

CHAPTER FIVE

THE COURT OF JUSTICE

ARTICLE 19

Establishment of the Court

1. The Court of Justice established under Article 7 of this Treaty shall ensure the adherence to law in the interpretation and application of this Treaty.
2. The Court of Justice shall consist of a First Instance Division and an Appellate Division.

ARTICLE 20

Composition of the Court

1. The Court shall be composed of twelve judges appointed by the Authority of whom seven shall be appointed to the First Instance Division and five shall be appointed to the Appellate Division.
2. The Judges of the Court shall be chosen from among persons of impartiality and independence who fulfill the conditions required for the holding of high judicial office in their respective countries of domicile or who are jurists of recognised competence:

Provided that no two or more Judges shall at any time be Nationals of the same Member State.

3. Notwithstanding the provisions of paragraph 1 of this Article, the Authority may, upon the request of the Court, appoint additional Judges.
4. The Authority shall designate one of the Judges of the Appellate Division as the President of the Court responsible for exercising such functions as are set out under this Treaty and the Rules of Court.
5. The Authority shall designate one of the Judges of the First Instance Division as the Principal Judge with such functions as are set out in the Rules of Court.

ARTICLE 21

Tenure of Office and Resignation

1. The President and Judges shall hold office for a period of five years and shall be eligible for re-appointment for a further period of five years.
2. The President and the Judges shall hold office throughout the term of their respective appointments unless they resign or die or are removed from office in accordance with the provisions of this Treaty.

3. Where the term of office of a Judge comes to an end by effluxion of time or on resignation before a decision or opinion of the Court with respect to a matter which has been argued before the Court of which he was a member is delivered, such Judge shall, only for the purpose of completing that particular matter, continue to sit as a Judge.
4. The President may, at any time, resign his office by giving one year's written notice to the Chairman of the Authority, but his resignation shall not take effect until his successor has been appointed by the Authority and has taken office.
5. A Judge may, at any time, resign his office by letter delivered to the President for transmission to the Chairman of the Authority, and his resignation shall take effect on the date it has been accepted by the Authority.

ARTICLE 22

Removal from Office and Temporary Membership of the Court

1. The President or a Judge shall not be removed from office except by the Authority for stated misbehaviour or for inability to perform the functions of his office due to infirmity of mind or body or due to any other specified

cause.

2. If a Judge is appointed by the Authority to replace the President or another Judge before the term of office of the President or a Judge expires, the Judge so appointed shall serve in that office for the remainder of the term of the replaced President or Judge.
3. If a Judge is temporarily absent or otherwise unable to carry out his functions, the Authority shall, if such absence or inability to act appears to the Authority to be likely to be of such duration as to cause a significant delay in the work of the Court, appoint a temporary Judge to act in place of the said Judge.
4. If a Judge is directly or indirectly interested in a case before the Court, he shall immediately report the nature of his interest to the President, and, if in his opinion the President considers the Judge's interest in the case prejudicial, he shall make a report to the Authority, and the Authority shall appoint a temporary Judge to act for that case only in place of the interested Judge.
5. If the President is directly or indirectly interested in a case before the Court he shall, if he considers that the nature of his interest is such that it would be prejudicial

for him to take part in that case, make a report to the Authority and the Authority shall appoint a temporary President, chosen in the same manner as the substantive President, to act as President for that case only in place of the substantive President.

ARTICLE 23

General Jurisdiction of the Court

1. The Court shall have jurisdiction to adjudicate upon all matters which may be referred to it pursuant to this Treaty.
2. The First Instance Division of the Court shall have jurisdiction to hear and determine at first instance, subject to a right of appeal to the Appellate Division under paragraph 2, any matter brought before the Court in accordance with this Treaty.
3. An appeal shall lie to the Appellate Division on:
 - (a) points of law;
 - (b) grounds of lack of jurisdiction; or
 - (c) procedural irregularity.

ARTICLE 24

Reference by Member States

1. A Member State which considers that another Member State or the Council has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, may refer the matter to the Court.
2. A Member State may refer for determination by the Court, the legality of any act, regulation, directive or decision of the Council on the grounds that such act, regulation, directive or decision is ultra vires or unlawful or an infringement of the provisions of this Treaty or any rule of law relating to its application or amounts to a misuse or abuse of power.

ARTICLE 25

Reference by the Secretary-General

1. Where the Secretary-General considers that a Member State has failed to fulfill an obligation under this Treaty or has infringed a provision of this Treaty, he shall submit his findings to the Member State concerned to enable that Member State to submit its observations on the findings.
2. If the Member State concerned does not submit

its observations to the Secretary-General within two months, or if the observations submitted are unsatisfactory, the Secretary-General shall refer the matter to the Bureau of the Council which shall decide whether the matter shall be referred by the Secretary-General to the Court immediately or be referred to the Council.

3. Where a matter has been referred to the Council under the provisions of paragraph 2 of this Article and the Council fails to resolve the matter, the Council shall direct the Secretary-General to refer the matter to the Court.

ARTICLE 26

Reference by Legal and Natural Persons

Any person who is resident in a Member State may refer for determination by the Court the legality of any act, regulation, directive, or decision of the Council or of a Member State on the grounds that such act, directive, decision or regulation is unlawful or an infringement of the provisions of this Treaty:

Provided that where the matter for determination relates to any act, regulation, directive or decision by a Member State, such person shall not refer

the matter for determination under this Article unless he has first exhausted local remedies in the national courts or tribunals of the Member State.

ARTICLE 27

Jurisdiction Over Claims by Common Market Employees and Third Parties Against the Common Market or its Institutions

1. The Court shall have jurisdiction to hear disputes between the Common Market and its employees that arise out of the application and interpretation of the Staff Rules and Regulations of the Secretariat or the terms and conditions of employment of the employees of the Common Market.
2. The Court shall have jurisdiction to determine claims by any person against the Common Market or its institutions for acts of their servants or employees in the performance of their duties.

ARTICLE 28

Jurisdiction under Arbitration Clauses and Special Agreements

The Court shall have jurisdiction to hear and determine any matter:

- (a) arising from an arbitration clause contained in a contract which confers such jurisdiction to which the Common Market or any of its institutions is a party; and
- (b) arising from a dispute between the Member States regarding this Treaty if the dispute is submitted to it under a special agreement between the Member States concerned.

ARTICLE 29

Jurisdiction of National Courts

1. Except where the jurisdiction is conferred on the Court by or under this Treaty, disputes to which the Common Market is a party shall not on that ground alone, be excluded from the jurisdiction of national courts.
2. Decisions of the Court on the interpretation of the provisions of this Treaty shall have precedence over decisions of national courts.

ARTICLE 30

National Courts and Preliminary Rulings

1. Where a question is raised before any court or tribunal of a Member State concerning the application or

interpretation of this Treaty or the validity of the regulations, directives and decisions of the Common Market, such court or tribunal shall, if it considers that a ruling on the question is necessary to enable it to give judgment, request the Court to give a preliminary ruling thereon.

2. Where any question as that referred to in paragraph 1 of this Article is raised in a case pending before a court or tribunal of a Member State against whose judgment there is no judicial remedy under the national law of that Member State, that court or tribunal shall refer the matter to the Court.

ARTICLE 31

Judgment of the Court

1. The Court shall consider and determine every reference made to it pursuant to this Treaty in accordance with the Rules of Court, and shall deliver in public session a reasoned judgment which, subject to the provisions of the said Rules as to review, shall be final and conclusive and not open to appeal:

Provided that, if the Court considers that in the special circumstances of the case it is undesirable that its judgment be delivered in open Court, the

Court may make an order to that effect and deliver its judgment before the parties privately.

2. The Court shall deliver one judgment only in respect of every reference to it, which shall be the judgment of the Court reached in private by majority verdict.
3. An application for revision of a judgment may be made to the Court only if it is based upon the discovery of some fact which by its nature might have had a decisive influence on the judgment if it had been known to the Court at the time the judgment was given, but which fact, at that time, was unknown to both the Court and the party making the application, and which could not, with reasonable diligence, have been discovered by that party before the judgment was made, or on account of some mistake or error on the face of the record.

ARTICLE 32

Advisory Opinions of the Court

1. The Authority, the Council or a Member State may request the Court to give an advisory opinion regarding questions of law arising from the provisions of this Treaty affecting the Common Market, and the Member States shall in the case of every such request have the right to be represented and take part in the proceedings.

2. A request for an advisory opinion under paragraph 1 of this Article shall be made in writing and shall contain an exact statement of the question upon which an opinion is required and shall be accompanied by all relevant documents likely to be of assistance to the Court.
3. Upon the receipt of the request under paragraph 1 of this Article, the Registrar shall forthwith give notice thereof, to all the Member States, and shall notify them that the Court shall be prepared to accept, within a time fixed by the President, written submissions, or to hear oral submissions relating to the question.
4. In the exercise of its advisory function, the Court shall be governed by the provisions of this Treaty and the Rules of Court relating to references of disputes to the extent that the Court considers appropriate.

ARTICLE 33

Representation before the Court

Every party to a reference before the Court shall be represented by Counsel appointed by that party.

ARTICLE 34

Acceptance of Court Judgments

1. Any dispute concerning the interpretation or application of this Treaty or any of the matters referred to the Court pursuant to this Chapter shall not be subjected to any method of settlement other than those provided for in this Treaty.
2. Where a dispute has been referred to the Council or the Court, the Member States shall refrain from any action which might be detrimental to the resolution of the dispute or might aggravate the dispute.
3. A Member State or the Council shall take, without delay, the measures required to implement a judgment of the Court.
4. The Court may prescribe such sanctions as it shall consider necessary to be imposed against a party who defaults in implementing the decisions of the Court.

ARTICLE 35

Interim Orders

The Court may, in any case referred to it, make any interim order or issue any directions which it considers necessary or

desirable. Interim orders and other directions issued by the Court shall have the same effect ad interim as decisions of the Court.

ARTICLE 36

Intervention

A Member State, the Secretary-General or a resident of a Member State who is not a party to a case before the Court may with leave of the Court, intervene in that case, but the submissions of the intervening party shall be limited to evidence supporting or opposing the arguments of a party to the case.

ARTICLE 37

Proceedings

1. The proceedings before the Court shall be either written or oral.
2. Records of each hearing shall be signed by the President and shall be kept and maintained by the Registrar.

ARTICLE 38

Rules of Court

1. The Court shall make Rules of Court which shall, subject

to the provisions of this Treaty, regulate the detailed conduct of business of the Court.

2. The Rules of Court shall become effective upon approval by the Council.

ARTICLE 39

Immunity of the President and Judges

The President and the Judges shall be immune from legal action for any act or omission committed in the discharge of their functions under this Treaty.

ARTICLE 40

Execution of Judgment

The execution of a judgment of the Court which imposes a pecuniary obligation on a person shall be governed by the rules of civil procedure in force in the Member State in which execution is to take place. The order for execution shall be appended to the judgment of the Court which shall require only the verification of the authenticity of the judgment by the Registrar whereupon, the party in whose favour execution is to take place, may proceed to execution in accordance with the rules of civil procedure in force in that Member State.

ARTICLE 41

Registrar and Other Staff

1. The Council shall appoint a Registrar from among nationals of the Member States qualified to hold high judicial office in their respective States.
2. The Court shall employ such other staff as may be required to enable it to perform its functions and who shall hold office in the service of the Court.
3. The terms and conditions of service of the Registrar and other staff shall, subject to this Treaty, be determined by the Council on the recommendation of the Court.
4. Subject to the overall supervision of the President, the Registrar shall be responsible for the day to day administration of the business of the Court. The Registrar shall also carry out the duties imposed upon him by this Treaty and the Rules of Court.

ARTICLE 42

Budget

1. The budget of the Court shall be borne by the Member States.

2. The formula for contributions to the budget for the Court shall be the formula applicable to the determination of contributions by the Member States to the budget of the Secretariat.
3. The President shall present the budget of the Court to the Council for approval, through the Intergovernmental Committee.
4. The Council shall determine the payment and currencies of contributions by the Member States to the budget of the Court.

ARTICLE 43

Official Languages of the Court

The official languages of the Court shall be English, French and Portuguese.

ARTICLE 44

Seat of the Court

The Seat of the Court shall be determined by the Authority.