Address given by Maurice Lagrange (8 October 1964)

Caption: During the solemn court hearing of 8 October 1964, Maurice Lagrange talks about the duties of the Advocate General and the role of the Court of Justice.

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Address given by Advocate General Maurice Lagrange at the formal sitting of the Court on 8 October 1964

Mr President,

Today, I am speaking not only to you and your colleagues, the Judges at the Court. For the first time — and, sadly, also the last — I have the opportunity to speak before the full Court, including my distinguished colleague, the Advocate General, whom I have not usually had the pleasure of having alongside me, except in formal sittings where, doubly disregarding the nature of our roles, we both remain seated and silent.

I should therefore like to take this unique opportunity, first of all, to say a few words, following the remarks which you have made, Mr President, about this institution of Advocate General and its role in the workings of the Court.

Unknown in international courts, and similarly unknown in the supreme administrative courts of the Member States other than France, this institution was evidently inspired by the example of the French Council of State where, under the undoubtedly questionable name of ‘commissaire du gouvernement’, a member of the judiciary, acting with complete impartiality and independence, is appointed in each case to make reasoned submissions in open court. Are these not the very words used by the European Treaties to define the task of the Advocate General?

What reasons therefore prompted the authors of the Treaties to include in the Community Court that they were in the process of creating an institution which had a counterpart in only one of the Member States? First of all, it was, without question, a homage to a national institution which had proved its worth and of which it could legitimately be hoped that, when transposed to the Community context, it would also produce beneficial results. However, there are other reasons. First, whilst it is true that the institution can be found in only one single country of the Community, this is correct only as far as administrative courts are concerned. Despite an obvious kinship, our Court is something more than and different from an administrative court and, if an analogy really must be found, there is, in the courts of general law in all our countries, an individual who is indeed called ‘advocate general’ whose role is likewise to deliver his opinion in open court, with the complete independence afforded to him by his status as a member of the court, on cases referred to the court to which he is attached; the only difference is that, before our Court, public policy is always deemed to be affected, which means that Advocates General in Luxembourg are required to deliver an opinion in all cases and cannot (this would certainly be tempting sometimes) simply leave the matter to the discretion of the court.

Another reason appears to have argued in favour of the institution; it was regarded as a kind of counterpart to the prohibition on judges publishing any dissenting opinion. There is no doubt that the public exposition by a member of the court of an argument which is then compared with the judgment can make a useful contribution to the exchanges of ideas and the doctrinal discussions generally prompted by the publication of a dissenting opinion. Secondly, whether the conclusions are consistent with or contrary to the decision adopted, that decision is clarified and even reinforced, either by analogy or by opposition.

Lastly, and this is perhaps not the least important aspect of the Advocate General’s role, before expressing his personal opinion (or referring to the opinion of the Court where it has already been delivered previously), the Advocate General is, of course, required to clarify the case as it emerges from a long and sometimes intricate procedure, in order to organise the points of fact and law to be resolved, without ignoring any of the pleas raised or neglecting to raise, where they occur to him, those which must be raised of his own motion and to bring out the essential points of the case. This work, which is both analysis and summary, is a useful complement to the work of the Judge-Rapporteur, expressed in the Report for the Hearing, which, however perfect it may be, is inevitably hampered by the procedural objectivity that it is required to maintain.

It could possibly be said that this is the task of lawyers, which, in a sense, is perfectly true. Experience shows, moreover, that the vast majority of the distinguished representatives of the bars of the Member States whom we have had the pleasure to welcome here, and to whom I should like today to pay public tribute,

have understood this role perfectly. They have realised that the oral procedure here is merely a complement to a very exhaustive written procedure and that the usefulness of the oral phase consists more in focusing attention on the essential aspects, highlighting and enlivening the dispute, than in prolonging the dispute by seeking out increasingly subtle arguments; from this point of view, their role in this Court has proven extremely useful. Nevertheless, whatever the aptitude, the competence, indeed the intellectual independence of those whom we quite rightly call law officers, it goes without saying that the Advocate General has one advantage over them, his status as a Member of the Court — entirely independent vis-à-vis the parties. It is in this way, in the final analysis, that Advocates General are required to participate, through the exercise of their special role, in the formulation and development of case-law, the task of the Court.

Has the institution fulfilled expectations? One purely objective reason to think that it has is the fact that it has been retained unchanged by the Rome Treaties after five years of experiment in the context of the ECSC. However, it should be recognised — and it can be done now — that the experiment has not been without risk. Whatever the personal qualifications and good intentions of those concerned, it was essential for a certain common view of the role of the Advocates General to emerge from the outset and to be understood and accepted by the Judges. It was also necessary for them to agree with the Judges on certain fundamental principles so as to guide case-law definitively, with particular regard to the character of Community law as it derives from the Treaties. There is no doubt that a fundamental disagreement with the Advocates General in this regard would, by paralysing their personality, diminish considerably the importance and the usefulness of their role. Very fortunately, this was not the case.

However, it was still necessary for this unity of opinion to emerge between the two parties themselves. It would certainly have been regrettable if, on essential points likely to govern the future development of case-law, they had been prompted to take different positions; however, this was not the case either.

To whom is credit due for this welcome agreement? Chiefly, without a doubt, to my colleague Mr Roemer; I can say this here without false modesty and with complete conviction. Whilst it was relatively simple for a senior member of the French Council of State to take on his task in the very spirit of an institution based so directly on the court system of his country, such an adaptation could prove more difficult for a lawyer from a country whose administrative courts do not include the office of advocate general. It is with total commitment, my dear friend, that, from the outset, you made the necessary effort and in this way, with constant agreement on the way we carry out our duties, we have each been able to participate as fully as we could in the work of the Court. From the excessively laudatory words that you have just spoken about me, Mr President, I will remember those in which you recognised the success of the role; that is what is closest to my heart.

However, today I do not want to speak simply about the role which I have had the honour to perform. The work of the Court is a collective work in which we all collaborate, whether in the secrecy of deliberation, where the Judges must assume responsibility for the decision and for its grounds, or in the public statement of the Advocate General's Opinion, on which I have already dwelt for too long, or in the regular work carried out by our Registrar and by our personal assistants and all the officials and staff of the Court, who perform an obscure and often difficult task without which our Institution could not function.

Staying with the judicial function of the Court, may I simply try to highlight what appear to me to be the essential features. I think that it is not really possible to understand what is the Court of Justice of the European Communities without first considering what is a Community Institution, an Institution of each of the three Communities, whose task as such is, through the exercise of its own competence, that is to say the judicial function, to contribute to the fulfilment of the objectives defined by each of the three European Treaties; moreover, this is made extremely clear in those Treaties. Such a mission (since it is one, in the most noble sense of the word), which is thus carried out, as it were, 'from the inside', is fundamentally different in this respect from that of the international courts, which are responsible for occasionally settling disputes between States, and from that of national courts of general law, whose normal role is to rule on private interests. From this point of view, there can be no doubt that the Court is similar in some respects to administrative courts: public law, 'public policy' in the legal sense of this term, are the most significant elements there.

However, and this is what distinguishes the Court from national administrative courts, its activity seeks not only to protect the rights of private individuals from abuses of power by the administration (the Community executive bodies in this case) but also to ensure that both the actions of the Member States and those of the Community organs comply with the Treaties; whether we like it or not, it is impossible to fail to see here the beginnings of elements of federalism.

But far be it from me today to start doctrinal disputes which are, moreover, generally out of place in our Institution; we normally prefer to leave them to academics. I would merely emphasise the extent to which, through the daily exercise of its various powers, the Court has close involvement in the application of the Treaties. The number and the variety of disputes referred to it, the fundamental importance of many of them, the relative speed with which it gives rulings (on average, less than a year from the date on which the application is made) and also, it must be said, the commitment of the Member States and the Community executive bodies in complying with its judgments to date have enabled it and will certainly continue to enable it to play an important part in the application of the Treaties. I am now thinking in particular of the Treaty establishing the European Economic Community which, as has often been observed, is to a large extent a 'Framework Treaty' whose aim is the progressive creation of the common market or, more precisely, of conditions in which a real common market will be able to function; it is clear that a leading judgment delivered by the Court is likely significantly to guide, in one area or another, the process of the creation of this common market. There is, therefore, no doubt that, as a Community Institution, the Court is closely associated with the action of the executive bodies (Council and Commission), even where it disagrees with them, calling on them, as is its duty, to comply with the law. In this respect, I consider it regrettable that the seat of the Court is not located in the same place as the executive bodies, as is the case with the European Coal and Steel Community; it goes without saying that the independence of the Members of the Court is not affected at all by such proximity, since the real merit of the Members of the Court is to preserve their independence vis-à-vis the government of their country.

But with what law is the Court required to ensure compliance? Community law, as you said, Mr President, whose existence has been fairly easy to infer from the specific Treaties which are, on the whole, well drafted and whose sources essentially lie in the national law of the Member States; this is not an opinion but a statement of fact which is evident simply from a reading of the Court's judgments. You paid tribute to the contribution of French law in the formation of Community law and, personally, I appreciate that tribute since, fortunately, European public service does not 'denationalise' the person performing it; on the contrary, in my opinion a 'good European' is one who, whilst seeking to be free of national prejudices and to understand his partners, places all the best elements of his national training in the service of the common ideal. This is precisely what we have been endeavouring to do in this Court: without a doubt, the results are encouraging. We have discovered that, in the field of the law, and contrary to the fears raised by a number of previous disappointments stemming from attempts to unify the law, perseverance in the pursuit of the common objective and determination not to fail in such a noble task would, nearly always, make it possible to find the 'common denominator' in the various legal systems of our countries, which, in compliance with the Treaty, may equitably resolve the dispute referred to us. Where it has been necessary to make a choice, it is to the national system which appears best to meet the objectives of the Treaty that reference is made.

In this way, without any great fuss and quite naturally as it were, an unprecedented work of approximation is being carried out in the legal sphere which is wholly consistent with the Treaty of Rome and must further the other kinds of approximation intended by that Treaty. In this way, cooperation will be simplified between the Court of Justice and the national courts, cooperation which is laid down and established subject to certain conditions, as you are aware, by the Treaty itself and which is absolutely essential to the success of the work undertaken. In this way, as far as I am concerned, the prospect of probably having a few more opportunities, in a national context, to participate in the application of the Treaty, drawing on the rich experience that I have acquired here, eases a little, but does not remove entirely, the profound regret I feel in leaving you.