(Chambre Correctionnelle) to decide on the costs in this action.

Donner Hammes Trabucchi
Delvaux Rossi Lecourt Straß

Delivered in open court in Luxembourg on 12 May 1964.

A. Van Houtte
Registrar

A. M. Donner
President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 30 APRIL 1964[1]

Mr President,
Members of the Court,

By its judgment of 29 May 1963, the Tribunal d'Arrondissement of Luxembourg (Chambre Correctionnelle) refers to this Court for a preliminary ruling on the interpretation of the European Treaties, that is (I quote) 'on the points and provisions stated and all others, if need be, which determine the duration of the sessions of the Assemblies of the European Communities and thus to settle the question of the parliamentary immunity of the defendants on 6 November 1962'.

You will remember in fact that two members of the Chambre des Députés of the Grand Duchy, who are also members of the European Assembly, relied on their parliamentary immunity in this dual capacity so as to have declared inadmissible an action for defamation brought against them. Following a rather complicated procedure, a summons was issued on 6 November 1962, that is to say, during the few hours of the year when the Luxembourg Chambre des Députés was not in session; the session had actually opened on 7 November 1961 and ended by Ministerial Decree of 29 October 1962 with effect on 5 November 1962, while the new ordinary session was to open on the first Tuesday after 3 November, that is, 6 November at 3 o'clock in the afternoon! So the immunity no longer applied as regards the Luxembourg parliament, but the question remained with regard to the status of the accused as members of the European Assembly. With regard to this matter, the tribunal had some doubts whether the European Assembly was in ordinary or extraordinary session on 6 November 1962, doubts which arose particularly from the lack of clarity of the provisions in the Treaties relating to the duration of the sessions. This question needed to be clarified since, under Article 9 of each of the three Protocols on the Privileges and Immunities, it is only '*during the sessions of the Assembly*' that its members enjoy 'in their national territory, the immunities accorded to members of their national parliament'. And that is why, considering that a preliminary decision was necessary before it could give judgment and using the option offered by Article 177 (2) of the EEC

1—Translated from the French.

Treaty and Article 150 (2) of the EAEC Treaty, the Court (I quote the operative part of the judgment) 'refers the parties to the Court of Justice of the European Communities to have interpreted by that Court the Treaties invoked by the defendants, namely, the points and provisions stated and all others, if need be, which determine the duration of the sessions of the Assemblies of the European Communities and thus to settle the question of the parliamentary immunity of the defendants on 6 November 1962'.

I

Several procedural and jurisdictional questions must first be settled.

A. The *first* relates to the *validity of the reference* to the Court. You have noticed in fact that the Court 'refers *the parties* to the Court of Justice', whereas it ought itself to have referred the matter to the Court. In this respect, however, there is no difficulty: the matter has been effectively brought before the Court by a direct communication from the Chief Registrar of the tribunal to the Registrar of this Court, and not by the parties. The reference is regular.

B. The *second* problem concerns the *purpose of the questions put.* This point is more delicate, for it bears directly upon the jurisdiction of this Court. This jurisdiction has a dual limit:

1. A limit arising from Article 177: the request must concern a question relating to the interpretation of the Treaty or to the validity and interpretation of acts of the institutions of the Community. Here it is a matter of an abstract interpretation, the Court being unable in any case to take the place of the national court in settling the litigation with which that court is faced;
2. A limit arising from the question put: the Court may only reply to that question and not to others, and without assessing whether the question is appropriate or relevant with regard to the judgment of the main issue.

First of all, what is the tribunal asking exactly? If we keep to the operative part of the judgment, we find that the court does not mention the provisions of which it seeks interpretation and does not set out the precise nature of the difficulties of interpretation with which it is faced. However, if we look at the grounds of judgment, we see clearly that the tribunal desires clarification of the problem of the *duration of the sessions* of the European Assembly, in so far as this problem is the key to settling the dispute with regard to the existence of immunity on 6 November 1962, and that the doubt which it feels relates to the interpretation of Article 22 of the ECSC Treaty and Articles 139 of the EEC Treaty and 109 of the Euratom Treaty, which provisions are expressly cited in the grounds of the judgment. One needs only to read these Articles to find that the lack of agreement between them, on the one hand, and, on the other, the absence in the Treaties of Rome of any provision concerning the *closure* of the ordinary session lead to difficulties of interpretation with regard to the duration of the sessions, difficulties which fall within the jurisdiction of the Court. And the Court, as was said in the oral procedure, has never hesitated to make the necessary effort to extract from the questions posed by the court of reference those which relate to its own interpretative jurisdiction. This effort does not appear very great in this case so far as the Treaties are concerned.

However, the interpretation of the provisions of the Treaties referred to in the judgment does not of itself allow the tribunal to settle the dispute. It is necessary, further, to take into account the Rules of Procedure of the European Assembly, adopted under Article 25 of the ECSC Treaty and Articles 142 of the EEC Treaty and 112 of the Euratom Treaty, which Rules contain provisions on the sessions of the Assembly. These

provisions, also, raise questions of their interpretation and even the assessment of their validity in relation to the Treaties, all of which are questions equally within the jurisdiction of the Court by virtue of Article 177 of the EEC Treaty and Article 150 of the Euratom Treaty. Although the judgment does not contain an explicit request on these points, I consider that the Court should also give a reply to them. Furthermore, I think that in this way we shall be meeting the wishes of the tribunal, which requests an interpretation not only of the 'provisions stated' but of '*all others*' enabling it to settle the question in dispute.

C. *Third problem*: Has this Court jurisdiction to give a preliminary ruling on the questions put *in so far as they concern the interpretation of the ECSC Treaty*?

Although the Treaty of Paris did not institute a procedure of reference to the Court, as the Treaties of Rome did, an interpretation, admittedly bold but in my opinion justifiable, of Article 31 of that Treaty leads one to accept that that Article applies a general, if not exclusive, attribution of jurisdiction to the Court concerning the interpretation of the Treaty and the implementing regulations and, consequently, authorizes, if not requires, reference to the Court for a preliminary ruling on those questions when they are raised before national courts.

However, it is not necessary in this case to take up a position on this delicate question. The provisions of Article 22 of the ECSC Treaty are in fact perfectly clear and there is no need to interpret them. The difficulties lie entirely in the Treaties of Rome and in the Rules of Procedure of the European Assembly; the problem of the simultaneous application to a common institution of divergent provisions of the Treaties of Paris and of Rome relates solely to the interpretation of the latter Treaties, especially Article 232 of the EEC Treaty and the Convention on the Common Institutions. As for the 'obscure' provisions, in so far as they govern the opening of the sessions without saying anything about their closure, they are those of the Treaties of Rome. Finally, as regards the Rules of Procedure, the jurisdiction of the Court is sufficiently well founded, both regarding interpretation and assessment of validity, by Article 177 of the EEC Treaty and Article 150 of the Euratom Treaty and, of course, assessment of validity should if necessary be examined as against the ECSC Treaty as well as the two others.

D. Fourth problem: Has the question put by the Tribunal d'Arrondissement of Luxembourg *become pointless* as a result of the request made by the plaintiff to the European Assembly for the withdrawal of the immunity, which is at present being discussed before that institution?

I do not think so. The court before which the main case is pending is in fact the sole judge whether, in requesting the withdrawal of the immunity, the plaintiff should be regarded as having waived his argument that the European Assembly was not in session on 6 November 1962. Likewise, it is sole judge of the expediency of waiting, before giving judgment on the main action, for the Assembly itself to give a decision on the withdrawal requested. As for the Court, it is required to give a preliminary ruling on the question which has been properly referred to it and with regard to which it considers that it has jurisdiction.

The only problem for the Court is a problem of expediency: should it give a ruling immediately or wait for the decision of the European Assembly? I think, for my part, that the first solution is preferable. Everything depends, in fact, on the decision which is given. If it withdraws immunity, the question put to this Court must doubtless be considered as pointless but, if the opposite occurs, very delicate problems of conflict could arise, both for this Court and

for the referring tribunal, in respect of the authority of the decision of the Assembly with regard to the two courts — conflicts which there is every interest in avoiding. But we clearly cannot prejudge what the decision will be. In both cases the Assembly would be forced to adopt a position, at least by implication, on the questions of principle which have been put to you and there is, therefore, the greatest interest in these questions being settled *beforehand* by the Court.

II

Having thus cleared the ground, let us move on to the substance of the case.

The Convention on the Common Institutions achieved uniformity of the provisions relating to the Assembly on one point alone, namely the composition of the institution, which was the subject of an amendment of Article 21 of the ECSC Treaty; there was no amendment, in particular, of Article 22 which is of interest for us. Therefore, in accordance with the opinion of legal writers, which is based above all on Article 232 of the EEC Treaty and which has been followed hitherto in other fields, in budgetary matters for example, we must *apply* the three Treaties *concurrently*; and this is precisely the object of the Rules of Procedure of the European Assembly.

If we compare Article 22 of the ECSC Treaty with Article 139 of the EEC Treaty[1] we first find some common rules:

1. The existence of an annual session: 'The Assembly shall hold an annual session'.
2. Meeting 'without requiring to be convened' on a certain date.
3. The possibility for the Assembly to 'meet in extraordinary session at the request of a majority of its members' or of the Council, the High Authority (for the ECSC) or the Commission (for the EEC and Euratom).

There are however two differences:

1. The different date fixed for the meeting which is not required to be convened: the second Tuesday in May for the ECSC, the third Tuesday in October for the other two Communities.
2. The fixing of a time-limit for the annual session of the ECSC ('The session may not extend beyond the end of the financial year in question', that is, 30 June); the absence of any rule on this matter in the other two Treaties.

It is in these circumstances that the European Assembly has been led to set up the following system in its Rules of Procedure (Article 1 of the Rules).

'1. The Assembly shall hold an annual session.

2. It shall meet without requiring to be convened on the second Tuesday in May and the third Tuesday in October and shall itself determine the duration of adjournments of the session.

The enlarged Bureau provided for in Article 13 may alter the duration of such adjournments by a reasoned decision of a majority of its members taken at least two weeks before the date previously fixed by the Assembly for resuming the session; the date of resumption shall not, however, be postponed for more than two weeks (subparagraph added by a resolution of the Assembly of 28 June 1963, OJ of 12 July 1963).

3. Exceptionally, the President may, on behalf of the enlarged Bureau, convene the Assembly at the request of a majority of its current members or at the request of the High Authority, or one of the European Commissions or one of the Councils.'

The system adopted by the European Assembly is thus based on the existence

1 — For convenience, I shall henceforth ignore the Euratom Treaty, the provisions of which are, as you know, identical with those of the EEC Treaty.

of *an* annual session, which is never closed (nor moreover suspended) but is 'adjourned' on dates and for a period fixed by the Assembly itself and exceptionally under certain conditions by the 'enlarged Bureau'.

Is this system compatible with the Treaties? At first sight one might doubt it. It appears to give to the 'annual session' provided for in the Treaties a permanent character which is contrary to the relevant provisions: Article 22 of the ECSC Treaty expressly confines the duration of the annual session between two precise dates. As for Article 139 of the EEC Treaty, in not fixing a date for the closure of the annual session it simply intended to leave to the Assembly itself latitude to fix this date, but not to permit it to remain in permanent session. The opening of the session presupposes its closure, which Parliament never pronounces, and the permanence of the session is moreover incompatible with the institution of a system of extraordinary sessions provided for by the Treaties.

However, on reflexion I do not think that the Rules of Procedure of the European Assembly are, on the point with which we are concerned, contrary to the Treaties.

First, the Rules take care to lay down that the Assembly 'shall meet without requiring to be convened on the second Tuesday in May and the third Tuesday in October', in conformity with the provisions of the Treaties. It is true that it does not lay down any rule as to the *closure* of the session. But it should be remarked that the Treaties themselves do not speak of 'closure' (any more in fact than of 'opening') and it was not for the Assembly to legislate on this point which is of a constitutional nature. The opening of Parliament which, in some constitutions, is performed by a solemn act of the Head of State, especially in countries ruled by a monarchy, in general conflicts with the rule of a 'meeting without requiring to be convened' which constitutes a prerogative of sovereignty recognized in Parliament. As for the 'closure', that is also a constitutional prerogative, often recognized in the executive power. Such was the case with the French constitution of 1875; such is still the case with the Luxembourg constitution, to cite only those two examples.

The European Treaties which, in spite of many analogies, do not nevertheless have the character of a constitution in the full sense of the word, did not have to take account of such considerations. It was enough for them to determine under what conditions the Parliamentary Assembly should meet and disperse. In this respect, as we have seen, there is no doubt that they intended to exclude a system of *permanent* sessions, that is to say, a system in which the Assembly '*meets*' permanently. In organizing a system providing for 'adjournments' of the session, the European Assembly has conformed to that rule.

One cannot compare these periods during which the session is 'adjourned' with certain national practices which allow a parliamentary assembly to *suspend* its session, by means of a vacation or more simply by charging its President to convene it at a later date. In this case, the suspension of the work of the Assembly is hardly distinguishable from the fixing of the date of the next sitting during a session, the date merely being postponed.

Here the case is quite different. It is the *session itself* which is 'adjourned'. So, throughout the adjournments, the Assembly not only does not sit, but *is not in session.* On the other hand — and here we meet the essential difference from the examples of domestic law to which we have alluded — such a practice does not break any constitutional principle. While in domestic constitutional law a procedure allowing the Assembly itself to fix the duration of its sessions, under the pretext of 'adjourning' them (and so resuming them) at its sovereign will,

could constitute a means of infringing the constitutional rules relating to the duration of the sessions and, for example, the prerogatives which the executive enjoys in this respect, this cannot apply in the European Treaties. As I have said, we have here neither opening nor closure of sessions involving the intervention of another power. The European Assembly meets automatically on certain dates; it ends the session itself and may meet for an extraordinary session *at the request of a majority of its members*. It thus appears that the provision of the Rules by virtue of which the Assembly 'shall itself determine the duration of adjournments of the session', this being 'the annual session', is quite simply a practical procedure by which the Assembly profits from the fact that it meets to decide the resumption of its work at a later date without its being necessary to obtain during the adjournment the required number of signatures to obtain a meeting for an extraordinary session. Such a meeting is decided there and then and its date fixed. I should merely note that, to be fully in conformity with the provisions of the Treaties, the decision should be taken by a *majority of the members* of the Assembly.

Furthermore, I find both in practice followed by the European Assembly and in the wording itself of the Rules a very strong confirmation of the distinction between the adjournments of the session and the mere adjournments of the sittings. As regards the wording of the Rules, the distinction appears clearly in Article 20. As regards the practice, if I take at random one of the issues of the reports of the debates, for example Facsimile No 61 (sitting of 4 to 8 February 1963) we read on page 5 the following:

'*The President*: The sitting is open.

1. Resumption of the session.

The President: I declare resumed the session of the European Assembly which was adjourned on 23 November 1962.'

On page 24 the President fixes the next sitting for the following day together with its agenda and closes the meeting. The following day at 3.30 p.m. he merely opens the sitting and the same applies for the following days to the end of the 'cycle' of sittings (to use a neutral word). Then we read (page 230):

'7. Approval of the minutes.

The President: In conformity with Article 20 (2) of the Rules, I must submit to the Assembly the minutes of *the present session* which were drawn up during the debates.

Are there any comments?

The minutes of proceedings are approved.

8. Adjournment of the session.

The President: The Assembly has now completed its agenda. The enlarged Bureau proposes to fix the next sitting for Monday 25 March 1963 at 5.00 p.m.

Are there any objections?

Then it is decided.

Members of the Assembly will receive proposals concerning the agenda as soon as they have been drawn up.

In thanking my colleagues for having carried out their work well and swiftly in sometimes difficult conditions *I declare the session adjourned until 25 March 1963.*

(Applause)

The sitting is adjourned.

(The sitting was adjourned at 11.30 a.m.)'

Thus everything happens as if the Assembly held *several* sessions each year. We even find in certain minutes a final declaration of the President declaring *in so many words*: '*The next session* is to take place' on such and such a date (for example, Reports of debates No 63, p. 44; No 66, p. 172).

I would point out, finally, that in conformity with its Rules, the European Assembly approves the minutes of the last sitting before the session is declared adjourned. Sometimes even, the minutes approved are those '*of the present session*' (Report No 61, which I read a moment ago, and No 66, p. 172, already cited).

Such a practice conforms with those systems involving several sessions (Laferrière, Droit constitutionnel, 2nd ed., p. 744). When there is merely an adjournment of the sitting, the minutes are normally approved at the beginning of the following sitting.

The truth is that the very expression '*adjournment of the session*' has a different meaning according to whether we are in a system of permanent session or, as in the Communities, in a system of sessions, ordinary and extraordinary, of limited duration. In the former case the 'adjournment' is a mere fact, for example, an adjournment of sittings of a certain length. In the second case, on the other hand, the expression bears a legal significance: it is the interval between the sessions. (Laferrière, ibid., p. 992, note 1.)

The argument put forward during the oral procedure that the parliamentary committees cannot meet between sessions is irrelevant. All depends in this respect on the constitutions. Under the Luxembourg constitution such meetings of committees during the interval between sessions would in fact be prohibited. Under the system of the French constitution of 1875, on the other hand, the committees could meet between sessions. The Rules of Procedure of the European Assembly regulate the question in Article 39, according to which 'A committee shall meet when convened by its chairman or at the request of the President, *whether the Assembly is in session or not*'.

In these circumstances, and without bringing into question the legality of the Rules of Procedure of the European Assembly, which do not appear to me to be contrary to the Treaties, I think that, during the 'adjournment' of a session, the Assembly *is not in session*, within the meaning of Article 9 of each of the three Protocols on the Privileges and Immunities.

I am of the opinion:

— that Article 9 of each of the three Protocols on the Privileges and Immunities should be interpreted as meaning that the 'duration of the sessions of the Assembly' does not include the period of adjournment of the session, fixed by the European Assembly under the conditions set out in its Rules of Procedure; and

— that the Tribunal d'Arrondissement of Luxembourg should decide on the costs of the present action.