ministration 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.

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 à 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,

Application for the interpretation of Article 11 (b) of the Protocol on the Privileges and Immunities of the ECSC,

THE COURT

composed of: A. M. Donner, President, Ch. L. Hammes and N. Catalano, Presidents of Chambers, O. Riese (Judge-Rapporteur) and R. Rossi, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts

The facts giving rise to the present case may be summarized as follows:

In the Belgian income tax system there are the scheduled taxes (impôts cédulaires) which are levied at different rates according to the nature of the income and an additional tax known as the 'personal surtax' (impôt complémentaire personnel) (cf. Decree of the Regent of 15 January 1948 consolidating the laws and decrees relating to income tax (hereinafter referred to as 'the consolidated laws'), in particular Article 37 *et seq.* — Moniteur Belge of 21 January 1948). This tax is levied on the aggregate income; the rate increases progressively with successive bands of income; the income of the spouses is aggregated whatever régime of matrimonial property is adopted and the assessment is made on the head of the family (cf. Articles 37, 43 and 46 of the consolidated laws).

The applicant, an official of the ECSC, is a Belgian citizen. In accordance with the above-mentioned provisions, the Inspector of Taxes (Contrôleur des Contributions) at Hollogne-aux-Pierres requested him on 26 October 1959 to supply information as to the gross amount of the remuneration paid to him by the ECSC for the years 1957, 1958 and 1959, adding: 'Although exempt, the net remuneration must be taken into account in order to determine the rates of tax applicable to other taxable income; in your case income subject to the personal surtax.' This other taxable income had been received by the spouse of the applicant, who is not an official of the Community.

In his reply of 12 November 1959 the applicant refused to make a declaration of his own income maintaining that by virtue of Article 11 (b) of the Protocol on the Privileges and Immunities of the ECSC (hereinafter referred to as 'the Protocol') officials of the Community are exempt from *all* taxa-

tion on salaries and emoluments paid by the Community and that therefore his salary could not be taken into account in calculating the personal surtax.

By a notice of estimated assessment (avis d'imposition d'office) of 25 November 1959 and notice of rectification of the declaration (avis de rectification de la déclaration) of the same day, the tax inspectorate informed the applicant that his assessment to personal surtax would be made on an estimated basis in accordance with Article 56 of the consolidated laws and informed him that in view of 'your clear intention to avoid paying the tax due by supplying an incomplete declaration' the tax inspectorate was authorized 'to apply Article 74 of the consolidated laws which provides a time-limit of five years for collecting back taxes'. On the back of the notice of estimated assessment the tax authorities stated 'it is not contested that the income from employment received by a person as an official of the ECSC in Luxembourg is exempt from tax'; nevertheless by virtue of the first paragraph of Article 43 of the consolidated laws providing for the aggregation of the incomes of the spouses for the personal surtax 'whilst being exempt from this tax, the net income from employment must be known in order to determine the rate of tax applicable to the income received by the spouse' of the applicant.

In a letter of 14 December 1959 the applicant maintained his point of view and, further, contested the amounts on which the assessment was based; these he regarded as being excessive.

By a letter of 16 December 1959 in reply, the Inspector of Taxes at Hollogne-aux-Pierres maintained his point of view as to the principle involved but added that he would not apply the third paragraph of Article 74 of the consolidated laws to the 1956 tax year (income for 1955) and that he would accept that it was out of time; on the other hand as regards the tax years 1957 to 1959 (income for 1956 to 1958) he refused to amend the estimated assessments 'in view of your failure on three occasions' to furnish a return of the net amounts actually received.

On 18 or 19 December 1959 the Collector of Taxes at Engis sent to the applicant a 'Notice and Extract from the income tax register showing unpaid tax for the 1957 tax year' ('Avertissement-extrait de rôle aux impôts sur les revenus, rappel de droits de l'exercice 1957') requiring payment of FB 9035 in respect of the personal surtax; this notice further contained the observation 'additional assessment including surcharges for an inexact or incomplete declaration' (imposition supplémentaire avec accroissements pour déclaration inexacte ou incomplète).

The tax was assessed on an amount of FB 69122 declared by the applicant as the amount of his wife's income, but the rate of the tax assessed on this amount was determined by adding to the income of the wife the estimated amount of the applicant's income from his employment as an official of the ECSC.

On 1 April 1960 the applicant brought the present application based in the main on the view that the procedure followed by the Belgian tax authorities which took account of the emoluments paid by the ECSC and which required the applicant to declare them is contrary to Article 11 (b) of the Protocol.

II — Conclusions of the parties

In his application, the *applicant* claims that the Court should:

Declare the application admissible and accordingly, rule:

that Article 11 (b) of the Protocol on the Privileges and Immunities of the European Coal and Steel Community prohibits the levying on an official of the Community of any charge whatsoever which is based on, or justified in whole or in part, by the payment of a salary by the Community to that official;

rule:

that in particular the levying on an official of the ECSC of the personal surtax provided

for by Belgian law cannot, even for the determination of the rate of this tax, be based on the existence of or on the amount of the above-mentioned salary; therefore the tax assessed on the applicant as set out in the Notice and Extract from the income tax register sent to him on 18 December 1959 (Articles 913, 321) in the sum of FB 9035 is prohibited by the Protocol and therefore is void and of no effect;

accordingly:

annul the contested assessment and order the Belgian State to repay to the applicant all the amounts, including interest and charges which have been or may be paid by the applicant in respect of this assessment; order it to pay compensatory interest at 4.5% per annum on the amounts repayable as from the date of payment to the date of repayment;

order the Belgian State to bear the costs.

In its defence the *defendant* contends that the Court should:

Declare that it has no jurisdiction to rule on the application made to it;

in the alternative, decide that the Belgian Inspector of Taxes acted correctly in taking account of the remuneration paid to the applicant as an official of the ECSC in order to determine the rate of personal surtax to be applied to the income of his spouse which is subject to this tax;

order the applicant to bear the costs.

In their respective replies and rejoinders the parties reaffirmed their conclusions; however, the *defendant* contends further in the alternative that the Court should:

declare that the application is unfounded.

III — Submissions and arguments of the parties

The submission and arguments of the parties may be summarized as follows:

1. *The jurisdiction of the Court of Justice*

A — Article 16 of the Protocol provides that

'any dispute concerning the interpretation or application of the present Protocol shall be submitted to the Court.'

The *applicant* considers that in view of this provision the Court of Justice has jurisdiction to rule on the present case since it concerns the interpretation or application of Article 11 (b) of the Protocol which reads as follows:

'In the territory of each of the Member States, and whatever their nationality, ... officials of the Community:

. . . . . .

(b) shall be exempt form any tax on salaries and emoluments paid by the Community;

. . . . . .

The *defendant* takes the view that the dispute is concerned with the question whether 'the income of a taxpayer who benefits from tax exemption must ... nevertheless be aggregated with the income of his spouse in conformity with Article 43 of the consolidated laws in order to determine, in accordance with the rising scale set out in Article 46 of those laws, the rate to be applied to the income which is in fact liable to the personal surtax, namely that of the spouse'. What is at issue is therefore income which is not covered by the Protocol but solely by Belgian tax law and the essential question is simply whether the application of that law to this income was correct. Consequently the present dispute is not concerned with the interpretation or application of the Protocol and the Court must declare that it has no jurisdiction.

The *applicant* replies that Article 11 (b) of the Protocol 'encompasses within its application all forms of taxation ... whereby an official, merely because he receives remuneration from the Community, is obliged to

pay a tax or an additional charge'. The application is based exclusively on the infringement of the Protocol; as the defendant maintains that the Protocol is not applicable in the present case there is obviously a dispute as to the interpretation and application of that Protocol. Furthermore this is confirmed by the fact that in its defence submissions on the substance of the case the defendant undertakes an analysis of Article 11 (b) of the Protocol in order to assert that the provision was correctly applied. Consequently the Court does have jurisdiction to rule on the present case since it 'must declare whether the applicant is right or wrong as he places reliance on the Protocol and as its application to the present case is disputed'.

B — In the alternative the *defendant* states that in any case the Court should do no more than resolve the problem of law brought before it and that 'it cannot do what it is asked to do in the conclusions of the applicant, namely further rule that the disputed assessment is void and of no effect, annul it and order the Belgian State to repay amounts paid or to be paid in respect thereof' since Article 16 of the Protocol only empowers the Court to resolve disputes concerning the interpretation or application of that Protocol. In order to obtain the reduction or annulment of the assessment in question the applicant should have recourse to the procedure provided for by Belgian law.

The *applicant* replies that if the view advocated by the defendant were adopted, this would reduce the judgment of the Court to a mere opinion; such a restrictive interpretation of Article 16 of the Protocol which gives the Court the power to resolve any dispute concerning its application would be in conflict with the 'particular aim of its provisions' and the 'requirements for their implementation'.

(a) The Protocol entails a restriction of the sovereignty of the Member States which is regarded as indispensable in order to ensure the proper functioning of the Community institutions and to ensure protection against 'the exercise by the Member States in certain ways of their sovereignty'; this also applies to matters of taxation.

(b) The jurisdiction of the Court arises from the necessity to confer on authorities other than those of the Member State concerned the task of ruling on infringements of the privileges and immunities. Thus the Court is empowered to take any decision necessary to put an end to such infringements. In this connexion the applicant submits the following example:

If a Member of the High Authority were improperly detained, then the Court should have the power to order his release and not merely to rule that his arrest was contrary to the provisions of the Protocol on the Privileges and Immunities.

(c) It appears from Article 16 of the Protocol that the parties in any dispute relating to privileges and immunities are obliged to refer the matter to the Court of Justice and not to the national courts. Otherwise it would have been necessary to lay down a procedure for referring questions for a preliminary ruling and requiring the national courts to make a reference to the Court of Justice before taking their decision in order to have the question of law relating to the interpretation of the Protocol decided by the Court. However, in the present case there exists no rule of this nature analogous to that provided for by Article 41 of the ECSC Treaty.

(d) If the view of the defendant were accepted, this would give rise to insoluble problems and the protection of the privileges and immunities established by the Protocol would be ineffective in the absence of coordination of the national rules of procedure on the one hand and those of the Community on the other (the possible expiry of the time-limits provided for by national law; the applicant's inability to secure the enforcement of a judgment of the Court of Justice).

Further by recognizing that the judgents of the Court are enforceable, the Treaty gives the Court of Justice the power to make the appropriate orders.

The *defendant* argues that the only procedure available for the annulment of an assessment to Belgian tax—apart form automatic reductions made by the tax authorities themselves which are not involved in the present case—is 'that of an appeal submitted to the Director of Taxes' with the possibility of an appeal against his decision.

Neither the ECSC Treaty nor the Protocol provides for any exception to this procedure. The Protocol does not assign to the Court the right to annul directly assessments to national tax. Further, no such right may be derived from the powers assigned to the Court as regards disputes concerning the interpretation and application of the Protocol. Once the Court has resolved the question of interpretation, it is for the applicant 'on the basis of this decision to follow the normal procedure prescribed by the fiscal law of his country'.

The fact that certain legislative provisions do not exist or are not comprehensive enough may give rise to procedural difficulties; however, these may not in any event justify an interpretation which is too far removed from the provisions of the text.

2. *The substance of the case*

The *applicant* believes that the Belgian State infringed the rule contained in Article 11 (b) of the Protocol by aggregating the remuneration paid by the Community and income taxable for the purpose of the personal surtax to determine and thus automatically to increase the rate of this tax.

The *defendant* states that the dispute relates to 'the question whether the remuneration of an official of the Community who is exempt from all taxation by virtue of Article 11 (b) of the Protocol on the Privileges and Immunities of the ECSC may nevertheless be taken into account in order to determine the rate applicable to the income of his wife which is subject to the Belgian personal surtax'.

After setting out in detail the provisions of Belgian law relating to the determination of the tax in question, the defendant observes that the Protocol does not provide total exemption for remuneration paid to officials of the Community but merely that the officials themselves are exempt from any tax on this remuneration. It is not a case of 'immune from income tax' ('revenus immunisés') but merely of an 'individual exempt from taxation' ('contribuable exonéré d'impôts'). In the present case the exemption was granted since no tax was required from the applicant in respcet of his own remuneration; the amount on which the tax in question is assessed merely covers the income of his wife who is not an official of the Community.

Nevertheless, as the applicant's remuneration is not exempt, 'it remains in principle subject to tax and must therefore be taken into account in order to determine properly the taxable capacity of the person concerned' and it must consequently be aggregated with the income of his spouse.

In support of this view the defendant cites two judgments given by the Cour d'Appel, Brussels, which are at present being reviewed by the Cour de Cassation of Belgium. These are the judgments given in the case of Baron de Selys-Longchamps, Secretary-General of the Customs Cooperation Council, and in the case of G. de Burlet, an official of the North Atlantic Treaty Organization. Furthermore the defendant refers to earlier case-law relating to income exempted from Belgian taxation by the international conventions for the avoidance of double taxation, in particular the judgment of the Cour de Cassation of Belgium of 6 February 1935 in the Eyers case (Pasicrisie, 1939, I, 62). In these judgments, given in cases analagous to that of the applicant, Belgian case-law confirmed the point of view adopted in the present case by the defendant.

Finally the defendant refers to Belgian legislation (Article 35 (11) of the consolidated laws) and to the conventions preventing the taxation of income received and taxed abroad, in particular the Franco-Belgian Convention of 16 May 1931 (Moniteur Belge of 17 January 1932). In application of these provisions, the Belgian authorities

have consistently aggregated income which is exclusively taxable abroad with the other income of taxpayers in order to calculate the rate of tax and Belgian case-law has accepted this course of action.

Acceptace of the interpretation advocated by the applicant 'would produce the extraordinary result that the income of his spouse, governed exclusively by Belgian tax law, would receive favourable treatment ... The tax exemption granted to the applicant by the Protocol would have the effect of further reducing the tax liability of his wife to whom the Protocol does not apply'.

In reply to this argument the *applicant* states that in the present case what is at issue is not Belgian law but the Protocol on the Privileges and Immunities of the Community.

1. The distinction between the words 'exonéré' ('exempt') and 'immunisé' (immuné) has no significance in Belgian tax law as both words are used in legislation and in case-law interchangeably; this is confirmed by the Dutch text of the Belgian laws. The distinction is still less valid in supranational law. The intention of the authors of the Protocol was to remove the remuneration of officials from 'all control by national tax authorities'.

2. The fact that the other income subject to taxation is income of the wife from moveable property is not relevant to the case for the following reasons:

(a) The subject-matter of the dispute is the taxation of the applicant himself who was ordered to pay the sum of FB 9035 comprising:

a penalty for failing to declare his remuneration as an official of the ECSC,

the additional personal surtax levied on him.

The Belgian system of taxation, whereby the incomes of the spouses are aggregated, declared by the head of family and assessed on him, creates a fiction whereby the income of the wife is deemed to be acquired by the husband who becomes personally liable for the tax. Thus the dispute concerns the applicant himself and not his wife.

(b) If the other income which gave rise to the assessment to tax had been acquired by the applicant personally, the tax would have been assessed in exactly the same way and the tax authorities would likewise have contested the application of Article 11 (b) of the Protocol; this is evident from their correspondence with the applicant and from Belgian case-law on which the defendant relies.

3. If the applicant had received no remuneration from the ECSC, he would not have been assessed to the sum of FB 9035.

That tax assessment 'originates, at least in part, from the fact that the applicant receives remuneration from the Community and, in reliance on the Protocol, refused to declare the amount of this remuneration to the tax authorities'.

The Protocol obliges national authorities to consider the exempt income as non-existent. It prohibits any fiscal charge which would not have been imposed if the remuneration had not been paid, in order to guarantee to officials of the Community the benefit of the whole of their salary and in order to ensure equality of remuneration for all officials of the Community.

To authorize the tax authorities to take into account the remuneration in order to tax the other income of the official more heavily would in effect enable them by indirect means to achieve what is prohibited by the Protocol and to deprive the tax exemption laid down in the Protocol of any effect.

The *defendant* replies:

As to Point 1.

Whilst it is true that the terms 'income exempt from, free of, or immune from tax' ('revenus exonérés, exemptés ou immunisés d'impôt') are equivalent in Belgian

law this proves nothing in the present case where the point at issue is the distinction between the concepts '*income* exempt from or immune from tax' ('*revenus* exonérés ou immunisés d'impôt') and an '*individual* exempt from taxation'('contribuable exonéré d'impôt'). These two terms characterize the difference existing between the objective concept of income exempt from all tax on the one hand and the subjective concept of a person exempt from all taxation on the other hand.

In the first case, the income itself can in no way be subject to tax; on the other hand in the second case it is the person himself who benefits from the provision and who may therefore be subject to no taxation. Here it is the second example which applies; the tax which would have had to be levied on the income of the applicant as an official of the ECSC may not be demanded of him; in fact such tax was not demanded of him.

As to Point 2.

On the other hand there is no justification for allowing the wife of the applicant, who has no connexion with the Community, a reduction in the tax which is lawfully due on her personal income.

The procedure adopted by the Belgian authorities does not in any case result in the indirect taxation of remuneration paid by the ECSC to the applicant; it merely has the effect of 'allowing the taxation of the income of the wife at a rate appropriate to their actual taxable capacity whilst if this remuneration were ignored completely, the income of the wife would be taxed in a low income band and the effect of the exemption which applies to the applicant would be exaggerated'.

As to Point 3.

The defendant denies that the exemption from taxation provided for by the Protocol obliges the national authorities to regard the exempt income as non-existent.

If the authors of Article 11 (b) of the Protocol had intended to create the tax position which the applicant claims to exist, they would have expressed themselves in different terms or else they would have expressly defined or interpreted the words used. In expressly choosing the system of exemption of the official rather than that of the exemption of income 'they were fully aware of what they were doing and accepted the legal consequences inherent in their choice'. In fact as regards the legal position accepted not only in Belgium but also in other countries such as Switzerland (judgment of the Swiss Federal Court (Tribunal Fédéral Suisse) of 2 May 1958) it is recognized that income in respect of which a person benefits from an exemption 'must nevertheless be taken into account in determining the rate applicable for certain taxes'.

IV — Procedure

The procedure followed its normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate-General the Court decided not to hold a preparatory inquiry. Nevertheless it invited the defendant to submit to the Court the income tax declarations made by the applicant in respect of the tax years 1957, 1958 and 1959.The defendant submitted photocopies of these documents to the Court within the prescribed period.

Grounds of judgment

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 conjunction 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 responsibility 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 sup-

ported 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.

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.

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.

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 'privilège' (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.

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 Liège, 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, Liège. 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 intepretation 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.

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.

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 immunisés) but merely of 'individuals exempt from taxation' (contribuables exonérés d'impôts) 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' ('éxonéres') and 'immune' ('immunisés') 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.

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.

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).

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-à-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.

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.

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 repect 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.

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 misconstruing, 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.

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.

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the provisions of the ECSC Treaty, especially Articles 78, 86 and

88 thereof and also Articles 11, 13 and 16 of the Protocol on the Privileges and Immunities of the Community;
Having regard to the Protocol on the Statute of the Court of Justice of the ECSC;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities, especially Article 69;

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 9035 is contrary to the Protocol in so far as it is based on the existence of salary and emoluments paid to the applicant by the ECSC.**

3. **Orders the defendant to pay the costs.**

Donner Hammes Catalino
Riese Rossi

Delivered in open court in Luxembourg on 16 December 1960.

A. Van Houtte — Registrar

A. M. Donner — President

OPINION OF MR ADVOCATE-GENERAL LAGRANGE DELIVERED ON 18 OCTOBER 1960[1]

Index

Mr President,
Members of the Court,

In a few words I shall first go over the facts of the case which are very simple: Mr Humblet, of Belgian nationality, is an official of the High Authority of the European Coal and Steel Community. Although he is employed in Luxembourg where he resides with his wife, he is regarded as having retained his domicile for tax purposes (domicile fiscale) in Belgium where he also maintains a residence and where his wife receives income: this much is common ground.

The income of Mrs Humblet, which was duly declared, was subjected in Belgium to the personal surtax (impôt complémentaire personnel) in the name of her husband as head of family in accordance with the law. Nevertheless in 1959, changing their previous practice, the Belgian fiscal authorities requested Mr Humblet to declare the amount of the remuneration which he received as an official of the High Authority and which was exempt from taxation under the Protocol on the Privileges and Immunities of the Community. The authorities wanted in fact to take the amount thereof into account in arriving at the income of the spouses in order to determine the rate of tax applicable although tax was subsequently to be imposed only on that proportion of the income which was not exempt, in this case the income of the wife. The applicant, Mr Humblet, refused to comply and was issued with an estimated assessment in respect of the years 1957, 1958 and 1959 (for the income in the years 1956, 1957 and 1958) and to this assessment were added what in Belgium are called 'surcharges', a term which appears to correspond to what in other countries are less delicately called penalties. The objection which he lodged in accordance with the proper procedure against this assessment was rejected and proceedings in the matter are at present pending before the Cour d'Appel.

Alongside these national proceedings Mr Humblet considered himself entitled also to bring the matter before the Court of Justice in application of Article 16 of the Protocol on the Privileges and Immunities which as you know provides that:

1. — Translated from the French.