17 FEBRUARY 1970[1]

Mr President,
Members of the Court,

The case before the Court today concerns the question whether the Commission was right in accusing the French Government of having infringed provisions of Community law. This infringement is claimed to have occurred on the grounds that until the entry into force of the Agreement establishing an Association between the European Community and the Tunisian Republic, that is to say until 1 September 1969, France did not collect levies on olive oil imported from Tunisia as provided for in Regulation No 136/66 of the Council of 22 September 1966 (OJ p. 3025) on the establishment of a common organization of the market in oils and fats, on the basis of the difference between the threshold price and the cif price (or to be more precise, as laid down by Article 13 of that regulation on unrefined olive oil from third countries and by Article 14 in respect of refined olive oil from third countries). The *Journal Officiel* of the French Republic of 8 December 1966 in fact contains a notice to importers according to which the levies under Regulation No 136/66 are not due on imports from Morocco and Tunisia to the extent that such imports fall within the limits of the quotas opened for those countries in respect of the year 1966 or 1966/1967. I must moreover mention the order published in the *Journal Officiel* of the French Republic of 19 January 1967 which laid down that in respect of imports of olive oil from Tunisia there should be a zero-rated quota of 20 000 metric tonnes in respect of the year 1967. For the sake of completeness only, I would also mention that this order likewise provided for a quota of 6000 metric tonnes in respect of Morocco; but this fact is without significance for the present case. Furthermore I must refer to the notice to importers published in the *Journal Officiel* of the French Republic of 2 June 1967 according to which the levy under Regulation No 136/66 was not due on imports of olive oil of a particular kind originating in Tunisia to the extent that these remained within the limits of the quota opened in respect of the year 1967.

In the face of this, the Commission addressed a letter on 1 August 1967 to the French Minister for Foreign Affairs in which it pointed out that the importation from Morocco and Tunisia free of levy, infringed Regulation No 136/66 and asked the French Government to forward its observations on this complaint within a period of two months. In its reply of 3 November 1967 the French Government argued that under Protocol I.7 to the EEC Treaty which also applies to the relationship of France with Morocco and Tunisia, Articles 13 and 14 of the aforementioned regulation of the Council are not applicable to imports originating in those countries. Moreover the French Government referred to the damage which such an application would inevitably involve for the economic life of Tunisia and Morocco. In accordance with this view a notice to importers was published in the *Journal Officiel* of 12 January 1968 pursuant to which a quota of 20 000 metric tonnes of olive oil originating in Tunisia (nothing was said about Morocco) could be imported into France, free of levy in the year 1968.

Thereupon on 3 May 1968 the Commission issued a formal notice under Article 169 of the EEC Treaty. It repeated therein the opinion contained in its letter of 1 August 1967 and set a time-limit of 30 days for the French Government to put an end to this infringement of the Treaty.

But the French Government persisted in its point of view and in the *Journal Officiel* of 31 January 1969 it informed importers that during 1969 up to 20 000 metric tonnes of olive oil of a particular kind could be imported from Tunisia without payment of the levy provided for in the Regulation No 136/66.

This was the occasion for the Commission

1 — Translated from the German.

to commence proceedings. By application lodged on 14 June 1969 it submitted to the Court of Justice the dispute outlined which bears exclusively on the case of Tunisia, for at that date the exemption from levy already no longer applied to imports of olive oil from Morocco. Accordingly it is now necessary to examine the submission by which the Commission asks you to rule that in excluding the application of the levy within the limits of a quota fixed annually on imports of olive oil originating in and coming from Tunisia the French Government has infringed Articles 13 (1) and 14 (1) of Regulation No 136/66.

Legal analysis

1. Before examining whether this application is well-founded, it is necessary briefly to show that there are no objections as to *admissibility*. I consider that this is the proper course because the infringement complained of by the Commission no longer exists since the coming into force of the Agreement for establishing an Association between the European Economic Community and the Tunisian Republic (that is to say since 1 September 1969), France since that date adhering to Regulation of the Council No 1471/69 (OJ L 198) which lays down in a uniform manner special rates of levy for the Community for imports of olive oil coming from Tunisia. In fact, as the Court of Justice has already emphasized in similar cases (Case 7/61, Rec. 1971, p. 653) this fact is of no importance. As regards the admissibility of the application under Article 169 of the EEC Treaty the only important element is that the French Government did not comply with the Commission's opinion within the time-limit of one month fixed in the notice of 3 May 1968 and that the situation complained of still existed at the time when the action was brought. Besides, it must be recognized that the Commission has an interest in this declaration because the Protocol cited by the French Government continues to apply to products not comprised within the Association Agreement to which I have referred and because the application of the Protocol to other products is only suspended for the duration of the validity of the Association Agreement (that is to say for five years). On this point I can refer the Court to the exchange of letters published in the Official Journal of 1969 (L 198, p. 87) and I can now without further preliminary remarks start the examination on the substance of the case.

2. As I have already said, the French Government, accused of having infringed the Treaty by not charging the levies on olive oil coming from Tunisia provided for under Regulation No 136/66, defends itself by citing the Protocol 'on goods originating in and coming from certain countries and enjoying special treatment when imported into a Member State', annexed to the EEC Treaty (Protocol I.7). The determination of its scope therefore constitutes the central problem of the case before us. This justifies starting by quoting its text to the extent that it is of interest in this case. In the first paragraph of the Protocol we read: 'The application of the Treaty establishing the European Economic Community shall not require any alteration in the customs treatment applicable, at the time of the entry into force of this Treaty, to imports ... into France of goods originating in and coming from Morocco, Tunisia...' Since in the French Government's view the levies are not customs duties (we can deduce this from a letter of 3 November 1967) the problem of interpretation accordingly centres on the question whether the notion of 'customs treatment' to which we have referred must be understood in a narrow sense and limited to customs duties as such or whether in a wider sense it must be understood as 'import treatment'. This last-mentioned interpretation is as we know, that adopted by the French Government. Starting from this premise, the French Government argues as follows: bearing in mind that at the time of the entry into force of the EEC Treaty the imports of olive oil coming from Tunisia were not subject to French customs duties, Protocol I.7 exempted France from imposing on Tunisian oil a variable charge on imports having like effect to that which was introduced—in the form of a levy—at the time of the entry into force of the organization of the market relating thereto and replacing the customs duty. In support of this thesis the French

Government has presented a series of observations which the Commission has tried to demolish by its arguments. Let us now examine the relevant points in detail.

(a) I start with the arguments on the wording as such. In this respect the French Government refers back first of all to other expressions used in the Protocol itself. It argues that its preamble uses the more general notion of 'special treatment' applied to imports into a Member State and that in paragraph 3 of the text there is also a reference to 'special treatment'. This wording helps to elucidate the scope of the provision contained in paragraph 1 and in particular to show the need for giving a *wide* interpretation to paragraph 1.
In agreement with the Commission, I must however confess that these references do not get us very far. We must recognize that the function of the preamble is essentially to bring out the reasons determining the adoption of the Protocol and *generally* to characterize its contents. The preamble does not therefore require the same precision as the provisions themselves following thereon. Consequently in cases of divergence in text the *content* of the Protocol must take precedence over the preamble and it is first and foremost the text of these provisions which is decisive. The same applies to paragraph 3. A reading of it shows clearly that it is only *referring back* to the rules contained in paragraph 1. Thus it seems understandable that the special systems in question are not indicated in a precise manner. On the other hand it would be wrong to determine the scope of special systems from the text containing the reference back.
Thus the first argument of the French Government certainly carries no weight in the matter.

(b) The French Government's attempts to interpret the concept of 'customs treatment' taking into account international linguistic usage go further. The French Government considers that they may have a certain usefulness although, along with the Commission, it is obliged to admit that there is no clear and precise definition.
In this respect the French Government referst first of all to a reference in the Glossary of the Customs Cooperation Council. According to this document the term 'régime douanier' ('customs treatment') must be interpreted as 'la destination au regard des lois et règlements douaniers que peuvent recevoir les marchandises assujetties au contrôle de la douane' ('the use from the point of view of customs laws and regulations to which goods subject to customs control may be put'). Besides it is said in two supplementary definitions that 'dans certains pays ce terme désigne également l'ensemble des prescriptions légales ou réglementaires s'appliquant à cette destination' ('in certain countries this term also refers to the totality of the provisions laid down by law or regulation which apply for this purpose') and they state 'qu'il existe des régimes douaniers différents (régimes de la mise à la consommation, de l'entrepôt de douane, de l'admission temporaire, du transit douanier, etc.) selon la nature et le but de l'opération' 'that there exist different customs treatments (those applicable on release to the market, on customs warehousing, on temporary entry, on customs transit etc.) according to the nature and the purpose of the operation'). As regards the value of these references for the purpose of argument, the Commission first of all objected by saying that these are forms of words which have fallen into disuse since 1964. Since 1967 the recognized definition is 'Traitement applicable au regard des lois et règlements douaniers et selon la nature et le but de l'opération aux marchandises assujetties au contrôle de la douane' ('Treatment applicable under the customs laws and regulations and according to the nature and the purpose of the operation, to goods subject to customs control'). The supplementary note now adds: 'Il existe divers régimes douaniers, mise à la consommation, entrepôt de douane, admission temporaire, transit douanier, etc. ...' ('There exist different customs treatments, those on release to the market, on customs warehousing, on temporary entry, on customs transit etc. ...'). But above all it must be admitted that neither the old form of words nor the new version of the glossary allow any convincing conclusions to be drawn on the problem before the Court.
On this point, also, I consider that the Com-

mission's thesis is correct. In reality the forms of words referred to stress the concepts of '*customs* laws' and '*customs* regulations', in other words they refer to the classic concept of customs law. Besides, the amplifications which are not exhaustive, do not provide a clarification for the solution of the case before the Court. As was said by the Commission, they give the impression of dealing with the manner in which the customs duties are to be put into effect but say nothing as to the *nature* of the duties involved. The glossary of the Customs Cooperation Council may therefore safely be disregarded for the purpose of providing a solution to this case.

Let me say at once that the same applies to the weight to be attached to references relating to the linguistic usage of GATT which the French Government invokes under three headings in order to show that the term 'customs' does indeed cover the wide area which it applies to the expression 'customs treatment' in the Protocol.

In fact it does not prove its point by means of terms used in the special Italo-Libyan system. We have in fact seen this deals with *tariff quotas* for certain products, in other words, as the Commission has rightly pointed out, we find ourselves in a field which concerns customs problems in the narrower sense. This reference is therefore, useless for the purpose of delimitation which interests us at present.

Equally, the recourse to the definition 'customs union' is more of apparent than real help in this case. In Article 24 (8) of GATT it is defined as 'the substitution of a single customs territory for two or more customs territories, so that duties and other restrictive regulations of commerce are substantially eliminated and that ... substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union'. As is admitted by the Commission, it can be said that this definition carries no weight as an argument in the present context because it is precisely the adjective 'douanier' ('customs') which is not used in order to cover the *other* duties referred to. Moreover, it must be said that the EEC Treaty is clearly based on a different system. Here as we know there is a distinction made in the title relating to free movement of goods between customs union (Chapter 1 of Title I) and the elimination of quantitative restrictions between Member States (Chapter 2 of that Title). Moreover, it is clear that within the Community, notwithstanding the discontinuance of internal customs duties, levies had to be collected during the transitional period; the system of Community law itself thus furnishes strong evidence to rebut the argument that the levy falls within the concept of customs duties.

Finally, the third argument as regards GATT concerns the forms of words which were used by the Community authorities within the framework of the negotiations on the Association Agreement with Tunisia. In my opinion the Commission has convincingly shown that this also is not relevant. In fact the general use of expressions 'tariff preferences', 'customs franchise privileges' and 'collection of customs duties' to which the French Government refers can only be explained by the fact that in these negotiations the discussions also dealt with products which like citrus fruits are clearly subject to customs duties. On the other hand the global use of expressions of the kind referred to does not allow one to arrive at a decisive definition of levies applicable to other products (such as olive oil) that is to say, to deduce therefrom the proof that the Community admits the existence of a *customs* system in respect of *all* the goods in question.

(c) Whilst the arguments so far examined were not of a kind to support the French Government's opinion, I must on the other hand admit that the Commission did cite several very important arguments drawn from related fields in support of the validity of its point of view. There are four references in all.

Let me first refer to Protocol No 12 of the Association Agreement between the Community and Greece. The Protocol emphasizes in express terms that the levies are not charges having an effect equivalent to customs duty and that the standstill obligation under Articles 12 and 37 of the Association Agreement does not therefore apply thereto. Thus the levies are in effect clearly

different from charges having an effect equivalent to customs duties and obviously from customs duties as such (in respect of which such a clarification would be unnecessary). The only interpretation which one can deduce is that the Community understands the term 'customs treatment' in a manner which does *not* include levies.
Other arguments which it is possible to draw from the area covered by the Treaty itself point in the same direction. One must mention Protocol I.3 'on German Internal Trade and connected problems' likewise annexed to the EEC Treaty. This Protocol states that the Treaty requires no change in the *treatment* currently accorded to German internal trade. The Protocol therefore expressly uses a *wide* term, similar to that of 'import régime' which the French Government would like to see as the content of Protocol I.7. This situation combined with the fact that Protocol I.7 has a different wording allow us in fact to arrive at the conclusion that a restrictive content must be given to the narrower concept and that one must not seek to extend it by way of interpretation.
In this respect the Implementing Convention on the Association of the Overseas Countries and Territories with the Community, which is annexed to the EEC Treaty, is even more precise. Article 9 thereof also uses the term 'customs treatment' ('régime douanier') when it provides that 'The customs treatment to be applied to trade between Member States and the countries and territories shall be that provided for in Articles 133 and 143 of this Treaty'. We can further deduce from Article 133 of the Treaty that it is only a case of abolition of customs duties on imports and that therefore even charges having an effect equivalent to customs duties are not included. Here also therefore we can, going along with the Commission, see an argument against the thesis of the French Government according to which the concept of the customs treatment also includes levies apart from customs duties. It is in fact difficult to conceive that the scope of Protocol I.7 should be wider than that of the aforementioned convention and that one should thus accord to countries to whom the Member States have given no more than a declaration of intent with a view to a future association, a treatment more favourable than that applied to countries already associated with the Community.
Finally, a fourth reference of the Commission relates to imports from the African and Malagasy States the trade of which is subject to the internal Community treatment in conformity with Article 132 (1) of the EEC Treaty. Clearly in 1962 at the time when the levies in relation to third countries were laid down, it was generally considered necessary also to collect these levies on imports from the States referred to because they did not form part of the Community organizations of the market. But to avoid this happening, express exceptions were made—it might be added at France's request—under which the countries involved were not to be treated as third countries (for example Article 14 of Regulation No 19, Regulation No 128 of the Commission and Regulation No 156 of the Council). We can with reason say that this would not have been the case if the concept of 'customs treatment' already included the levies and this also provides an essential argument against the correctness of the contrary view adopted by the French Government.
In a first interim conclusion I can therefore state that the mainly terminological research which I have so far undertaken neatly tilts the scale in favour of the Commission and of its thesis.

(d) But the case also gives rise to other considerations, particularly that *of the meaning and the purpose* of the Protocol relied on by the French Government, in other words one must investigate whether, on the interpretation which the Commission considers correct, this Protocol retains a logical sense or whether it is deprived of all meaning, as the French Government fears.
On this question it is first of all easy to demonstrate that even with the restrictive interpretation, that is to say excluding the levies from the notion of 'customs treatment', the Protocol retains a logical function. One can say this, even though in respect of the countries favoured thereby, in particular Tunisia, it is above all agricultural exports which are of importance; consequently a special régime not including

these products would have little use. In the course of the proceedings the Commission did in fact show that even on the basis of the interpretation which it has adopted, that is to say in a case of exemption from customs duties only, the extent of the privileges remains considerable. In fact there exists a range of agricultural products which are not the subject of an organization of the market (to which consequently the levies do not apply) and a range of products included in organizations of the market which are not subject to any levy but simply to customs duties. On this subject I can refer in particular to the list which the Commission gave in its reply (p. 2). In my opinion it shows clearly that from an economic point of view Protocol I. 7 has also a reasonable area of application, even if one derives from it only an authority to refrain from collecting customs duties but not from collecting levies. We must further recognize that with the Community system in the background, Protocol I.7 has a clear meaning precisely on the assumption that it confines itself to customs duties as such. This much can be said because at the time when the Treaty was concluded precise and immediately applicable provisions were adopted only for the purpose of the progressive adaptation of external customs duties. Thus it was natural in this matter to make exceptions by way of special Protocols in respect of the relations between certain Member States and third countries. On the other hand, in other fields, particularly agricultural policy, for which levies are available, the Treaty only provided a certain *programme* which must in its details be implemented by Community measures. As the Commission rightly thinks, there was therefore no ground for introducing special provisions into the Protocols of the Treaty; rather could it be supposed that by taking the measures in question within a Community framework the Member States would ensure that due account was taken of their particular relationships with third countries. There can be no doubt that this consideration favours the interpretation of Protocol I.7 recommended by the Commission.

(e) Besides, considerations related to the common agricultural policy point in the same direction. The Commission has shown us what important function attached to the levies for the purposes described in Article 39 of the EEC Treaty. They are an instrument for stabilizing imports and maintaining a definite price level within the single market in which the Community production benefits from preferences. Thanks to these means, it is in particular possible to ensure a reasonable living standard for the agricultural population. It is quite obvious that this system is very much disturbed if goods comprised in organizations of the market are imported into a Member State free of levy. Such imports may result in there existing in this Member State a price level lower than that of the Community threshold prices and target prices, in other words they may result in a discrimination between domestic producers and thus cause an infringement of Article 40 (3) of the EEC Treaty. Further, a partitioning of the domestic market necessarily results therefrom and this manifestly runs counter to the idea of unity of the Common Market. This partitioning off is from a legal point of view provided for in paragraph 2 of Protocol I.7. From the point of view of market technique it could have occurred in the present case as the amount of the import quotas for olive oil from Tunisia clearly coincided with the total French requirements. Consequently, as we have heard in the course of the proceedings, the imports into France of Italian olive oil were minimal. The situation which I have described is moreover of a kind likely to have harmful effects on other Member States. In this respect it is not necessary to study very thoroughly the question already discussed in detail, whether the special French treatment really caused apressure on prices in Italy. It seems enough to admit that such effects cannot be excluded and that they may also be triggered off by small quantities of products reaching a saturated market. Besides the statistical data on the evolution of the level of Italian prices and on their fall below the level of threshold prices which were furnished by the Commission really are impressive. Finally I cannot disregard the effect which exemption from levy has on the functioning of the financial system of the common agricultural policy. According to Regulation No 130/66 the

Guarantee Section of the Common Agricultural Fund is as we know financed by the Member States who contribute to the fund 90% of the levies which they collect on imports coming from third countries. If necessary the rest is covered by contributions of the Member States, applying a definite scale. Now if a Member State does not collect levies, the corresponding portion of the contribution is obviously diminished and the sum which Member States must contribute according to the fixed scale increases. If the levies were considered as coming within the 'customs treatment' then the States referred to in Protocol I.7 could unilaterally have an influence on the system of financing of the common agricultural policy. There you have a consequence which in my opinion must also be taken into account when interpreting the Protocol.
It is therefore precisely the important and multifarious effects resulting from the system of levies which make it unthinkable that there was an intention to incorporate levies into the scheme of the special treatment under Protocol I.7.

(f) However, this is not yet the end of our investigation. One further argument on the part of the French Government still remains to be examined and it is certainly not the easiest: the French Government argues that to deal with the case one must take into account the declaration of intent which was made at the time of the signature of the EEC Treaty 'on the association of the independent countries of the Franc Area with the European Economic Community'. In this declaration the contracting parties express their anxiety 'to maintain and intensify the traditional trade flows between the Member States of the European Economic Community and these independent countries and to contribute to the economic and social development of the latter' and they declare their readiness, 'as soon as this Treaty enters into force to propose to these countries the opening of negotiations with a view to concluding conventions for economic association with the Community'. In the French Government's opinion one must see the function of the Protocol in question in the light of this declaration of intent and therefore as pointing to the continuance in favour of certain countries during a *transitional* period and until the conclusion of Association Agreements of the advantage which they derive from special relationships with individual Member States. In fact following on this basic idea the Agreement, establishing an Association between the Community and the Tunisian Republic which entered into force on 1 September 1969, and Regulation No 1471/69 of the Council which is based on this Agreement, in practice preserved for the Tunisian Republic in respect of olive oil the advantages which previously it had derived from the special relationship with France. But looked at from this point of view the thesis according to which France was obliged to raise levies in respect of the import of Tunisian olive oil on the entry into force of Regulation No 136/66 and that a break in the economic relations of Tunisia with France was therefore unavoidable makes no sense. Given the importance of the exports of Tunisian olive oil to France and Tunisia's constant trade deficit with France this would have involved considerable damage to the Tunisian economy. How this result and the subsequent grant of favourable treatment by the Community can be reconciled with the principles of an orderly development policy which cannot dispense with planning and stability must remain an unsolved problem.
Finally let us see what to deduce from these considerations which do certaintly carry weight.
First, we may have justifiable doubts in relation to the argument that the Association Agreement and the Regulation of the Council based thereon are intended to retain for the benefit of the Tunisian Republic advantages in respect of olive oil equivalent to those it enjoyed under the special French régime. In this respect it can be said that in the GATT negotiations on this point only compensation *within certain limits* was considered. The correctness of the French thesis is also put in doubt by the Tunisian Government's stand taken in the course of the negotiations with the Community; its attitude was that in order to maintain all the advantages granted by the French Government it was necessary to deduct 8.5 ua per 100 kg from the levy to be collected

under Article 13 of Regulation No 133/66, whilst the aforementioned Regulation No 1471/69 of the Council (OJ L 198) only grants a reduction of 5.5 ua per 100 kg in respect of imports of olive oil into the Community. Nevertheless it is not necessary to go into details of these calculations because it is really not yet possible to give a reliable opinion after the short period of time which has elapsed since the entry into force of the Association Agreement and on the basis of the different documents produced. The determining factor really is that even if the equality of the advantages cannot be disregarded, it must not be forgotten that these advantages are henceforth granted by the *Community*, after it has carefully taken into account its interests, which may perhaps require a different solution under different circumstances. Apart from this it must not in any event be forgotten that Regulation No 1471/69 provides a *guaranteed minimum price* for Tunisia. This did not exist in the special French régime. This at least therefore shows one difference, the importance of which, in the interest of the common agricultural policy, must not be underestimated.

A second consideration relates to the thesis that recognition of the correctness of the Commission's point of view made a break in the advantageous relationship which Tunisia maintained with France inevitable with the entry into force of Regulation No 136/66 because considerable levies had become payable. The Court of Justice sought to obtain clarification on this subject by questions addressed to the parties, whereupon we learned that the problem was not raised at all at the time of preparation of Regulation No 136 and that France had expressed no reservations as regards its imports of olive oil from Tunisia. We shall leave aside the question whether negligence can be alleged against the parties for we are dealing with an objective procedure which is not concerned with allocating blame. In my opinion the thesis that the problem as it faces us today had not been recognized at the time is perfectly defensible. If it had been recognized, if the great importance of exports of olive oil for the Tunisian economy had been sufficiently spotlighted, there is no doubt that, even admitting the interpretation of Protocol I.7 recommended by the Commission, a reasonable solution could have been found for Tunisia either within the framework of Regulation No 136/66 or of a special regulation. In my opinion one may make this assumption because, as was shown at the time when the Association Agreement was entered into, the Community authorities are perfectly well aware of the obligatory nature of the declaration of intent to which I have referred, in particular where it uses terms indicating that the traditional trade between the Member States of the European Economic Community and the countries belonging to the Franc Area is to be *maintained* and *expanded.*

But having regard to the development of the Community I consider it particularly important, that this concerned a problem in *Community* law and not in purely national law. In the final analysis the thesis of an inevitable break in the external economic development of Tunisia is not therefore relevant.

3. Having said all this let me summarize my views.

I cannot, I think, summarize without acknowledging that the French Government has striven in an impressive manner and with a profound sense of its responsibility to deal with this problem, which is delicate both from a legal and a political point of view, by arguing genuinely for the solution which it considers correct. All things considered one must still find that the text of Protocol I.7, its meaning and purpose, the general pattern of the Treaty and above all the arguments which may be drawn from the requirements of the common agricultural policy suggest that the Com-

mission's opinion is correct. Accordingly, Protocol I.7 does not contain customs regulations as such; in relying thereon the Member States do not therefore have the right to refrain from collecting levies under Community law. Since, as regards imports from Tunisia, the French Government, relying on the aforementioned Protocol, has not collected the levies laid down by Regulation No 136/66 for imports of olive oil from third States we must find that it has acted contrary to Community law.

In view of this finding, the unsuccessful defendant must also bear the costs.