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Judgment of the Court of 16 December 1960. - Jean-E. Humblet v Belgian State. - Case 6/60.

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Keywords

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1 . INTERPRETATION - PROVISIONS ESTABLISHING GUARANTEES FOR THE PROTECTION OF RIGHTS - INTERPRETATION IN FAVOUR OF THE INDIVIDUAL CONCERNED .

2 . PROCEDURE - INTERPRETATION OR APPLICATION OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC - JURISDICTION OF THE COURT IN RELATION TO MEMBER STATES - LIMITS .

(ECSC TREATY, ARTICLES 31 AND 43; PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC, ARTICLE 16)

3 . PROCEDURE - INTERPRETATION OR APPLICATION OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC - INFRINGEMENT OF THAT PROTOCOL BY A

MEMBER STATE - RIGHT OF ACTION OF A COMMUNITY OFFICIAL WHO HAS BEEN PREJUDICED - PRIOR EXHAUSTION OF OTHER COMMUNITY PROCEDURES

(PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC, ARTICLE 16)

4 . PROCEDURE - INTERPRETATION OR APPLICATION OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC - EXCLUSIVE NATURE OF THE COURT'S JURISDICTION - RIGHT OF ACTION - PRIOR EXHAUSTION OF RIGHTS OF RECOURSE TO NATIONAL COURTS .

(PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC, ARTICLE 16)

5 . OFFICIALS OF THE ECSC - PRIVILEGES AND IMMUNITIES - EXEMPTION FROM TAXATION - INDIVIDUAL RIGHT

(PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC, ARTICLES 11 AND 13).

6 . OFFICIALS OF THE ECSC - PRIVILEGES AND IMMUNITIES - EXEMPTION FROM TAXATION - SCOPE - DETERMINATION OF THE RATE APPLICABLE TO OTHER INCOME - ASSESSMENT ON THE JOINT INCOME OF AN OFFICIAL OF THE ECSC AND OF HIS SPOUSE

(PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC, ARTICLE 11)

7 . OBLIGATIONS OF THE MEMBER STATES - MEASURE BY A MEMBER STATE CONTRARY TO THE TREATY - RULING BY THE COURT - CONSEQUENCES

(ECSC TREATY, ARTICLE 86)

Summary

1 . IN CASE OF DOUBT A PROVISION ESTABLISHING GUARANTEES FOR THE POTECTION OF RIGHTS CANNOT BE INTERPRETED IN A RESTRICTIVE MANNER TO THE DETRIMENT OF THE INDIVIDUAL CONCERNED .

2 . THE COURT'S JURISDICTION TO RULE ON ANY DISPUTE RELATING TO THE APPLICATION OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC DOES NOT ENABLE IT TO INTERFERE DIRECTLY IN THE LEGISLATION OR ADMINISTRATION OF THE MEMBER STATES . THEREFORE THE COURT CANNOT, ON ITS OWN AUTHORITY, ANNUL OR REPEAL LAWS OF A MEMBER STATE OR ADMINISTRATIVE MEASURES ADOPTED BY ITS AUTHORITIES .

3 . AN OFFICIAL OF THE ECSC WHO REGARDS HIMSELF AS PREJUDICED BY THE INFRINGEMENT BY A MEMBER STATE OF THE PRIVILEGES AND IMMUNITIES CONFERRED ON HIM MAY BRING AN ACTION AGAINST THAT STATE UNDER ARTICLE 16 OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC WITHOUT HAVING PREVIOUSLY EXHAUSTED OTHER PROCEDURES PROVIDED FOR BY COMMUNITY LAW .

4 . THE JURISDICTION OF THE COURT OF JUSTICE PROVIDED FOR BY ARTICLE 16 OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC IS EXCLUSIVE; AN APPLICATION BROUGHT UNDER THIS PROVISION IS NOT INADMISSIBLE MERELY

BECAUSE THE APPLICANT HAS NOT EXHAUSTED HIS RIGHTS OF RECOURSE TO THE COURTS OF HIS OWN COUNTRY BEFOREHAND .

5 . THE PRIVILEGES AND IMMUNITIES OF OFFICIALS OF THE ECSC, IN PARTICULAR EXEMPTION FROM NATIONAL TAXES, ALTHOUGH PROVIDED IN THE PUBLIC INTEREST OF THE COMMUNITY, ARE GRANTED DIRECTLY TO THOSE OFFICIALS AND CONFER AN INDIVIDUAL RIGHT ON THEM .

6 . THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC PROHIBITS ANY MEASURE BY A MEMBER STATE IMPOSING ON AN OFFICIAL OF THE COMMUNITY ANY TAXATION, WHETHER DIRECT OR INDIRECT, WHICH IS BASED IN WHOLE OR IN PART ON THE PAYMENT OF THE SALARY AND EMOLUMENTS TO THAT OFFICIAL BY THE COMMUNITY .

CONSEQUENTLY THE TAKING INTO ACCOUNT OF THIS REMUNERATION FOR THE CALCULATION OF THE RATE APPLICABLE TO OTHER INCOME OF THAT PERSON IS ALSO PROHIBITED .

THE TAKING INTO ACCOUNT OF THIS REMUNERATION FOR THE PURPOSE OF CALCULATING THE RATE APPLICABLE TO THE INCOME OF THE SPOUSE OF AN OFFICIAL OF THE ECSC WHERE THE NATIONAL LEGISLATION APPLICABLE PROVIDES FOR ASSESSMENT ON THE JOINT INCOME OF THE SPOUSES IS LIKEWISE PROHIBITED . 7 . IF THE COURT FINDS THAT A LEGISLATIVE OR ADMINISTRATIVE MEASURE ADOPTED BY THE AUTHORITIES OF A MEMBER STATE IS CONTRARY TO COMMUNITY LAW, THAT STATE IS OBLIGED BY VIRTUE OF ARTICLE 86 OF THE ECSC TREATY TO RESCIND THE MEASURE IN QUESTION AND TO MAKE REPARATION FOR ANY UNLAWFUL CONSEQUENCES THEREOF .

Parties

IN CASE 6/60

JEAN-E . HUMBLET, AN OFFICIAL OF THE ECSC, WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT 7 RUE DU FORT-RHEINSHEIM, APPLICANT,

ASSISTED BY PAUL ORIANNE, ADVOCATE AT THE COUR D'APPEL, BRUSSELS,

V

BELGIAN STATE, WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE BELGIAN EMBASSY, 9 BOULEVARD DU PRINCE-HENRI, DEFENDANT,

REPRESENTED BY THE MINISTER FOR FINANCE, WITH GEORGES LALOUX, DEPUTY ADVISER AT THE DEPARTMENT OF DIRECT TAXATION (CONSEILLER ADJOINT A L'ADMINISTRATION CENTRALE DES CONTRIBUTIONS DIRECTES) OF THE MINISTRY FOR FINANCE, ACTING AS AGENT, ASSISTED BY JULES FALLY, ADVOCATE AT THE COUR DE CASSATION OF BELGIUM,

Subject of the case

APPLICATION FOR THE INTERPRETATION OF ARTICLE 11 (B) OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE ECSC,

Grounds

I - THE BASIS AND EXTENT OF THE COURT'S JURISDICTION

1 . BY VIRTUE OF ARTICLE 16 OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COAL AND STEEL COMMUNITY, IN CONJONCTION WITH ARTICLE 43 OF THE ECSC TREATY, THE COURT HAS JURISDICTION TO RULE ON ANY DISPUTE RELATING TO THE INTERPRETATION OR APPLICATION OF THAT PROTOCOL .

IN THE PRESENT CASE THE DEFENDANT NEVERTHELESS CONTENDS THAT THE COURT HAS NO JURISDICTION AND THAT THE CASE DOES NOT RELATE TO THE INTERPRETATION OF THE PROTOCOL BUT TO THE CORRECT APPLICATION OF BELGIAN LAW TO THE INCOME OF THE APPLICANT'S WIFE WHO IS NOT HERSELF AN OFFICIAL OF THE COMMUNITY .

THIS ARGUMENT CANNOT BE ACCEPTED BY THE COURT .

IN REALITY THE DISPUTE RELATES TO THE QUESTION WHETHER ARTICLE 11 (B) OF THE PROTOCOL ALLOWS MEMBER STATES TO TAKE INTO ACCOUNT THE REMUNERATION OF AN OFFICIAL OF THE COMMUNITY IN ORDER TO DETERMINE THE RATE OF TAX APPLICABLE TO HIS WIFE'S INCOME . IN ITS DEFENCE, THE DEFENDANT ITSELF STATED THAT THIS WAS THE SUBJECT OF THE DISPUTE .

THE COURT IS THEREFORE CONCERNED WITH RESOLVING A DISPUTE RELATING TO THE INTERPRETATION OR APPLICATION OF THE PROTOCOL, IN PARTICULAR ARTICLE 11 (B).

CONSEQUENTLY THE CONTENTION THAT THE COURT LACKS JURISDICTION MUST BE REJECTED .

2 . ON THE OTHER HAND THE COURT HAS NO JURISDICTION TO ANNUL LEGISLATIVE OR ADMINISTRATIVE MEASURES OF ONE OF THE MEMBER STATES .

THE ECSC TREATY IS BASED ON THE PRINCIPLE OF A STRICT SEPARATION OF THE POWERS OF THE COMMUNITY INSTITUTIONS AND THOSE OF THE AUTHORITIES OF THE MEMBER STATES .

COMMUNITY LAW DOES NOT GRANT TO THE INSTITUTIONS OF THE COMMUNITY THE RIGHT TO ANNUL LEGISLATIVE OR ADMINISTRATIVE MEASURES ADOPTED BY A MEMBER STATE .

THUS, IF THE HIGH AUTHORITY BELIEVES THAT A STATE HAS FAILED TO FULFIL AN OBLIGATION UNDER THE TREATY BY ADOPTING OR MAINTAINING IN FORCE PROVISIONS CONTRARY TO THE TREATY, IT MAY NOT ITSELF ANNUL OR REPEAL THOSE PROVISIONS BUT, IN ACCORDANCE WITH ARTICLE 88 OF THE TREATY, IT MAY MERELY RECORD SUCH A FAILURE AND SUBSEQUENTLY INSTITUTE PROCEEDINGS AS SET OUT IN THE TREATY TO PREVAIL UPON THE STATE IN QUESTION ITSELF TO RESCIND THE

MEASURES WHICH IT HAD ADOPTED .

THE SAME APPLIES TO THE COURT OF JUSTICE . UNDER THE TERMS OF ARTICLE 31 OF THE TREATY IT HAS RESPONSABILITY FOR ENSURING THAT COMMUNITY LAW IS OBSERVED AND BY ARTICLE 16 OF THE PROTOCOL HAS JURISDICTION TO RULE ON ANY DISPUTE RELATING TO THE INTERPRETATION OR APPLICATION OF THE PROTOCOL BUT IT MAY NOT, ON ITS OWN AUTHORITY, ANNUL OR REPEAL THE NATIONAL LAWS OF A MEMBER STATE OR ADMINISTRATIVE MEASURES ADOPTED BY THE AUTHORITIES OF THAT STATE .

THIS STATEMENT OF THE LIMITS OF THE JURISDICTION OF THE COURT MAY FURTHER BE SUPPORTED BY AN ARGUMENT STEMMING FROM THE TREATIES OF ROME, IN PARTICULAR FROM ARTICLE 171 OF THE EEC TREATY AND ARTICLE 143 OF THE EAEC TREATY WHICH MERELY ATTACH DECLARATORY EFFECT TO THE DECISIONS OF THE COURT IN CASES OF FAILURE TO COMPLY WITH THE TREATIES, ALBEIT OBLIGING THE MEMBER STATES TO TAKE THE NECESSARY MEASURES TO COMPLY WITH THE JUDGMENT .

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THE COURT FINDS THAT THERE IS NO FOUNDATION TO THE ARGUMENT OF THE APPLICANT THAT THE PROTECTION OF THE PRIVILEGES AND IMMUNITIES CONFERRED BY THE PROTOCOL WOULD BE INEFFECTIVE AND THE JUDGMENT OF THE COURT OF JUSTICE REDUCED TO A MERE OPINION IF IT WERE UNABLE TO ANNUL ILLEGAL MEASURES ADOPTED BY NATIONAL AUTHORITIES AND ORDER THE MEMBER STATES TO MAKE REPARATION FOR THE RESULTANT DAMAGE .

THE APPLICANT BASES HIS REASONING ON THE TEXT OF ARTICLE 16 OF THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES IN CONJUNCTION WITH ARTICLE 43 OF THE ECSC TREATY ON THE GROUNDS THAT THE ABOVE-MENTIONED ARTICLE 16 REFERS NOT ONLY TO INTERPRETATION BUT ALSO TO THE " APPLICATION " OF THAT PROTOCOL .

NEVERTHELESS IT WOULD BE ERRONEOUS TO ACCEPT THAT THIS PROVISION ENABLES THE COURT TO INTERFERE DIRECTLY IN THE LEGISLATION OR ADMINISTRATION OF MEMBER STATES .

IN FACT IF THE COURT RULES IN A JUDGMENT THAT A LEGISLATIVE OR ADMINISTRATIVE MEASURE ADOPTED BY THE AUTHORITIES OF A MEMBER STATE IS CONTRARY TO COMMUNITY LAW, THAT MEMBER STATE IS OBLIGED, BY VIRTUE OF ARTICLE 86 OF THE ECSC TREATY, TO RESCIND THE MEASURE IN QUESTION AND TO MAKE REPARATION FOR ANY UNLAWFUL CONSEQUENCES WHICH MAY HAVE ENSUED . THIS OBLIGATION IS EVIDENT FROM THE TREATY AND FROM THE PROTOCOL WHICH HAVE THE FORCE OF LAW IN THE MEMBER STATES FOLLOWING THEIR RATIFICATION AND WHICH TAKE PRECEDENCE OVER NATIONAL LAW .

CONSEQUENTLY IF IN THE PRESENT DISPUTE THE COURT WERE TO RULE THAT THE TAX ASSESSMENT IN QUESTION WAS UNLAWFUL, IT WOULD NECESSARILY FOLLOW THAT THE BELGIAN GOVERNMENT WOULD BE OBLIGED TO ADOPT THE REQUISITE MEASURES TO CANCEL IT AND TO REIMBURSE TO THE APPLICANT ANY AMOUNTS WHICH WERE WRONGFULLY COLLECTED .

FOR ALL THE ABOVE REASONS THE CONCLUSIONS OF THE APPLICANT, IN SO FAR AS

THEY SEEK THE ANNULMENT OF THE TAX ASSESSMENT AT ISSUE AND AN ORDER FOR THE DEFENDANT TO REPAY THE AMOUNTS PAID ARE INADMISSIBLE AS THE COURT HAS NO POWER TO ACT IN THIS WAY . THE SAME APPLIES IN RESPECT OF THE APPLICATION FOR A DECLARATION THAT THE TAX ASSESSMENT IN QUESTION BE DECLARED VOID AND OF NO EFFECT .

THE SAME APPLIES AGAIN TO THE APPLICATION FOR AN ORDER THAT THE DEFENDANT PAY COMPENSATORY INTEREST IN RESPECT OF TAX UNLAWFULLY LEVIED . IT IS FOR THE NATIONAL LEGISLATURE TO DETERMINE WHETHER AN UNLAWFUL IMPOSITION GIVES RISE TO A CLAIM FOR COMPENSATORY INTEREST .

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ON THE SAME PRINCIPLES THE APPLICATION FOR REPAYMENT OF THE PENALTY IMPOSED ON THE APPLICANT FOR SUPPLYING AN INCOMPLETE DECLARATION OF HIS INCOME MUST BE REJECTED .

II - THE ADMISSIBILITY OF THE APPLICATION

AS REGARDS THE ADMISSIBILITY IT MUST FIRST BE CONSIDERED (A) WHETHER AN INDIVIDUAL MAY BY HIMSELF LODGE WITH THE COURT OF JUSTICE AN APPLICATION BASED ON ARTICLE 16 OF THE PROTOCOL AND (B) WHETHER HE MAY DO THIS BEFORE EXHAUSTING THE LEGAL AND PROCEDURAL MEANS PROVIDED EITHER BY COMMUNITY LAW OR BY NATIONAL LEGISLATION .

ALTHOUGH THIS QUESTION WAS NOT RAISED BY THE PARTIES IN THE COURSE OF THE WRITTEN PROCEDURE, NEVERTHELESS THE COURT MUST EXAMINE THIS OF ITS OWN MOTION AS IT CONCERNS THE ADMISSIBILITY OF THE APPLICATION .

1 . EXAMINATION OF THE RELEVANT PROVISIONS GIVES RISE TO THE FOLLOWING CONSIDERATIONS :

(A) BY GIVING A RIGHT OF RECOURSE BASED ON ARTICLE 16 OF THE PROTOCOL, THE AUTHORS OF THE PROTOCOL CLEARLY SOUGHT TO ENSURE COMPLIANCE WITH THE PRIVILEGES AND IMMUNITIES THEREIN PRESCRIBED, IN THE INTERESTS NOT ONLY OF THE COMMUNITY AND ITS INSTITUTIONS BUT ALSO OF THE INDIVIDUALS TO WHOM THESE PRIVILEGES AND IMMUNITIES WERE GRANTED AND, ON THE OTHER HAND, IN THE INTERESTS OF THE MEMBER STATES AND OF THEIR ADMINISTRATIVE AUTHORITIES WHICH NEED TO BE PROTECTED AGAINST TOO WIDE AN INTERPRETATION OF THOSE PRIVILEGES AND IMMUNITIES .

IT IS THUS QUITE ACCEPTABLE FOR AN OFFICIAL OF THE COMMUNITY TO APPEAR BEFORE THE COURT OF JUSTICE AS AN APPLICANT AGAINST THE GOVERNMENT OF HIS OWN COUNTRY IN THE SAME WAY AS UNDERTAKINGS HAVE ALREADY CONTESTED BEFORE THE COURT OF JUSTICE ARGUMENTS SUBMITTED BY THE GOVERNMENTS OF THEIR COUNTRIES, INTERVENING IN SUPPORT OF THE HIGH AUTHORITY .

ALTHOUGH THE PRIVILEGES AND IMMUNITIES WERE GRANTED " SOLELY IN THE INTERESTS OF THE COMMUNITY " IT MUST NOT BE FORGOTTEN THAT THEY WERE EXPRESSLY ACCORDED " TO THE OFFICIALS OF INSTITUTIONS OF THE COMMUNITY ".

THE FACT THAT THE PRIVILEGES, IMMUNITIES AND FACILITIES WERE PROVIDED IN THE PUBLIC INTEREST OF THE COMMUNITY CERTAINLY JUSTIFIES THE POWER GIVEN TO

THE HIGH AUTHORITY TO DETERMINE THE CATEGORIES OF OFFICIALS TO WHICH THEY ARE APPLICABLE (ARTICLE 12) OR WHERE APPROPRIATE TO WAIVE THE IMMUNITY (SECOND PARAGRAPH OF ARTICLE 13) BUT DOES NOT MEAN THAT THESE PRIVILEGES ARE GRANTED TO THE COMMUNITY AND NOT DIRECTLY TO ITS OFFICIALS . THIS INTERPRETATION IS, FURTHERMORE, CLEARLY SUPPORTED BY THE WORDING OF THE ABOVEMENTIONED PROVISIONS .

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THEREFORE THE PROTOCOL CONFERS AN INDIVIDUAL RIGHT ON THE PERSONS CONCERNED, COMPLIANCE WITH WHICH IS ENSURED BY THE RIGHT OF RECOURSE PROVIDED FOR IN ARTICLE 16 OF THE PROTOCOL .

(B) ARTICLE 16 OF THE PROTOCOL, WHEREBY " ANY DISPUTE CONCERNING THE INTERPRETATION OR APPLICATION OF THE ... PROTOCOL SHALL BE SUBMITTED TO THE COURT " CONTAINS NO REFERENCE TO ANY PROCEDURE WHICH MUST BE INITIATED AND EXHAUSTED BEFORE THE INTRODUCTION OF AN APPLICATION BEFORE THE COURT . ACCORDING TO THE WORDING OF THAT ARTICLE ANY PERSON WHO REGARDS HIMSELF AS PREJUDICED BY THE INTERPRETATION OR APPLICATION OF THE PROTOCOL MAY SUBMIT THE DISPUTE TO THE COURT OF JUSTICE WITHOUT ANY OTHER PRIOR FORMALITIES .

ACCORDINGLY OFFICIALS OF THE COMMUNITY ARE ENTITLED TO BRING BEFORE THE COURT OF JUSTICE AN APPLICATION UNDER ARTICLE 16 OF THE PROTOCOL AGAINST THE GOVERNMENT OF THEIR COUNTRY WITHOUT BEING OBLIGED BEFOREHAND TO HAVE RECOURSE TO THE PROCEDURE PROVIDED BY OTHER PROVISIONS OF COMMUNITY LAW OR NATIONAL LAW .

2 . NEVERTHELESS THE PROBLEM MUST ALSO BE EXAMINED IN THE LIGHT OF THE SCHEME OF THE TREATY AND THE RULES OF LAW GENERALLY ACCEPTED IN THE MEMBER STATES :

(A) THE QUESTION MUST FIRST OF ALL BE RESOLVED WHETHER ACTION BY AN OFFICIAL OF THE COMMUNITY WHO REGARDS HIMSELF AS BEING PREJUDICED BY AN INFRINGEMENT OF THE PROTOCOL BY A MEMBER STATE IS NOT EXCLUSIVELY A MATTER FOR THE COMMUNITY OR THE INSTITUTION TO WHICH THE OFFICIAL BELONGS . EXAMINATION OF THIS QUESTION IS ALL THE MORE NECESSARY AS NO PROVISION OF THE ECSC TREATY PERMITS INDIVIDUALS TO BRING AN APPLICATION DIRECTLY TO THE COURT IN RELIANCE ON INFRINGEMENT OF THE TREATY BY A MEMBER STATE BUT, ON THE CONTRARY, IN PRINCIPLE IT IS FOR THE HIGH AUTHORITY TO ACT AGAINST SUCH AN INFRINGEMENT BY APPLYING THE PROCEDURE PROVIDED FOR THIS PURPOSE IN ARTICLE 88 OF THE TREATY .

NEVERTHELESS THE AUTHORS OF THE TREATY CERTAINLY DO NOT OVERLOOK THE FACT THAT " DISPUTES " CAPABLE OF ARISING CONCERNING " THE INTERPRETATION OR APPLICATION " OF THE PROTOCOL WOULD ARISE IN THE FIRST PLACE FROM CONTROVERSIES BETWEEN THE PARTIES ON WHOM THE PROTOCOL CONFERS PRIVILEGES AND IMMUNITIES AND THE AUTHORITIES WHICH HAVE AN INTEREST IN THE RESTRICTIVE INTERPRETATION OF THOSE PRIVILEGES AND IMMUNITIES .

IN THIS RESPECT THE PARTIES TO THE PRESENT SUIT APPEAR TO BE TYPICALLY PARTIES TO A " DISPUTE " WITHIN THE MEANING OF ARTICLE 16 .

IN ADDITION, AS HAS ALREADY BEEN STATED ABOVE, THE PRIVILEGES SET OUT IN THE PROTOCOL CONFER INDIVIDUAL RIGHTS ON THE PERSONS TO WHOM IT APPLIES AS IS EVIDENCED BY THE GERMAN AND DUTCH EQUIVALENTS OF THE TERM " PRIVILEGE " (VORRECHTE AND VOORRECHTEN). IT MAY GENERALLY BE PRESUMED THAT A SUBSTANTIVE RIGHT HAS AS ITS COROLLARY THAT IT PROVIDES THE PERSON IN WHOSE INTEREST IT OPERATES WITH THE MEANS OF ENFORCING IT HIMSELF BY PROCEEDINGS BEFORE THE COURTS RATHER THAN BY THE INTERVENTION OF A THIRD PARTY .

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IN THESE CIRCUMSTANCES IT IS PROPER TO APPLY THE PRINCIPLE WHEREBY, IN CASE OF DOUBT, A PROVISION ESTABLISHING GUARANTEES FOR THE PROTECTION OF RIGHTS CANNOT BE INTERPRETED IN A RESTRICTIVE MANNER TO THE DETRIMENT OF THE INDIVIDUAL CONCERNED .

FINALLY IT MUST NOT BE OVERLOOKED THAT ARTICLE 16 DOES NOT CONTAIN THE LIMITATIONS LAID DOWN IN ARTICLE 33 OF THE TREATY .

(B) FURTHERMORE IT MUST BE CONSIDERED WHETHER THE APPLICATION IS INADMISSIBLE FOR THE FURTHER REASON THAT THE APPLICANT SHOULD PREVIOUSLY HAVE EXHAUSTED THE ADMINISTRATIVE AND JUDICIAL PROCEDURES AVAILABLE TO HIM UNDER THE NATIONAL LAW TO WHICH HE IS SUBJECT .

AS REGARDS THE ADMINISTRATIVE PROCEDURE IT IS EVIDENT THAT, IN THE PRESENT CASE, AT THIS STAGE OF THE PROCEEDINGS ALL POSSIBILITIES ARE EXHAUSTED AS THE DIRECTOR OF TAXES FOR THE PROVINCE OF LIEGE, BY A DECISION OF 15 JUNE 1960 REJECTED THE OBJECTION SUBMITTED BY THE APPLICANT AGAINST THE ASSESSMENT IN QUESTION .

AS REGARDS THE JUDICIAL PROCEDURE IT IS EVIDENT FROM THE STATEMENTS OF THE PARTIES THAT THE APPLICANT LODGED AN APPEAL WITH THE COUR D'APPEL, LIEGE . THUS AT THIS STAGE OF THE PROCEEDINGS THE JUDICIAL PROCEDURE HAS BEEN SET IN MOTION IN BELGIUM BUT THE POSSIBILITIES HAVE NOT BEEN EXHAUSTED .

NEVERTHELESS THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES IN NO WAY SET THE COURT OF JUSTICE OF THE COMMUNITIES ABOVE THE NATIONAL JUDICIAL SYSTEM IN THE SENSE THAT DECISIONS TAKEN BY NATIONAL COURTS MAY BE CONTESTED BEFORE THE COURT OF JUSTICE .

AS AGAINST THIS, THE COURT OF JUSTICE HAS EXCLUSIVE JURISDICTION WITH THE REGARD TO THE INTERPRETATION OF THE PROTOCOL . AS HAS ALREADY BEEN STATED ABOVE THE TREATIES ARE BASED ON THE PRINCIPLE OF THE STRICT SEPARATION BETWEEN THE POWERS OF THE COURT ON THE ONE HAND AND OF THE NATIONAL COURTS ON THE OTHER . IT FOLLOWS THAT THERE IS NO OVERLAPPING OF THE JURISDICTION ASSIGNED TO THE DIFFERENT COURTS .

THEREFORE, IN SO FAR AS THE COURT OF JUSTICE HAS JURISDICTION, THERE CAN BE NO QUESTION OF A PRIOR " EXHAUSTING " IN THE NATIONAL COURTS OF A PROCEDURE WHICH CONSISTS OF THE SUBMISSION OF ONE AND THE SAME QUESTION FOR DECISION, FIRST BY THE NATIONAL COURTS AND SUBSEQUENTLY BY THE COURT

OF JUSTICE .

CONSEQUENTLY THE COURT OF JUSTICE HAS JURISDICTION TO RESOLVE THE QUESTION OF LAW SUBMITTED TO IT WITHIN THE LIMITS SET OUT ABOVE AND THE FACT THAT THE APPLICANT HAS NOT EXHAUSTED HIS RIGHTS OF RECOURSE TO THE COURTS OF HIS OWN COUNTRY IS NO OBSTACLE TO THE ADMISSIBILITY OF THE APPLICATION .

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IT FOLLOWS FROM THE ABOVEMENTIONED CONSIDERATIONS THAT THE APPLICANT'S RIGHT OF ACTION CANNOT BE DISPUTED . THE APPLICATION IS THEREFORE ADMISSIBLE IN SO FAR AS THE CONCLUSIONS FALL WITHIN THE COMPETENCE OF THE COURT OF JUSTICE .

III - THE SUBSTANCE OF THE CASE

THE BELGIAN TAX AUTHORITIES BASED THE DISPUTED ASSESSMENT ON THE PROVISIONS OF THE DECREE OF THE REGENT OF 15 JANUARY 1948 CONSOLIDATING LAWS AND DECREES RELATING TO TAXATION OF INCOME (MONITEUR BELGE OF 21 JANUARY 1948), HEREINAFTER REFERRED TO AS THE " CONSOLIDATED LAWS ".

IN PARTICULAR THEY APPLIED ARTICLES 46 AND 43 OF THOSE LAWS . ARTICLE 46 PROVIDES THAT THE RATE OF PERSONAL SURTAX, AN ADDITIONAL TAX LEVIED ON THE TOTAL INCOME, SHALL BE IMPOSED ON SUCCESSIVE BANDS OF INCOME . THIS PROVISION IS BASED ON THE SO-CALLED PROGRESSIVE SYSTEM IN THAT THE PERCENTAGE OF THE TAX INCREASES AS THE TOTAL INCOME OF THE TAXPAYER REACHES A HIGHER BAND .

FOR ITS PART, THE ABOVEMENTIONED ARTICLE 43 PROVIDES THAT " THE INCOME OF THE SPOUSES SHALL BE AGGREGATED " THUS COMBINING THE SPOUSES ' INCOME INTO A SIMPLE UNIT FOR THE PURPOSES OF TAX LAW .

IN APPLYING THESE PROVISIONS TO THE PRESENT SITUATION, THE BELGIAN AUTHORITIES TOOK INTO ACCOUNT THE EMOLUMENTS PAID TO THE APPLICANT BY THE ECSC BY ADDING THEM TO THE TAXABLE INCOME OF HIS SPOUSE, THUS PRODUCING AN AMOUNT WHICH, BY REASON OF THE BANDS SET OUT IN ARTICLE 46, MADE THIS INCOME LIABLE AT A SUBSTANTIALLY HIGHER RATE THAN THAT WHICH WOULD HAVE BEEN APPLICABLE IF IT HAD BEEN ASSESSED WITHOUT REGARD TO THE EMOLUMENTS OF THE APPLICANT .

THE APPLICANT BELIEVES THAT THIS METHOD OF ASSESSMENT IS CONTRARY TO ARTICLE 11 (B) OF THE PROTOCOL .

THEREFORE THE DISPUTE RELATES TO THE QUESTION WHETHER ARTICLE 11 (B) OF THE PROTOCOL ALLOWS THE BELGIAN TAX AUTHORITIES TO TAKE ACCOUNT OF THE SALARY AND EMOLUMENTS PAID TO AN OFFICIAL OF THE COMMUNITY BY THE COMMUNITY IN ORDER TO DETERMINE THE RATES APPLICABLE TO THE INCOME OF HIS SPOUSE WHO IS SUBJECT TO THE BELGIAN SURTAX ON INCOME .

THUS THE APPLICANT'S CONCLUSIONS RAISE BEFORE THE COURT THE GENERAL PROBLEM WHETHER, BY PROHIBITING ANY TAXATION OF THE ABOVEMENTIONED INCOME, ARTICLE 11 (B) OF THE PROTOCOL ALSO PREVENTS, IN PARTICULAR, ITS

BEING INTO ACCOUNT IN FIXING THE RATE OF THE SURTAX ON INCOME AS PROVIDED BY BELGIAN LAW .

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IT IS NECESSARY THEREFORE TO EXAMINE THE GENERAL PROBLEM IN ORDER TO DEDUCE THE PRINCIPLE WHICH CAN BE APPLIED TO ENABLE THE PARTICULAR CASE RAISED HERE TO BE SETTLED .

1 . FROM THE POINT OF VIEW OF THE LAW APPLICABLE, THE GENERAL PROBLEM MUST BE RESOLVED ACCORDING TO THE LAW OF THE COMMUNITY, IN PARTICULAR BY INTERPRETING ARTICLE 11 OF THE PROTOCOL, AND NOT ACCORDING TO BELGIAN LAW .

CONSEQUENTLY, NEITHER THE BELGIAN LEGISLATION AND CASE LAW NOR THE PRACTICE FOLLOWED IN ANALAGOUS CASES BY THE BELGIAN AUTHORITIES CAN BE RELEVANT TO THIS CASE SINCE THEY RESOLVE THE PROBLEM IN THE LIGHT OF NATIONAL LAW .

2 . THE DEFENDANT ARGUES THAT ARTICLE 11 (B) OF THE PROTOCOL DOES NOT PROVIDE TOTAL EXEMPTION OF THE REMUNERATION PAID TO OFFICIALS BY THE COMMUNITY BUT MERELY DECLARES THAT OFFICIALS ARE PERSONALLY EXEMPT FROM ALL TAXATION . THE DEFENDANT DEDUCES FROM THIS THAT IT IS NOT A CASE OF " IMMUNE FROM INCOME TAX " (REVENUS IMMUNISES) BUT MERELY OF " INDIVIDUALS EXEMPT FROM TAXATION " (CONTRIBUABLES EXONERES D' IMPOTS) AND CONCLUDES THAT THIS REMUNERATION WHICH IS IN PRINCIPLE ASSESSABLE " MUST BE TAKEN INTO ACCOUNT IN ORDER TO DETERMINE CORRECTLY THE TAXABLE CAPACITY OF THE PERSON CONCERNED ".

THIS LINE OF REASONING IS UNACCEPTABLE TO THE COURT .

ON THE ONE HAND IT HAS NOT BEEN ESTABLISHED THAT THE WORDS " EXEMPT " (" EXONERES ") AND " IMMUNE " (" IMMUNISES ") ARE EMPLOYED IN INTERNATIONAL FISCAL TERMINOLOGY TO DESIGNATE DIFFERENT CONCEPTS .

FURTHERMORE, IT APPEARS FROM THE HEADING TO CHAPTER V OF THE PROTOCOL " MEMBERS OF THE HIGH AUTHORITY AND OFFICIALS OF THE INSTITUTIONS OF THE COMMUNITY " THAT THE PROTOCOL WAS CONCERNED WITH REGULATING AS A WHOLE THE LEGAL POSITION OF THESE PERSONS WHICH EXPLAINS WHY THE AUTHORS OF THE PROTOCOL CHOSE THE CONSISTENT METHOD OF ATTACHING THE VARIOUS POINTS LISTED IN ARTICLE 11 SUBPARAGRAPHS (A) TO (D) TO THE PERSON OF THE MEMBER OR OFFICIAL RATHER THAN TO THE OBJECT OF THE DIFFERENT PRIVILEGES AND IMMUNITIES .

LITERAL INTERPRETATION OF THE TEXT SUPPORTS THE VIEW ADVOCATED BY THE APPLICANT .

IN FACT THE WORDS " SHALL BE EXEMPT FROM ANY TAX ON SALARIES " INDICATE CLEARLY AND UNAMBIGUOUSLY EXEMPTION FROM ANY FISCAL CHARGE BASED DIRECTLY OR INDIRECTLY ON THE EXEMPTED REMUNERATION .

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AGAINST THIS IT MAY NOT BE CONTENDED THAT THE TERM " ON SALARIES " JUSTIFIES

THE CONVERSE ARGUMENT THAT ARTICLE 11 DOES NOT PREVENT THE TAXATION OF OTHER INCOME AT A HIGHER RATE BY REASON OF THE REMUNERATION IN QUESTION .

SUCH TAXATION WOULD BE CONTRARY TO THE EXEMPTION PROVIDED BY ARTICLE 11 SINCE THE COMMUNITY SALARY, WHICH IS EXEMPT FROM ALL TAXATION, WOULD EVEN IN THIS CASE CONSTITUTE THE LEGAL BASIS OF THE TAXATION IN QUESTION .

FURTHERMORE THE ECSC PROTOCOL (AND ALSO THE EEC AND EAEC PROTOCOLS) CONTAINS NO PROVISION STATING THAT THE EXEMPTION OF COMMUNITY SALARIES DOES NOT PREVENT THIS INCOME FROM BEING INCLUDED IN THE TOTAL TAXABLE INCOME FOR THE PURPOSE OF A TAX OF SIMILAR SCOPE TO THAT OF THE BELGIAN SURTAX WHILST MOST OF THE MORE RECENT INTERNATIONAL AGREEMENTS RELATING TO DOUBLE TAXATION EXPRESSLY CONTAIN THIS RESERVATION .

AMONG THE AGREEMENTS CONTAINING THIS RESERVATION THERE ARE SOME CONCLUDED BY ONE OR OTHER OF THE MEMBER STATES SHORTLY BEFORE (SEE FOR EXAMPLE ARTICLE XIX (1) OF THE CONVENTION OF 29 APRIL 1948 BETWEEN THE NETHERLANDS AND THE UNITED STATES OF AMERICA; ARTICLE 6 OF THE CONVENTION OF 25 SEPTEMBER 1948 BETWEEN BELGIUM AND THE NETHERLANDS) OR SHORTLY AFTER THE SIGNATURE OF THE ECSC TREATY (SEE FOR EXAMPLE ARTICLE XVI (D) OF THE CONVENTION OF 27 MARCH 1953 BETWEEN BELGIUM AND THE UNITED KINGDOM; ARTICLE 18 OF THE CONVENTION OF 1 APRIL 1953 BETWEEN BELGIUM AND SWEDEN ETC .) AND IN ANY EVENT BEFORE THE SIGNATURE OF THE EEC AND EAEC TREATIES .

IN THESE CIRCUMSTANCES IF THE HIGH CONTRACTING PARTIES INDEED HAD THE INTENTION OF ALLOWING THE NATIONAL AUTHORITIES TO TAKE INTO ACCOUNT COMMUNITY EMOLUMENTS FOR THE PURPOSE OF DETERMINING THE RATE OF THE SURTAX OR OTHER TAXES OF SIMILAR SCOPE, IT IS INEXPLICABLE WHY THEY FAILED TO INCLUDE AN EXPRESS RESERVATION SIMILAR TO THAT CONTAINED IN THE CONVENTIONS REFERRED TO ABOVE AS THE PROBLEM COULD NOT HAVE BEEN UNKNOWN TO THE DELEGATIONS WHICH UNDERTOOK THE DRAFTING OF THE PROVISIONS SUBMITTED FOR EXAMINATION BY THE COURT .

NEVERTHELESS IT IS NOT SUFFICIENT FOR THE COURT TO ADOPT THE LITERAL INTERPRETATION AND THE COURT CONSIDERS IT NECESSARY TO EXAMINE THE QUESTION WHETHER THIS INTERPRETATION IS CONFIRMED BY OTHER CRITERIA CONCERNING IN PARTICULAR THE COMMON INTENTION OF THE HIGH CONTRACTING PARTIES AND THE RATIO LEGIS .

3 . IN THIS RESPECT THE FACT IS THAT IT IS NOT POSSIBLE TO DISCOVER ANY COMMON VIEW TAKEN BY THE MEMBER STATES WHICH MIGHT SERVE AS A CRITERION FOR THE INTERPRETATION OF ARTICLE 11 (B) OF THE PROTOCOL .

THE OPINIONS OF THE GOVERNMENTS PUT FORWARD DURING THE PARLIAMENTARY DEBATES ON THE ECSC TREATY DO NOT TOUCH ON THIS QUESTION .

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THE SAME IS TRUE OF THE PARLIAMENTARY VOTES ON THE EEC AND EAEC TREATIES WHICH CONTAIN A PROVISION IN SUBSTANTIALLY THE SAME TERMS . MOST OF THE STATEMENTS BY THE GOVERNMENTS DID NOT DEAL WITH THE QUESTION, THE EXCEPTION BEING THAT OF THE LUXEMBOURG GOVERNMENT, CONCERNING THE EAEC TREATY; THIS ASSERTS THAT THE PROVISION ADOPTED " WILL NOT PREVENT THE

NATIONAL TAX AUTHORITIES FROM TAKING INTO ACCOUNT THE EXEMPTED INCOME FOR THE PURPOSE OF CALCULATING THE RATE OF TAX APPLICABLE TO THE NON-EXEMPT INCOME, THAT IS TO SAY INCOME ARISING FROM SOURCES OTHER THAN THE EMOLUMENTS PAID BY THE COMMUNITIES ".

QUITE APART FROM THE FACT THAT IT REFERS TO THE PROTOCOLS ANNEXED TO THE TREATIES OF ROME AND NOT TO THE ECSC PROTOCOL, THIS PASSAGE DOES NOT IN ITSELF PROVE THAT THE AUTHORS OF THE TREATIES WERE ALL IN AGREEMENT ON THIS INTERPRETATION . ON THE CONTRARY IT RAISES AFRESH THE QUESTION WHETHER THE COMMON INTENT OF THE CONTRACTING PARTIES APPLIED EQUALLY TO THE SECONDARY EFFECTS OF THE EXEMPTION GRANTED WHICH HAVE BEEN AT ISSUE IN THE PRESENT CASE .

A COMPARISON OF THE VARIOUS NATIONAL LAWS REINFORCES THESE DOUBTS .

INDEED, WHILST IT IS TRUE THAT THE FINANCE LAW OF THE FRENCH REPUBLIC IS BASED ON THE SAME PRINCIPLES AS THE CASE-LAW AND PRACTICE IN BELGIUM, IT IS CLEAR FROM THE LEGISLATION OF THE FEDERAL REPUBLIC OF GERMANY THAT IT INTERPRETED THE PROTOCOL IN THE SENSE ADVOCATED BY THE APPLICANT . THE GERMAN LAW ON THE TAXATION OF INCOME (EINKOMMENSTEUERGESETZ), IN THE VERSIONS OF 23 SEPTEMBER 1958 (BUNDESGESETZBLATT I, P . 672) AND OF 11 OCTOBER 1960 (BUNDESGESETZBLATT I, P . 789) INCORPORATED ARTICLE 11 (B) OF THE PROTOCOL INTO GERMAN LAW BY INCLUDING IT AT NO 34 OF PARAGRAPH 3 UNDER EXEMPT INCOMES .

THEREFORE THE GERMAN LEGISLATURE DOES NOT SHARE THE VIEW OF THE BELGIAN ADMINISTRATION THAT THE PROTOCOL DOES NOT PROVIDE FOR EXEMPTION OF THE INCOME BUT MERELY FOR EXEMPTION OF THE OFFICIALS .

4 . THE FIRST PARAGRAPH OF ARTICLE 13 OF THE PROTOCOL PROVIDES THAT " PRIVILEGES, IMMUNITIES AND FACILITIES SHALL BE ACCORDED ... TO OFFICIALS OF THE INSTITUTIONS OF THE COMMUNITY SOLELY IN THE INTERESTS OF THE COMMUNITY ". IT IS THEREFORE NECESSARY TO EXAMINE WHAT INTEREST THE COMMUNITY HAS IN HAVING ITS OFFICIALS EXEMPTED FROM ANY TAXATION ON THE SALARY PAID BY THE COMMUNITY .

(A) IT MAY BE STATED THAT ONLY THE EXEMPTION OF REMUNERATION PAID BY THE COMMUNITY FROM ALL NATIONAL TAX ENABLES THE INSTITUTIONS OF THE COMMUNITY TO EXERCISE EFFECTIVELY THEIR RIGHT TO FIX THE EFFECTIVE AMOUNT OF THE REMUNERATION OF THEIR OFFICIALS, A RIGHT WHICH IS ACCORDED TO THEM BY THE TREATY (ARTICLE 78 OF THE ECSC TREATY, ARTICLES 15 AND 16 OF THE PROTOCOL ON THE STATUTE OF THE COURT OF JUSTICE OF THE ECSC).

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IF THE MEMBER STATES RETAINED THE RIGHT TO ASSESS THE SALARIES OF OFFICIALS OF THE ECSC TO TAX, EACH ACCORDING TO ITS OWN FISCAL SYSTEM, THE COMMUNITY WOULD IN EFFECT NO LONGER BE ABLE TO DETERMINE THE NET INCOME OF ITS OFFICIALS .

NEVERTHELESS IT IS THE FIXING OF THE NET INCOME WHICH ENABLES THE INSTITUTIONS TO EVALUATE THE SERVICES OF THEIR OFFICIALS AND WHICH ENABLES THE OFFICIALS TO ASSESS THE POST OFFERED TO THEM .

THE APPLICATION OF NATIONAL TAX LAWS TO THE SALARIES PAID BY THE COMMUNITY WOULD THUS DETRIMENTALLY AFFECT THE COMMUNITY'S EXCLUSIVE POWER TO FIX THE AMOUNT OF THOSE SALARIES .

THIS REASONING IS CONFIRMED BY THE TREATIES ESTABLISHING THE EEC AND THE EAEC WHICH, WHILE PROVIDING FOR A TAX ON SALARIES PAID BY THE COMMUNITIES FOR THE BENEFIT OF THE COMMUNITIES, NEVERTHELESS RESERVE THE POWER TO DETERMINE THIS TAX AS WELL AS TO DETERMINE SALARIES TO AN INSTITUTION OF THE COMMUNITY, THAT IS TO SAY, ITS COUNCIL (FIRST PARAGRAPH OF ARTICLE 12 OF THE PROTOCOLS ON THE PRIVILEGES AND IMMUNITIES OF THE EEC AND EAEC; ARTICLE 212 OF THE EEC TREATY, ARTICLE 186 OF THE EAEC TREATY).

TAKEN AS A WHOLE, THE THREE TREATIES IN THIS RESPECT SHARE COMMON GROUND IN THAT THEY WITHDRAW THE REMUNERATION PAID TO OFFICIALS OF THE COMMUNITY FROM THE MEMBER STATES' SOVEREIGNTY IN TAX MATTERS .

IN THIS WAY THE TREATIES SOUGHT TO REINFORCE THE INDEPENDENCE OF THE ADMINISTRATIVE DEPARTMENTS OF THE COMMUNITY VIS-A-VIS THE NATIONAL POWERS .

(B) A FURTHER DECISIVE REASON MAY BE ADDED TO THE LINE OF ARGUMENT SET OUT ABOVE, NAMELY THE FACT THAT THE TOTAL EXEMPTION FROM NATIONAL TAXES IS INDISPENSABLE IN ORDER TO GUARANTEE THE EQUALITY OF REMUNERATION FOR OFFICIALS OF DIFFERENT NATIONALITIES . IT WOULD BE EXTREMELY UNJUST IF TWO OFFICIALS, FOR WHOM THE COMMUNITY INSTITUTION HAD PROVIDED THE SAME GROSS SALARY, WERE TO RECEIVE DIFFERENT NET SALARIES .

THE DIFFERENCE IN NET REMUNERATION COULD MAKE THE RECRUITMENT OF OFFICIALS FROM CERTAIN MEMBER STATES MORE DIFFICULT, THUS CREATING DISCRIMINATION IN RESPECT OF THE REAL OPPORTUNITIES OF ACCESS TO COMMUNITY SERVICE FOR NATIONALS OF EACH MEMBER STATE .

(C) AS OFFICIALS ARE CONCERNED NOT WITH THE GROSS BUT THE NET REMUNERATION, IT WOULD BE NECESSARY, IF THE TAX EXEMPTION OF COMMUNITY REMUNERATION WERE NOT ENSURED, TO TAKE ACCOUNT OF FISCAL CHARGES IN FIXING THE EMOLUMENTS OF OFFICIALS . THAT CHARGE WOULD THUS FINALLY FALL ON THE BUDGET OF THE COMMUNITY . FURTHER, THE ASSESSMENT TO TAX OF THE REMUNERATION IN QUESTION BY THE MEMBER STATES MIGHT ADVERSELY AFFECT THE PRINCIPLE OF EQUALITY BETWEEN MEMBER STATES . IT COULD PRODUCE THE RESULT THAT IN CERTAIN MEMBER STATES THE UNDERTAKINGS WHICH MAKE RELATIVELY HIGH CONTRIBUTIONS TO THE COMMUNITY WOULD BE INDIRECTLY FINANCING CERTAIN OTHER STATES WHOSE FISCAL LEGISLATION MAY IMPOSE PARTICULARLY HEAVY TAXATION .

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THUS THE EXEMPTION OF THE SALARIES PAID BY THE COMMUNITY MEETS A LEGITIMATE INTEREST, THE SAFEGUARD OF WHICH IS GUARANTEED BY ARTICLE 11 (B) OF THE PROTOCOL .

5 . THE PROPOSITION ADVOCATED BY THE DEFENDANT HINDERS THE ACHIEVEMENT OF THE AIMS DESCRIBED ABOVE .

INDEED IT IS CONTRARY TO THE PRINCIPLE RECOGNIZED BY THE LAW OF THE EUROPEAN COMMUNITIES WHICH PROVIDES FOR A CLEAR DISTINCTION BETWEEN INCOME SUBJECT TO THE CONTROL OF THE NATIONAL TAX AUTHORITIES OF THE MEMBER STATES ON THE ONE HAND AND THE SALARIES OF OFFICIALS OF THE COMMUNITY ON THE OTHER; BY THE TERMS OF THE TREATIES OF ROME, THE LATTER ARE SUBJECT TO COMMUNITY LAW ALONE AS REGARDS ANY LIABILITY TO TAX WHILE THE OTHER INCOME OF OFFICIALS REMAINS SUBJECT TO TAXATION BY THE MEMBER STATES .

THIS DIVISION OF RECIPROCAL FISCAL JURISDICTION MUST EXCLUDE ANY TAXATION, DIRECT OR INDIRECT, OF INCOME WHICH IS NOT WITHIN THE JURISDICTION OF THE MEMBER STATES .

(A) THE SYSTEM ADOPTED BY THE BELGIAN TAX AUTHORITIES WITH REGARD TO THE APPLICATION OF THE SURTAX TO OFFICIALS OF THE ECSC CONSTITUTES INDIRECT TAXATION OF COMMUNITY SALARIES .

THE DEFENDANT ARGUES THAT THE SYSTEM IS NOT CONTRARY TO THE PROVISIONS OF ARTICLE 11 (B) OF THE PROTOCOL SINCE THE REMUNERATION PAID BY THE COMMUNITY IS NOT SUBJECTED TO ANY TAX . THE TAX IS MERELY IMPOSED ON OTHER INCOME BY APPLYING THE RATE WHICH WOULD BE APPLICABLE TO THE INCOME BAND RESULTING FROM THE FICTITIOUS ADDITION OF THE COMMUNITY SALARY TO THE OTHER INCOME .

THIS ARGUMENT FAILS TO RECOGNIZE CERTAIN EFFECTS OF THE TAXATION SYSTEM PROVIDED FOR BY THE BELGIAN LAW ON THE SURTAX (OR BY THE SIMILAR SYSTEMS IN FORCE IN OTHER MEMBER STATES) WHEREBY THE TAXABLE INCOME IS DIVIDED INTO BANDS WHICH ARE TAXED AT PROGRESSIVELY HIGHER RATES .

APPLICATION OF THIS SYSTEM OF TAXATION GIVES RISE TO NO DIFFICULTIES WHERE ALL OF THE TAXPAYER'S INCOME IS LIABLE TO TAX . IN FACT THE APPLICATION OF DIFFERENT RATES TO DIFFERENT BANDS DOES NOT PREVENT THE IMPOSITION OF A SINGLE TOTAL SUM OF TAX COVERING THE WHOLE OF THE INCOME WITH THE RESULT THAT THE HIGHEST RATE APPLIED TO THE HIGHEST BAND IN REALITY ALSO COVERS THE WHOLE OF THE INCOME .

NORMALLY THEREFORE IT IS OF NO IMPORTANCE WHETHER A PARTICULAR ITEM OF INCOME IS INCLUDED IN THE LOWER OR HIGHER BANDS AS THE AMOUNT OF THE TOTAL TAX ON THE WHOLE INCOME IS ALWAYS THE SAME .

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ON THE OTHER HAND THE SYSTEM USED BY THE BELGIAN TAX AUTHORITIES IN RESPECT OF OFFICIALS OF THE ECSC ENTAILS, FOR REASONS WHICH CANNOT BE JUSTIFIED, THE INCLUSION OF INCOME OTHER THAN COMMUNITY SALARIES IN THE HIGHER BANDS AND THE APPLICATION OF A HIGHER RATE THAN WOULD HAVE BEEN APPLIED TO IT IF THE COMMUNITY SALARY HAD NOT BEEN TAKEN INTO ACCOUNT .

FOR THIS REASON INCOME OTHER THAN THE COMMUNITY SALARY IS ASSESSED TO TAX AT A RATE WHICH IS NOT THAT APPROPRIATE TO ITS ACTUAL AMOUNT .

CONSEQUENTLY THE COMMUNITY SALARY IS INDIRECTLY ASSESSED TO TAX AS ONLY

THE TAKING INTO ACCOUNT OF THIS SALARY PERMITS THE APPLICATION TO THE OTHER INCOME OF A RATE HIGHER THAN THAT WHICH WOULD HAVE BEEN APPLICABLE TO IT .

(B) MOREOVER, TAKING ACCOUNT OF LOGICAL ECONOMIC AND FINANCIAL CONSIDERATIONS, THE TOTAL INCOME OF A TAXPAYER CONSTITUTES AN ORGANIC WHOLE . THE NATIONAL LAWS THEMSELVES ARE BASED ON THESE CONSIDERATIONS .

IN VIEW OF THIS, THE IMPOSITION OF TAXES " ON " A CATEGORY OF INCOME WHILE TAKING ACCOUNT OF OTHER INCOME TO CALCULATE THE RATE OF TAX HAS THE EFFECT, AT LEAST IN SUBSTANCE, OF TAXING THE LATTER INCOME DIRECTLY .

IN FACT THERE EXISTS A COMMON FUNDAMENTAL ELEMENT IN TAXING INCOME DIRECTLY AND TAXING IT INDIRECTLY BY AGGREGATING IT SINCE IN BOTH CASES THERE IS A CAUSAL LINK BETWEEN THAT INCOME AND THE TOTAL AMOUNT FOR WHICH THE PERSON CONCERNED IS LIABLE .

(C) CONSEQUENTLY, A MEMBER STATE INFRINGES THE PROTOCOL IF IT TAKES ACCOUNT OF THE SALARIES PAID BY THE COMMUNITY TO ITS OFFICIALS IN ORDER TO DETERMINE THE RATE OF TAX DUE ON OTHER INCOME WHICH IS NOT EXEMPTED WHERE THE NATIONAL TAX LAW PROVIDES FOR A SYSTEM OF TAXATION ON A RISING SCALE .

IT IS CONTRARY TO COMMUNITY LAW THAT AN OFFICIAL SHOULD BE TAXED MORE HEAVILY IN RESPECT OF HIS PRIVATE INCOME BECAUSE HE RECEIVES A SALARY FROM THE COMMUNITY AS TAXATION ON THIS BASIS INEVITABLY HAS THE EFFECT OF REDUCING THAT SALARY THUS BREACHING THE PRINCIPLE OF EQUALITY OF REMUNERATION .

IT CANNOT BE ARGUED AGAINST THIS THAT SUCH AN ASSESSMENT DOES NOT INFRINGE THE PRINCIPLE OF EQUALITY IN RELATION TO FISCAL CHARGES BECAUSE IT ONLY AFFECTS OFFICIALS WHO POSSESS SOURCES OF INCOME OTHER THAN THE EMOLUMENTS PAID BY THE COMMUNITY .

THIS LINE OF ARGUMENT TAKES NO ACCOUNT OF THE FACT THAT THE ESSENTIAL COMPARISON WHICH IS REQUIRED HERE MUST BE BETWEEN COMMUNITY OFFICIALS OF DIFFERENT NATIONALITIES RECEIVING THE SAME GROSS REMUNERATION AND HAVING ALSO IN THEIR RESPECTIVE COUNTRIES EQUAL AMOUNTS OF OTHER TAXABLE INCOME .

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IF THE MEMBER STATES WERE ABLE TO INCLUDE THE REMUNERATION OF COMMUNITY OFFICIALS IN THE TOTAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING THE RATE APPLICABLE TO OTHER INCOME, THE ABOVEMENTIONED DIFFERENTIATION WOULD BE THE RESULT NOT ONLY OF VARIATIONS BETWEEN THE TAX SCALES UNDER THE DIFFERENT NATIONAL LAWS, THAT IS OF FACTORS OUTSIDE THE COMMUNITY, BUT ALSO OF THE APPLICATION OF DIFFERENT NATIONAL LAWS TO INCOMES WHICH ARE COVERED BY COMMUNITY LAW AND WHICH COMMUNITY LAW INTENDED TO BE TREATED ALIKE .

(D) FROM ANOTHER ASPECT THE SYSTEM APPLIED BY THE DEFENDANT AFFECTS THE FREEDOM OF THE COMMUNITY TO FIX THE REMUNERATION OF ITS OFFICIALS . UNDER

THIS SYSTEM AN OFFICIAL OF THE COMMUNITY WOULD NOT MERELY BE OBLIGED TO DECLARE HIS REMUNERATION TO THE TAX AUTHORITIES BUT ALSO TO SET OUT THE USUAL DEDUCTIONS (EXPENSES ARISING FROM EMPLOYMENT AND OTHER EXPENSES) RELATING TO THIS SALARY IN ORDER TO AVOID EXCESSIVE TAX ON HIS PERSONAL INCOME .

IF THE NATIONAL TAX AUTHORITIES HAD TO EXAMINE THE ADMISSIBILITY AND THE AMOUNT OF THESE DEDUCTIONS THEY WOULD HAVE TO LOOK INTO THE VARIOUS COMPONENTS OF THE COMMUNITY SALARY . APART FROM THE UNFORTUNATE CONSEQUENCES WHICH COULD FOLLOW FROM DIFFERENCES IN STANDARDS OF JUDGMENT BETWEEN THE NATIONAL TAX AUTHORITIES, THIS WOULD ALSO AFFECT THE RIGHT OF THE COMMUNITY INSTITUTIONS TO FIX IN COMPLETE INDEPENDENCE THE REMUNERATION OF THEIR OFFICIALS AND THUS TO DETERMINE AND JUSTIFY THE VARIOUS COMPONENTS OF THE TOTAL SALARY PAID TO EACH OFFICIAL .

THE VIEW ADVOCATED BY THE DEFENDANT HAS THE RESULT OF MISCONTRUING, IF ONLY IN PART, THE MEANING WHICH SHOULD BE ASSIGNED TO ARTICLE 11 (B) OF THE PROTOCOL . IT WOULD RESULT NOT ONLY IN REMOVING THE REMUNERATION IN QUESTION FROM THE SPHERE OF THE SINGLE, UNIFORM LAW OF THE COMMUNITY BUT IT WOULD ALSO SUBJECT IT TO A NUMBER OF DIFFERENT, AND INDEED DISPARATE, LEGAL SYSTEMS .

IT IS THEREFORE AN INFRINGEMENT OF THE TREATY TO TAKE INTO ACCOUNT THE REMUNERATION REFERRED TO IN ARTICLE 11 (B) OF THE PROTOCOL IN ORDER TO CALCULATE THE RATE APPLICABLE TO OTHER INCOME OF THE PERSON CONCERNED .

6 . IT MUST ALSO BE BORNE IN MIND THAT THE PRESENT CASE CONCERNS NOT THE TAXATION OF THE ASSETS OF AN OFFICIAL OF THE COMMUNITY BUT THOSE OF HIS WIFE WHO IS NOT AN OFFICIAL AND THAT FOR THIS REASON THE DEFENDANT ARGUES THAT THE PROTOCOL IS NOT APPLICABLE TO HER PERSONAL INCOME .

NEVERTHELESS THE BELGIAN TAX LAW REGARDS THE ASSETS OF THE TWO SPOUSES, EVEN IF THEY ARE SEPARATE IN THE EYES OF CIVIL LAW, AS A SINGLE UNIT FROM THE POINT OF VIEW OF TAX LAW . THE EFFECTS OF THE TAX IN QUESTION ON THE COMMON INCOME CANNOT BE AND INDEED ARE NOT DENIED .

AS THE INDIRECT TAXATION OF THE REMUNERATION OF AN OFFICIAL OF THE COMMUNITY FOR THE PURPOSE OF AN ASSESSMENT ON BOTH THE SPOUSES BY TAKING IT INTO ACCOUNT IN ORDER TO DETERMINE THE RATE OF TAX IS PROHIBITED, THE SAME PROHIBITION MUST ALSO APPLY IN THE CASE OF A SINGLE ASSESSMENT ON THE OFFICIAL ALONE .

THIS IS CERTAINLY TRUE IN CASES WHERE THE HUSBAND IS ALSO PERSONALLY LIABLE FOR THE PAYMENT OF THE TAX IMPOSED ON THE ASSETS OF HIS WIFE .

THE SYSTEM OF COMBINED ASSESSMENT OF THE SPOUSES AS PROVIDED FOR BY ARTICLE 43 OF THE BELGIAN CONSOLIDATED LAWS HAS THIS EFFECT .

CONSEQUENTLY THE DEFENDANT CANNOT RELY ON THE FACT THAT THE PERSON ACCORDED THE PRIVILEGE WHO IS REFERRED TO IN THE PROTOCOL AND THE SPOUSE WHOSE INCOME HAS BEEN CHARGED TO TAX ARE NOT ONE AND THE SAME .

ON THE CONTRARY RATHER, THE PRINCIPLE THAT THE REMUNERATION REFERRED TO

IN ARTICLE 11 (B) OF THE PROTOCOL CANNOT BE TAKEN INTO ACCOUNT FOR THE PURPOSE OF DETERMINING THE RATE APPLICABLE TO OTHER INCOME APPLIES EQUALLY WHERE THE LATTER INCOME WAS RECEIVED BY THE SPOUSE OF THE OFFICIAL WHO IS EXEMPTED .

FOR ALL THE ABOVE REASONS THE FIRST TWO CONCLUSIONS OF THE APPLICANT WITH THE EXCEPTION OF THE APPLICATION FOR A DECLARATION THAT THE ASSESSMENT MADE ON HIM WAS VOID AND OF NO EFFECT ARE WELL-FOUNDED .

CONSEQUENTLY THE COMPETENT BELGIAN AUTHORITIES ARE OBLIGED, IN ACCORDANCE WITH ARTICLE 86 OF THE ECSC TREATY, TO NULLIFY THE EFFECTS OF THE MEASURES WHEREBY THE ASSESSMENT WAS MADE AND CONFIRMED .

Decision on costs

THE APPLICANT WAS SUCCESSFUL IN HIS CONCLUSIONS CONCERNING THE INTERPRETATION OF THE PROTOCOL AND THUS IN THE MAIN ISSUE IN THE CASE .

UNDER ARTICLE 69 OF THE RULES OF PROCEDURE OF THE COURT THE DEFENDANT SHALL BE ORDERED TO PAY THE COSTS .

Operative part

THE COURT

HEREBY :

1 . DISMISSES THE APPLICATION OF THE APPLICANT SEEKING THE ANNULMENT OF THE TAX ASSESSMENT IN QUESTION, A DECLARATION THAT IT IS VOID AND OF NO EFFECT AND AN ORDER THAT THE DEFENDANT SHOULD REPAY THE AMOUNTS PAID, INCLUDING THE PENALTY IMPOSED FOR THE INCOMPLETE DECLARATION OF INCOME AND PAYMENT OF COMPENSATORY INTEREST .

2 . RULES THAT THE OTHER CONCLUSIONS IN THE APPLICATION ARE ADMISSIBLE AND ARE WELL-FOUNDED IN THAT :

(A) THE PROTOCOL ON THE PRIVILEGES AND IMMUNITIES OF THE EUROPEAN COAL AND STEEL COMMUNITY PROHIBITS THE MEMBER STATES FROM IMPOSING ON AN OFFICIAL OF THE COMMUNITY ANY TAXATION WHATSOEVER WHICH IS BASED IN WHOLE OR IN PART ON THE PAYMENT OF THE SALARY TO THAT OFFICIAL BY THE COMMUNITY .

(B) THE PROTOCOL ALSO PROHIBITS THE TAKING INTO ACCOUNT OF THIS SALARY IN ORDER TO DETERMINE THE RATE OF TAX APPLICABLE TO OTHER INCOME OF AN OFFICIAL .

(C) THE SAME APPLIES TO THE CASE OF AN ASSESSMENT ON THE JOINT INCOME OF AN OFFICIAL OF THE COMMUNITY AND OF HIS SPOUSE IN RESPECT OF TAX PAYABLE ON THE INCOME OF THE LATTER .

(D) CONSEQUENTLY, THE TAX DEMANDED IN THE NOTICE AND EXTRACT FROM THE INCOME TAX REGISTER SENT TO THE APPLICANT ON 18 OR 19 DECEMBER 1959 (ARTICLES 913, 321) BY THE COLLECTOR OF TAXES AT ENGIS IN THE SUM OF FB 9 035 IS CONTRARY TO THE PROTOCOL IN SO FAR AS IT IS BASED ON THE EXISTENCE OF SALARY AND EMOLUMENTS PAID TO THE APPLIANT BY THE ECSC .

3 . ORDERS THE DEFENDANT TO PAY THE COSTS .