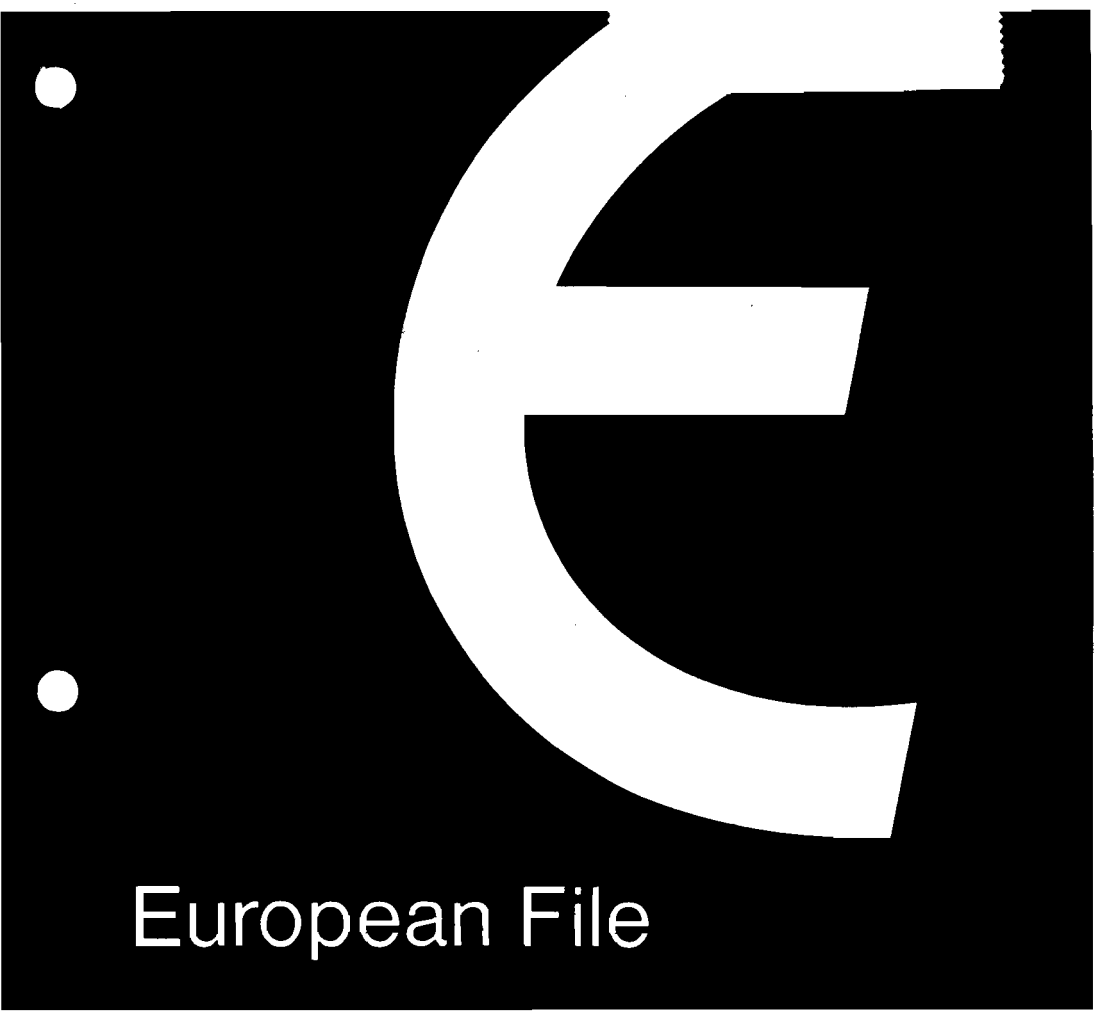
New rights for the citizens of Europe



European File

Commission of the European Communities
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The second direct elections to the European Parliament in June 1984 establishes the emergence of a new form of citizenship for 272 million Europeans. Without in any sense supplanting their national citizenship, their identity as citizens of the European Community is underlined by their second opportunity to vote directly for their representatives in the assembly which watches over the European Commission and Council of Ministers and adopts the Community budget. Another symbol of this new citizenship will be the European passport, which member countries have agreed to phase in from the beginning of 1985.

But European citizenship also guarantees a whole series of individual rights. Any citizen of the Community can appeal to a national court if he or she feels one of these rights is being infringed. Uniformity of application throughout the Community is maintained by the judgments of the European Court of Justice.

What are these rights? They include amongst others, the right of men and women to equal pay; the right to work in any Member State, with the same pay as citizens of the host country; the right to buy and sell without restriction across Community frontiers, with the full benefits of a common market; the right to fair prices, based on free competition between firms, without the creation of monopolies and dominant trading positions; and the right to legal redress across Community frontiers, in disputes over cross-border environmental damage or any other issue.

Equal pay for men and women

- ☐ Mrs Worringham and Mrs Humphreys discovered that their employer, Lloyds Bank Ltd, refused to give female employees under 25 the same pension rights as other workers. Their case was referred by the Appeal Court in London to the European Court, which found in their favour in 1981. The Court decided that an employer's pension contributions counted as part of a worker's remuneration. The European treaties forbid any form of discrimination in this area. The judgment apparently affects about 85 000 British firms, employing more than 11 million people.

- ☐ In another British case, Mrs Jenkins, working part-time for Kingsgate Ltd of Harlow, a company producing women's clothes, complained that she earned 10% less per hour than full-time employees. Nominally there was no discrimination on the grounds of sex but most of the firm's part-time workers were women. In 1981 the European Court of Justice decided that this could constitute sexual discrimination. It was left to the national court to apply the ruling to the case in question, taking account of the individual circumstances and the record and motives of the employer.

Wage discrimination is thus forbidden, whether it is direct or indirect, based on national law, collective agreements or individual contracts. In certain cases compensation can be backdated. This principle was established in 1976 in the Defrenne case, involving a Belgian air hostess whose pay was lower than that of male navigators doing exactly the same work.

European directives have put the principle of non-discrimination in concrete form and extended its scope. They cover job-descriptions, access to jobs, training, promotion, working conditions, the right to legal redress and protection of plaintiffs against retaliatory dismissal. A new directive provides for the elimination, by the end of 1984, of all forms of sexual discrimination in legal and social security systems. The Community is also taking an active interest in equality of opportunity at school. Its Social Fund sponsors training programmes designed to upgrade the qualifications of women and break down job barriers.

Apart from women's rights, there are a number of other European directives which grant the right of legal redress to all Community workers.[1] These include the right to be informed and consulted before large-scale redundancies are announced, the protection of existing rights when a firm is merged or sold, the right to be paid in case of bankruptcy. Draft directives which would give better protection to part-time, short-term or temporary workers would, if adopted, resolve the problem raised by Mrs Jenkins.

Other European rules govern the rights of Community citizens working or seeking work in another Member State.

Working in the country of one's choice

Looking through the small-ads, a Community official noticed that Belgian local authorities and State companies reserved a number of jobs for their own nationals. These included assistant gardeners, nurses and engine drivers. It turned out that this was a stipulation of the Belgian constitution. The Commission took Belgium to the European Court. In 1980 the Court held that the European treaties outlawed all discrimination between Community citizens in employment, pay and working conditions. Exceptions are allowed for government employees but within strict limits. They apply only to jobs directly or indirectly involved in public administration or the protection of the interests of the State or public bodies.

The principle of free movement of workers is directly applicable to most salaried jobs and professions which need no formal training. The Court of Justice has upheld this principle on numerous occasions, in cases involving, amongst others, entertainers, footballers and cyclists. But how should the principle be applied to those professions, which require a certificate, diploma or some other form of professional qualification? Consider two cases:

- ☐ The first, comparatively easy to solve but uncommon, involved a certain Mr Reyners. A Dutchman, he had studied law in Belgium and wished to practise in this country after receiving his qualifications there. In 1974, the Court decided that nothing should prevent him from doing so because national discrimination was forbidden.

[1] See *European File*, No 15/81: 'Workers' rights in industry'.

☐ But what happens in the case of a person who qualifies in one country but wishes to practise in another? A certain Doctor Broekmeulen wanted to set up as a general practitioner in the Netherlands after qualifying in Belgium. In 1981, the Court held that medicine was one of a number of professions where the mutual recognition of diplomas and certificates was guaranteed by European directives. These directives call either for a minimum period of professional experience or a certain degree of standardization in medical studies. The same applies in the public health sector. If Doctor Broekmeulen could satisfy these conditions, the Netherlands had no right to demand that he should undertake extra training. Earlier, in 1979, the Court ruled that Mr Knoors, a Dutch heating engineer, had a perfect right to work in his own country after training in Belgium.

The existence of a Community directive on the recognition of qualifications is not, however, an absolute precondition for freedom of movement. In 1977 a Belgian doctor of law, Mr Thieffry, was granted the right to work in France. The University of Paris recognized his diploma and he was able to prove a sound knowledge of French law.

In the same way, a person's nationality or country of residence cannot be used to refuse him or her the right to offer services, temporarily or regularly, in another Member State. This principle was established by the Court in 1974. In 1982 it went a step further and ruled that, wherever possible, national rules governing such activities should be relaxed to avoid discrimination. Thus two French contracting firms, Seco and Desquenne & Giral, who employed workers on jobs in Luxembourg, were exempted from paying local social security contributions because similar payments were already being made in France. The Court rules that double payments would have been discriminatory and unfairly increased the costs of the firms involved.

Social rights across frontiers

☐ At Christmas 1966, Mr Ugliola was not paid the traditional bonus by the Stuttgart dairy where he had worked since 1961. The reason given was that he had broken his employment to undertake his military service in Italy. In West Germany, however, temporary military service is taken into account by employers in calculating the number of years put in by an employee. In 1969, the European Court found in favour of Mr Ugliola. The Court ruled that as a Community citizen he had a right to all social benefits guaranteed by the labour laws of his host country. The fact that he had served in the Italian, rather than the German army was irrelevant.

☐ Mr Inzirillo, an Italian working near Lyon in France, had a grown-up son, Bernardo, who was seriously handicapped, unable to work and lived with his parents. French law restricted welfare payments for handicapped adults to French nationals. In 1976, the European Court ruled that it was irrelevant that

Bernardo was Italian and had never worked in France. He was a dependant of a worker from another Community country and Mr Inzirillo had a right to all welfare payments available to French workers.

- Mr and Mrs Reina, Italian workers living in Stuttgart, were refused the interest-free loans granted to new parents by the local Landeskreditbank. This was a public institution, implementing benefits for new-born children decided by the Baden-Württemberg regional government. In 1982, the Court decided this was wrong. Equality of treatment should extend to all social benefits, whether or not they were included in an employment contract and even if they were granted on a discretionary basis.

The application of the principle of equal treatment, enshrined in the European treaties, has been systematized by Community regulations. These have abolished the need for a work permit, guaranteed most trades union rights, the right to education and job training, the right to education grants and social security payments. It is also possible to consolidate, for pension purposes, insurance payments made in a number of different Community countries. The Community gives financial aid to the training and education of young migrant workers.

Social security benefits were recently extended to non-salaried migrant workers. Community citizens who travel abroad occasionally, whether on holiday or for any other reason, have the right to health care in another Member State on exactly the same terms as the local population. To claim this right, the traveller must carry an E 111 form issued by his own health insurance organization.

Buying and selling across frontiers

One extremely international story can be given as an illustration. Mr van Zanten wished to take home to the Netherlands a secondhand motor-boat which he bought in France from a Swede living in Monaco. The Dutch customs demanded 18% VAT. He protested. The case was sent to the European Court which ruled in 1982 that the abolition of customs duties between Community countries did not imply the abolition of internal taxes such as VAT. Until VAT rates are harmonized – something the Commission has been seeking patiently to achieve – it is inevitable that taxes have to be paid at Community borders. But double taxation is forbidden. The European treaties lay down that the taxation of imported goods must not be greater than the tax on goods produced internally. The Dutch customs were therefore wrong to charge that proportion of the VAT which represented the tax already paid by Mr van Zanten in France and which was included in the value of the boat when he tried to import it.

The European Commission has persuaded the Council of Ministers to grant certain exemptions for imported goods from VAT and other national taxes. The Commission has sought to extend these exemptions over the years. They include tax-free allowances for travellers, the right to tax-free importation of a private car

and the permanent tax-free importation of personal possessions when moving home. The Commission is also seeking to simplify border bureaucracy both for private travellers and traders and transport firms. The objective is to establish a European internal market where trade flows as freely between countries as between different parts of the Member States. This will promote trade and therefore boost industry, services and employment. Much work remains to be done in this area. But the case law of the European Court is helping to unify the Community market by exposing protectionist measures:

- In 1983 the Court, following a complaint from the Commission, condemned the Italian practice of charging different tax rates on spirits according to their country of origin. The United Kingdom was similarly condemned for charging higher taxes on table wines (largely imported) than on beers (mainly produced domestically). The Court rules that, although the products were different, they answered the same need.

- Protectionism does not operate through taxation alone. In 1979 the European Court condemned the German trading regulation which forbade the sale of alcoholic drinks below a minimum strength and prevented the importation of cassis de Dijon. The Court ruled that this amounted to a quantitative restriction on trade, forbidden by the European treaties except where necessary to protect consumers, public health or fair trade. This was a crucial judgment. A whole series of national regulations and individual standards obstruct the creation of an internal market, despite the numerous harmonization measures agreed by European governments. Pursuing the same objective, the Court condemned Ireland in 1981 for insisting that imported tourist souvenirs must be labelled with their country of origin. It also ruled against the French practice of restricting the advertising of certain, mainly imported, alcoholic drinks, allegedly on health grounds.

In summary, exceptions to the principle of 'equal sales opportunity' can only be permitted if they apply equally to the products of a Member State and other Community countries. Discrimination on national grounds is forbidden, even if it is based on seemingly neutral criteria.

Competitive prices and no monopolies

Distillers Company Limited, one of the largest Scotch whisky firms, operated a discriminatory pricing system. Reductions were given to retailers operating only in the United Kingdom. Higher prices were established in the rest of the Community through an exclusive and heavily protected distribution system. Steep price increases were imposed on British buyers who attempted to re-sell the whisky on the continent. Following complaints from other companies and an investigation by the Commission, Distillers were ordered by the Commission to change their operating methods. The case was referred to the European Court, which confirmed the Commission decision in 1980.

☐ The European treaties outlaw agreements or concerted practices between companies which threaten free trade between Member States or restrict or distort fair competition. Over more than 20 years, numerous agreements have been condemned and heavy fines often imposed. These cases have usually come to light through an investigation by the European Commission, acting on its own initiative or following a complaint by a Member State, another company or an individual. Interested parties, including the plaintiffs, can appeal against Commission decisions to the European Court of Justice. But it is not always necessary to wait for Commission action. European competition laws are directly applicable in Member States. Individuals can appeal to national courts to ensure that they are respected.

Outlawed agreements have included protected markets, usually in one Member State, involving, for instance, quinine and sugar producers. Others have involved price fixing agreements, including an understanding between dye manufacturers that prices would be raised simultaneously. Other examples have been exclusive purchasing agreements and exclusive or selective distribution systems which have carved up the European market. The Commission does allow selective distribution agreements, based on the qualifications of the retailer. But the recent AEG-Telefunken case in 1982, involving the freezing out of a retailer who cut his prices, demonstrated that heavy penalties could be imposed for any discriminatory use of such agreements.

☐ Abuse of dominant trading positions is also frowned upon. Hoffmann-La Roche of Basle dominated the world market in vitamins in bulk, controlling more than 80% of sales in some areas. The company had concluded loyalty agreements, guaranteeing exclusive or preferential dealings with its clients which were thus discouraged from approaching other producers. Penalized by the Commission, the company appealed to the Court which upheld, for the most part, the Commission's decision in 1979. The Court ruled that a dominant company had no right to enter agreements which restricted a buyer's choice of supplier or closed the market to other producers who could bring down prices.

Discrimination between trading partners, restrictions on production or supply and unfair prices have also been declared to be abuses of fair trade law. In 1974 the Court upheld a ruling against the Commercial Solvents Corporation and its Italian subsidiary, L'Istituto Chemioterapico Italiano. The group had the worldwide rights for the manufacture of chemicals needed to create a medicine against tuberculosis. It ceased deliveries to one of the few European producers of the medicine, the Giorgio Zoja laboratory. This firm would have been forced to halt production and leave the field clear for the Italian subsidiary of the group, which had just started manufacturing the finished product. The European institutions intervened and rescued Zoja by ordering the Group to resume deliveries. Four years later in 1978, the European Court upheld a similar decision against the United Brands Company which had protected its market by forbidding its distributors to sell bananas while still green and placed on its blacklist a client which took part in an advertising campaign for a rival

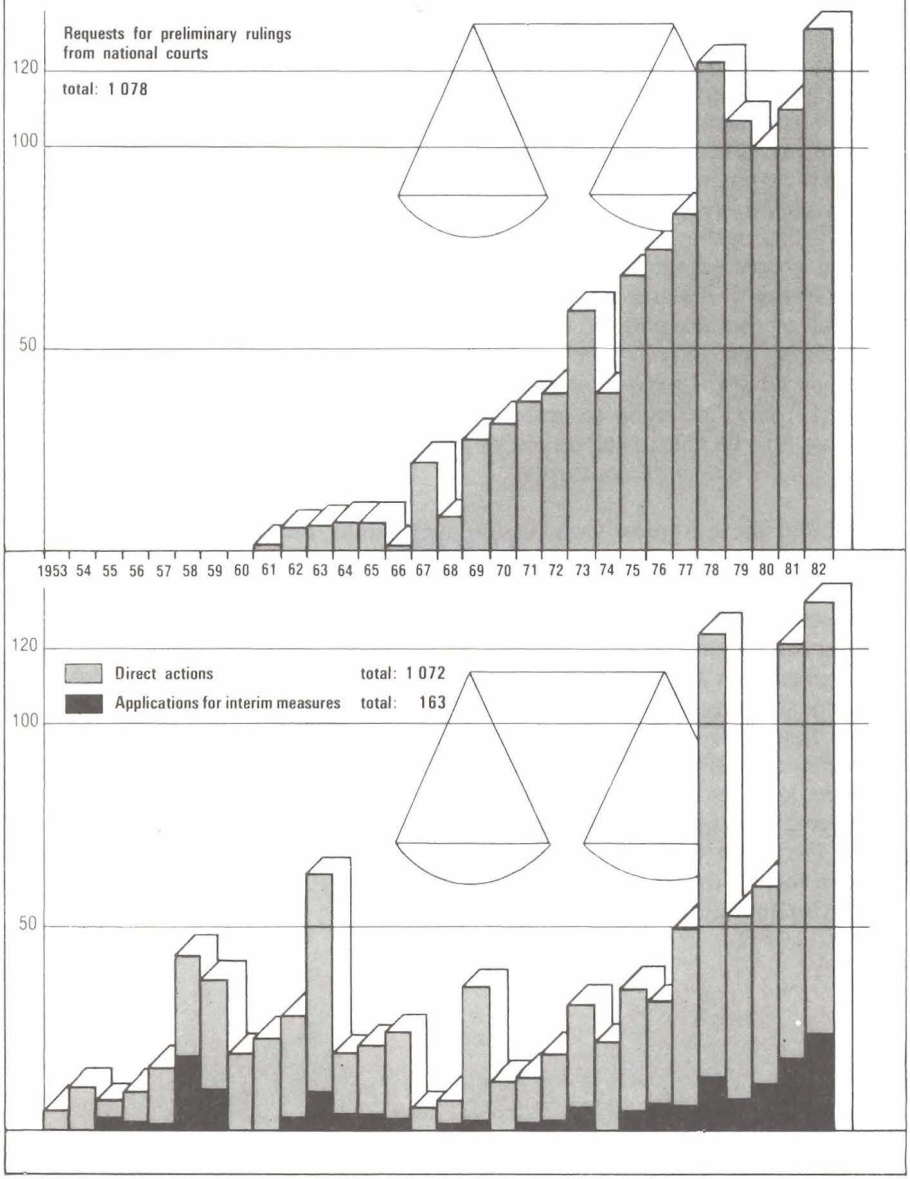
brand. In the Continental Can case (1971-3), the Court ruled that certain mergers could, of themselves, constitute an abuse of a dominant marketing position.

Removing obstacles to justice in the environmental and other fields

☐ Alsatian potassium mines dump tonnes of chloride into the Rhine. Hundreds of kilometres to the north the Dutch nursery, Bier, was forced to spend large sums of money reducing the salt content of the Rhine water. How could this injustice be righted? Community countries are signatories to the Brussels convention on legal competence and the implementation of legal decisions in civil and commercial matters. As a general rule, the convention allows any citizen of a signatory country to take legal proceedings against someone in another signatory country (using his usual lawyer if he wishes). The European Court ruled in 1976 that in the case of damage or partial damage, outside a formal contract, legal proceedings can be launched in the place where the damage occurs. In this instance, it was a matter of dispute whether the damage took place at the point of the dumping of the chloride or at the point where the water was rendered too salty. The convention is not specific in this area. The Court decided that the plaintiff should have a choice. This would allow the victim of cross-frontier pollution to protect his interests more readily. If necessary, he would also be able to call on one of the many Community directives which lay down environmental standards.

☐ In 1980 the European Commission successfully brought the Italian government before the Court for failing to adapt its national legislation during the agreed period to two Community directives on detergents and the sulphur content of combustible liquids. But access to the Court of Justice is not reserved to European institutions and member governments. Many Court judgments, in the areas covered by this File, involved private complaints to national courts about the non-observance of the treaties and the Community law flowing from them. Private plaintiffs can even refer directly to terms of Community directives if they feel that a Member State has failed to fully adapt its national legislation to European law. In cases where a decision cannot be referred to a higher national court, a judge can request an opinion directly from the European Court of Justice. This opinion is called a 'preliminary ruling'. This, then, is the legal machinery created to protect the new rights of citizens in all Community countries ■

The number of cases brought before the European Court of Justice up to December 31, 1982.



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