

JUDGMENT OF THE COURT  
11 JULY 1968<sup>1</sup>

**Claude Moïse Sayag and Another  
v Jean-Pierre Leduc and Others<sup>2</sup>**  
**(Reference for a preliminary ruling by the  
Belgian Cour de Cassation)**

Case 5/68

Summary

1. *Official of the EAEC — Privileges and immunities — Immunity from legal proceedings — Object*  
(Protocol on the Privileges and Immunities of the European Communities, Article 12(a))
2. *Official of the EAEC — Privileges and immunities — Immunity from legal proceedings — Extent — Driving of a motor vehicle*  
(Protocol on the Privileges and Immunities of the European Communities, Article 12(a))

1. The immunity from legal proceedings referred to in Article 12(a) of the Protocol on the Privileges and Immunities of the European Communities (Article 11(a) of the Protocol on the Privileges and Immunities of the EAEC) is intended to ensure that the official activity of the Community and of its servants is shielded from examination in the light of any criteria based on the domestic law of Member States so that the Community may accomplish its task in complete independence.

2. (a) The immunity from legal proceedings only covers acts which, by their nature, represent a participation of the person

entitled to the immunity in the performance of the tasks of the institution to which he belongs; in this respect there is no necessity to distinguish between the actual exercise of normal duties or those prescribed under the Staff Regulations and an act performed on the occasion of the exercise of those duties if the position is that the act in question serves directly for the accomplishment of a Community task.

(b) Driving a motor vehicle cannot be covered by immunity from legal proceedings save in the exceptional cases in which this activity cannot be carried out otherwise than under the authority of the Community and by its own servants.

In Case 5/68

Reference to the Court under Article 150 of the Treaty establishing the European Atomic Energy Community by the Belgian Cour de Cassation (Second Chamber) for a preliminary ruling in the action pending before that court between

1 — Language of the Case: French.  
2 — CMLR.

CLAUDE MOÏSE SAYAG AND S. A. ZURICH

and

JEAN-PIERRE LEDUC, DENISE LEDUC (NÉE THONNON, THE WIFE OF JEAN-PIERRE LEDUC) AND S.A. LA CONCORDE

on the interpretation of Article 11(a) of the Protocol on the Privileges and Immunities annexed to the Treaty establishing the European Atomic Energy Community (Article 12(a) of the Protocol annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities),

## THE COURT

composed of: R. Lecourt, President, A. M. Donner, President of Chamber, A. Trabucchi, J. Mertens de Wilmars and P. Pescatore (Rapporteur), Judges,

Advocate-General: J. Gand

Registrar: A. Van Houtte

gives the following

## JUDGMENT

### Issues of fact and of law

#### I — Facts and procedure

The facts and procedure may be summarized as follows:

Mr Claude Moïse Sayag, an engineer in charge of certain works at the Commission of the EAEC, was sentenced on 30 March 1966 by the Tribunal Correctionnel, Brussels, to various penalties for having on 25 November 1963 at Herselt, in Belgium, caused a road accident with his private car, in which Mr Jean-Pierre Leduc was injured. The Tribunal Correctionnel, Brussels, rejected Mr Sayag's plea of inadmissibility based on his alleged immunity from legal proceedings; the court based the reasons for its decision in particular on two letters from the Commission of the EAEC in which the Commission pointed out that 'the relevant departments of the Commission consider that it is not appropriate in this case to invoke immunity from

legal proceedings' and that 'the fact that Mr Sayag, an official of the Commission, was driving a motor vehicle does not constitute an act performed in his official capacity within the meaning of Article 11(a) of the Protocol on the Privileges and Immunities annexed to the Treaty establishing Euratom. In this respect he does not, in the opinion of the Commission, benefit from immunity from legal proceedings....'

The case then went to the Cour d'Appel, Brussels, which in its judgment of 21 December 1966, with particular reference to the immunity from legal proceedings claimed by Mr Sayag, held as follows:

'The accused maintains that the logical interpretation of the words "acts performed...in an official capacity" is that an official of Euratom carries out an act in his official capacity every time "he is acting in the performance of his duties".'

This interpretation is only justified if the act carried out in the performance of duties is specified in greater detail and if there is thereby understood any act which by its nature arises from the duties, that is to say, any act carried out in the actual performance of duties.'

On appeal against this decision, the Belgian Cour de Cassation (Second Chamber) on 12 February 1968 asked the Court, in application of Article 150 of the Treaty establishing the European Atomic Energy Community, to rule on the interpretation to be given to Article 11(a) of the Protocol on the Privileges and Immunities annexed to the Treaty establishing the EAEC—now Article 12(a) of the Protocol annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities—and, more particularly, to state 'whether the immunity from legal proceedings provided for by this provision is applicable to officials and servants of the Community when the acts giving rise to legal proceedings were carried out by them during the performance of their duties and have some relationship with their vocational activities or whether the immunity only covers acts constituting the actual performance of their normal duties of those prescribed under the Staff Regulations'.

The request of the Belgian Cour de Cassation was received at the Court Registry on 23 February 1968.

In accordance with Article 21 of the Statute of the Court annexed to the Treaty establishing the EAEC, observations were submitted within the prescribed time-limit by Mr Sayag, one of the appellants in the main action, by the respondents in the main action, by the Government of the Kingdom of Belgium and by the Commission of the European Communities.

The same parties in the main action and the Commission presented oral argument at the hearing in open court on 29 May 1968.

The Advocate-General delivered his opinion at the hearing on 11 June 1968.

## II — Observations submitted to the Court

The written observations submitted and the

oral arguments delivered may be summarized as follows:

(1) *The appellant in the main action Mr Sayag* points out that it follows from Articles 11 and 17 of the Protocol on the Privileges and Immunities of the EAEC that immunity from legal proceedings is justified essentially by the necessity of not hampering servants of the Community in accomplishing their tasks; it is intended to enable them to perform their duties under the most favourable conditions and ceases when the official may, without prejudicing his tasks, be considered as a private individual.

Immunity from legal proceedings does not cover traffic offences committed by an official outside the performance of his duties. On the other hand, an official is covered by that immunity where the infringement was committed when he was acting in an official capacity, even while driving his private car. The restrictive interpretation upheld by the judgment of the Cour d'Appel, Brussels, cannot be maintained. So that the immunity from legal proceedings may take effect, it is not necessary for the act in question to be inherent in the duties performed by the servant within the international organization; it is sufficient for there to be a relationship between the act and the official activities.

An offence committed by an official while making his way to the place where the mission entrusted to him must be carried out and while using the method of transport required of him by his travel order takes on the character of an act performed in the exercise of his duties. In this case, in fact, there is a particularly close relationship between the journey—and therefore the offence committed during that journey—and the mission with which the servant is entrusted, the journey being necessary to the performance of the mission.

In this case, Mr Sayag drove to Mol in his private car in order to carry out the task mentioned in his travel order which provided for his using his own car. It follows from these facts that the journey during which the offence was committed was inseparable from the performance of the mission entrusted to him and constituted an act carried out in the performance of his duties, and therefore in his official capacity.

This fact alone enabled Mr Sayag to take advantage of the immunity from legal proceedings provided for in Article 11(a) of the Protocol. To require for the application of this provision that the offence committed should constitute the actual performance of Mr Sayag's duties as an engineer would be tantamount to adding to the wording of the Protocol a condition which does not appear therein and which is contrary to accepted legal theory as to the extent of immunity from legal proceedings.

Finally, Mr Sayag is of the opinion that the immunity provided for in Article 11(a) of the Protocol on the Privileges and Immunities of the EAEC is applicable to officials and servants of the Community when acts giving rise to legal proceedings were carried out by them in the performance of their duties and have a relationship to their official activities.

(2) The *respondents in the main action* maintain that the immunity in favour of officials of Euratom provided for in Article 11(a) of the Protocol is established essentially in the interest of the duty, that is to say, in the interest of the organization itself, and that each institution of the Community is required to waive the immunity accorded to an official or other servant wherever it considers that the waiver of such immunity is not contrary to the interests of the Community.

That the basis of the immunity of servants of international organizations is that of 'duty' is now no longer the subject of debate either in legal writing or in case-law. To recognize this basis amounts at the same time to delimiting the scope of the immunity: for an act to be considered an official act it must relate to the official's sphere of duties.

As immunity exists only in the exclusive interest of the Community, with the sole purpose of protecting the duty to be performed, and as it covers only acts performed by an official in his official capacity, it can only relate to an act which by its nature arises out of that duty, that is to say, an act peculiar to the duty as defined by the Community, to the exclusion of an act carried out during the performance of the duty but which does not form part thereof. Finally, the respondents in the main action

consider that the Protocol on the Privileges and Immunities of the EAEC must be interpreted as meaning that the immunity provided for in that instrument in favour of officials and servants of the Community only covers acts constituting the actual performance of their normal or legally prescribed duties, and not merely acts carried out by them during the performance of those duties.

(3) The *Government of the Kingdom of Belgium* points out that the Belgian position with regard to immunity is based upon the principle that any exception must be interpreted restrictively; as immunity from legal proceedings constitutes a derogation from ordinary law, it must be given a strict interpretation.

The Government maintains that the words 'acts performed by them in their official capacity' are clearly much more restrictive than the expression 'during their official activities'. Therefore, it is clear that the driving of a motor vehicle can only constitute official activities in respect of a person employed as a driver.

The Government of the Kingdom of Belgium refers, further, to the overriding practical necessity of ensuring the observance of traffic regulations and of avoiding the abuses to which immunity from legal proceedings might lead in this sphere.

Finally, it is of the opinion that neither the letter nor the spirit of the provision which is the subject matter of the reference for a preliminary ruling enables the alleged immunity to be recognized in this case.

(4) The *Commission of the European Communities*, after retracing the evolution of the principles governing the grant of privileges and immunities to international officials, maintains that at the present time exemptions from national law granted to international officials, proceed from a purely functional conception of privileges and immunities. Such exemptions are granted exclusively in the interests of the organization. Immunity of international officials from legal proceedings is distinguished from that of diplomatic agents by the fact that it constitutes neither an absolute privilege covering private activities nor

a personal privilege.

The system of privileges and immunities provided by the Treaties establishing the Communities is very clearly inspired from the general tendency towards restriction since it puts in the foreground the interests, not of the official, but of the Community.

With regard to the present case the Commission states in particular:

(a) As far as concerns the determination of the categories of servants who may claim immunities, the Council, in pursuance of Article 15 of the Protocol, by Regulation No 8/63 of the EAEC and No 127/63 of the EEC of 3 December 1963 (Official Journal 6/181 of 11 December 1963), drew up the list of officials benefiting from such immunity and communicated the list to the Member States. Mr Sayag was on the list communicated to the Belgian Government at the time when the accident in question took place.

(b) As regards the question who is entitled to the right or, more generally, who may claim immunity, the judgment delivered by the Court in Case 6/60 (*Humblet*) ruled that the Protocol creates a subjective right for the benefit of officials of the Communities.

(c) As regards the question who is empowered to describe the act as officially performed or not, the Commission takes the view that it is for it, subject to review by the Court, to state, in the first place, whether the conditions for the application of immunity from legal proceedings are met, in other words whether the act for which the official is prosecuted was accomplished or effected in his official capacity.

When the answer to that question is in the affirmative, it is for the Commission to judge, in the second place, whether the interests of the Community require that the immunity be waived.

It was in the application of these principles that the Commission acted in this case.

(d) In the Commission's view, immunity from legal proceedings has the sole purpose of shielding the official from any action, criminal or civil, and from any threat of action on the part of the State when he makes a statement, orally or in writing, or carries out an act within his powers on behalf of the Community and its interests. Article 11(a) of the EAEC protocol is of

such a nature as to remove from the jurisdiction of national courts an official who, in a sphere linked to the application of the Treaty or the functioning of the institutions, carries out an act related to the specific duties conferred upon him by the institution to which he belongs. As immunity from legal proceedings is instituted in the interests of the Community, its existence is determined by the nature of the act rather than by the position of the official, even in the exercise of his duties. It has essentially for its object the shielding from inopportune national measures of acts by which the Community reveals itself or expresses itself. In order that there may be material for immunity from legal action there must be present an act, a writing or an oral statement, which is the act of the Community itself. Officials and other servants are only protected to the extent to which the Community has expressed itself through them and to which they have carried out acts deriving directly from the powers and means of action of the Community. Clearly offences against road traffic regulations, committed by officials driving their private cars, do not come within this category of acts, even if the journey was carried out during hours of duty in order to travel from one place of work to another.

(e) The use of a private means of transport is not one of the specific duties of an official charged with taking part in a meeting or carrying out a task outside his personal place of work.

When an official uses his private car, he is acting for reasons of convenience which are foreign to the interests of the service and the performance of official duties. These reasons are a matter of private choice and thus cannot in any case lead to assimilating the use of the car to an act carried out in an official capacity.

The fact that an official has a travel order, as had Mr Sayag on the occasion of the accident in question, by no means changes the situation, even if the use of a private car is expressly mentioned in the order. It is only a question of a simple means of establishing the cost of transport to be borne by the Community.

In conclusion the Commission takes the view that the immunity from legal proceed-

ings referred to in Article 11(a) of the Protocol on the Privileges and Immunities of the EAEC—now Article 12(a) of the Protocol annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities—applies to officials and servants who come within the categories determined by virtue of Article 15 of the EAEC Protocol when, in a sphere directly linked to the application of the Treaty or the functioning of the institutions, they are carrying out acts connected with the specific duties conferred upon them by

the institution to which they belong. In the application of this principle and in consideration of the provisions of the Staff Regulations applicable, officials and servants whose duties do not consist in driving the Community's vehicles and who are using their own cars freely and on their own initiative so as to make the exercise of their duties more easy, even if the institution has authorized them to do so, are not carrying out acts in their official capacity and cannot claim the benefit of immunity from legal proceedings.

### Grounds of judgment

By judgment of 12 February 1968, lodged at the Court on 23 February 1968, the Belgian Cour de Cassation by virtue of Article 150 of the Treaty establishing the European Atomic Energy Community, asked the Court for a preliminary ruling regarding the interpretation of Article 11(a) of the Protocol on the Privileges and Immunities annexed to the Treaty establishing the EAEC—now Article 12(a) of the Protocol annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities.

According to this judgment the Court is asked to rule 'whether the immunity from legal proceedings provided for by this provision is applicable to officials and servants of the Community when the acts giving rise to legal proceedings were carried out by them during the performance of their duties and have some relationship with their vocational activities or whether the immunity only covers acts constituting the actual performance of their normal duties or those prescribed under the Staff Regulations'.

It appears from the file submitted to the Court that the action before the court making the reference concerns a traffic accident caused by an official of the Community when, in possession of a travel order, he was driving his private motor car during the performance of his duties.

The action raises the question whether, in the present case, the act concerned was carried out in an official capacity within the meaning of the provisions referred to.

Article 191 of the Treaty establishing the EAEC provides that: 'The Community shall enjoy in the territories of the Member States such privileges and immunities as are necessary for the performance of their tasks under the conditions laid down in a separate protocol'.

Effect was given to this provision by the Protocol on the Privileges and Immunities

annexed to the Treaty establishing the EAEC, replaced as from 1 July 1967 by the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty of 8 April 1965 establishing a Single Council and a Single Commission of the European Communities.

In the terms of Article 30 of the latter Treaty, the provisions of the Treaty establishing the EAEC relating to the jurisdiction of the Court of Justice and the exercise of that jurisdiction are to be applicable to the provisions of the Treaty of 8 April 1965 and of the Protocol annexed thereto.

The new Protocol does not differ in substance, as far as concerns the question submitted to the Court, from the provisions of the former Protocol.

Article 12(a) of the Protocol (Article 11(a) of the former Protocol) provides that officials and other servants of the Communities shall 'be immune from legal proceedings in respect of acts performed by them in their official capacity, including their words spoken or written'.

The first paragraph of Article 16 of the Protocol (the first paragraph of Article 15 of the former Protocol) provides that the Council shall, acting on a proposal from the Commission and after consulting the other institutions concerned, determine the categories of officials and other servants of the Commission who are to be entitled in particular to immunity from legal proceedings and the determination of these categories was effected by Regulation No 8/63 EAEC and No 127/63 of the Councils of 3 December 1963.

According to the terms of Article 18 of the Protocol (Article 17 of the former Protocol) privileges, immunities and facilities are to be accorded to officials and other servants of the Communities solely in the interests of the Communities.

In this respect that article provides, in the second paragraph, that the institutions are to be required to waive the immunity accorded to an official or other servant under Article 12(a) of the Protocol (Article 11(a) of the former Protocol) wherever they consider that the waiver of such immunity is not contrary to the interests of the Communities.

It follows from all these provisions read together that the application of immunity from legal proceedings depends not only on the capacity of the person claiming it but also on the nature of the activity by virtue of which immunity is claimed.

According to Article 12(a) of the Protocol (Article 11(a) of the former Protocol) an act performed by an official or other servant does not give rise to immunity from legal proceedings unless it was performed in an official capacity, that is to say, within the framework of the task entrusted to the Community.

In excluding the jurisdiction of the national courts of Member States, subject to the application of the second paragraph of Article 18 of the Protocol (the second paragraph of Article 17 of the former Protocol) the provisions referred to above are intended to ensure that the official activity of the Community and of its servants is shielded from any examination in the light of any criteria based on the domestic law of Member States, so that such activity may be carried out in full freedom in accordance with the task entrusted to the Community.

The immunity from legal proceedings conferred on officials and other agents of the Community thus only covers acts which, by their nature, represent a participation of the person entitled to the immunity in the performance of the tasks of the institution to which he belongs.

On the other hand it matters little whether it is a question of the actual exercise of 'normal duties or those prescribed under the Staff Regulations', only of an act performed on the occasion of the exercise of those duties if the position is that the act in question serves directly for the accomplishment of a Community task in the sense defined above.

Hence, driving a motor vehicle is not in the nature of an act performed in an official capacity save in the exceptional cases in which this activity cannot be carried out otherwise than under the authority of the Community and by its own servants.

Finally it is appropriate to emphasize the the designation of an act with regard to immunity from legal proceedings, and any decision taken by the competent institution with regard to waiver of the immunity, do not prejudice any liability on the part of the Community, this being governed by special rules designed for a purpose separate from that of the provisions of the Protocol on the Privileges and Immunities.

#### Costs

The costs incurred by the Government of the Kingdom of Belgium and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Belgian Cour de Cassation, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;

Upon hearing the report of the Judge-Rapporteur;

Upon hearing the observations of the appellant Sayag, the respondents in the main action, the Government of the Kingdom of Belgium and the Commission of the



European Communities;

Upon hearing the opinion of the Advocate-General;

Having regard to the Treaty establishing the European Atomic Energy Community, especially Articles 150, 188 and 191;

Having regard to the Protocol on the Privileges and Immunities annexed to the Treaty establishing the European Atomic Energy Community, especially Articles 11, 15 and 17;

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, especially Article 30;

Having regard to the Protocol on the Privileges and Immunities of the European Communities annexed to the Treaty establishing a Single Council and a Single Commission of the European Communities, especially Articles 12, 16 and 18;

Having regard to the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community, especially Article 21;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

## THE COURT

in answer to the question referred to it by the Belgian Cour de Cassation by a judgment of that court of 12 February 1968, hereby rules:

1. **The immunity from legal proceedings laid down by Article 11(a) of the Protocol on the Privileges and Immunities of the EAEC (Article 12(a) of the Protocol on the Privileges and Immunities of the European Communities) applies exclusively to acts which, by their nature, represent a participation of the person claiming immunity in the performance of the tasks of the institution to which he belongs;**
2. **More especially, driving a motor vehicle is not in the nature of an act performed in an official capacity save in the exceptional cases in which this activity could not be accomplished otherwise than under the authority of the Community and by its own servants;**

and declares:

**It is for the Belgian Cour de Cassation to make a decision on the costs of the present proceedings.**

Lecourt

Donner

Trabucchi

Mertens de Wilmars

Pescatore

Delivered in open court in Luxembourg on 11 July 1968.

A. Van Houtte

R. Lecourt

Registrar

President