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The Law's Delays

Every law student learns that "justice delayed is justice denied". Every student of English history knows that, under Magna Carta, justice shall not be sold, denied or delayed ("*nulli vendemus, nulli negabimus aut differemus, rectum aut justitiam*"). And every student of human rights in Europe knows that, under Article 6(1) of the European Convention on Human Rights and Fundamental Freedoms, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".

Many commentators on the legal processes leading from a complaint to the Commission or an action in a lower court of a Member State all the way to a final judgment by the Court of Justice of the European Communities are unhappy about the length of time which these processes take. Sometimes, the circumstances in which the case originated have changed completely by the time the case is concluded; sometimes the principal party has died or gone out of business. A classic instance was the *Magill* case, which lasted many years. By the time all the legal arguments had been weighed by the final court, about the rights and wrongs of permitting a publisher to make use of full and varied television programme listings, publications which did just that were freely available.

In this issue, a case is reported in which an aggrieved party claimed that the very length of the Communities' legal processes in dealing with a competition case had not only vitiated the processes themselves but resulted in a fine which, in the circumstances, was manifestly unfair. The Court acknowledged that the general principle of Community law that everyone was entitled to fair legal process, inspired by the fundamental rights of the European Convention, and in particular the right to legal process within a legal period, was applicable in the context of proceedings brought against a Commission decision imposing fines on an undertaking for infringement of competition law.

However, the Court has long held (since the *Pioneer* case in 1980) that the proceedings before the Commission are not covered by the Convention, as they are executive acts and not acts of a tribunal; and in the *Baustahlgewebe* case, reported in this issue, the Court held that, while the plea alleging excessive duration of the proceedings was well founded for the purpose of reviewing the fine imposed on the appellant, that plea could not, in the absence of any indication that the length of the proceedings affected their outcome in any way, result in the contested judgment being set aside in its entirety. On a similar plea, based on a breach of the principle of promptitude, the Court said, rather weakly, that there were no actual time-limits in the rules of procedure or the statute of the Court. The Commission had said that the principle did not exist in Community law; but the Court did not rule specifically on this point.

For the appellant, the minor reduction in the fine was a Pyrrhic vistory; but the case should be treated by the Court as a reminder of the paramount need to minimise the "law's delays". □