INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. XVI

Publications Division, Directorate-General of Information, Commission of the European Communities, 200, rue de la Loi, 1040 - Brussels.

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Tr/st/D

TABLE OF CONTENTS

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

P.O. Box No. 1406, Luxembourg. Telephone 47.621.
Telex (Registry): 2510 CURIA LU
Telex (Press and Information Service of the Court):
2771 CJ INFO LU
Telegraphic address: Curia Luxembourg.

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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of information material issued by the Court:

I. Information on current matters - for general use

1. Hearings of the Court

   The calendar of public hearings is drawn up on a weekly basis. It is subject to change and is therefore only a guide. The calendar, which is in French, may be obtained, free of charge, from the Registry of the Court.

2. Cases pending before the Court of Justice of the European Communities

   A weekly summary of the judicial work of the Court, appearing in the six official languages of the Community. It is obtainable free of charge from the Press and Legal Information Service, mentioning the language desired. (Orders from the USA may be addressed to the Information Offices of the European Communities at Washington or at New York).

3. Judgments, Orders of the Court, Reports for the hearings, Opinions of the Advocates-General, are sent as roneoed documents to the parties and may, on special request, be supplied to other interested persons once they have been delivered or distributed at the public hearing. They are supplied free of charge. Requests for Judgments, Orders and Reports for the

hearings may be addressed to the Registry. The Opinions of the Advocates-General may be ordered from the Press and Legal Information Service. Since 1972 the "Times" newspaper of London devotes a column ("European Law Reports") to important cases in which judgment has been given by the Court.

II. Information and technical documentation

1. Information on the Court of Justice of the European Communities

A quarterly bulletin published by the Publications Division, Directorate-General of Information, Commission of the European Communities, Brussels. Contains the heading and a short summary of the most important cases before the Court of Justice and the national courts. Obtainable free of charge from the Information Offices of the Community, whose addresses appear in this bulletin.

2. Synopsis of the work of the Court

Published in the six official languages and obtainable free from the afore-mentioned Information Offices of the Communities.

3. Collection of texts on the organization, powers and procedure of the Court

(1967 edition is completely out of print)
A new edition is being prepared; it will be available in 1975. The price remains to be determined.
Orders with an indication of the language desired, should be sent to the Publications Office of the European Communities or the bookshops whose addresses are set out below.

4. Legal publications on European integration
(bibliography)

	BF	Dkr.	DM	FF	Lire	Fl	£
1966 reprint	300	46	24	29	3,750	22	3.20
1967 supplement	150	23	12	15	1,870	11	1.60
1968 supplement	150	23	12	15	1,870	11	1.60
1969 supplement	150	23	12	15	1,870	11	1.60
1970 supplement	150	23	11	17	1,900	11	1.60
1971 supplement	-	-	-	-	-	-	-

On sale at the addresses given below.

5. Bibliography of European case law (1965)
(on judicial decisions relating to the Treaties establishing the European Communities)

	BF	Dkr.	DM	FF	Lire	Fl	£
1965 edition	100	-	8	10	1,250	7.25	1.10
1967 supplement	100	-	8	10	1,250	7.25	1.10
1968 supplement	100	-	8	10	1,250	7.25	1.10
1969 supplement	100	-	8	10	1,250	7.25	1.10
1970 supplement	100	-	7.50	11.50	1,250	7.25	1.10
1973 supplement	100	16	7.50	11.50	1,250	7.25	1.10

On sale at the addresses given below.

Germany: Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1

Belgium: Ets Emile Bruylant, Rue de la Regence 67, 1000 Brussels

Denmark: J. H. Schultz' Boghandel, Møntergade 19, 1116 Copenhagen K

France: Editions A. Pedone, 13, rue Soufflot, 75005 Paris

Ireland: Messrs Greene & Co., Booksellers, 16 Clare Street, Dublin 2

Italy: Casa Editrice Dott. A. Giuffre, Via Statuto 2, 20121 Milan

Luxembourg: Office des publications officielles des Communautés européenes, Case postale 1003, Luxembourg

Netherlands: NV Martinus Nijhoff, Lange Voorhout 9, The Hague

United Kingdom: Sweet & Maxwell, Spon (Booksellers) Ltd., North Way, Andover, Hants, SP10 5BE

Other countries: Office des publications officielles des Communautés européennes, Case postale 1003, Luxembourg.

6. Index of case law relating to the Treaties establishing the European Communities ("Europäische Rechtsprechung")
Extracts from cases relating to the Treaties instituting the European Communities 1953 - 1972 (exists in German and in French, the extracts of national decisions also appear in their original language), Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1, Federal Republic of Germany.

III. Official publications

The Recueil de la jurisprudence de la Cour remains of course the only authentic source for citing the case law of the Court of Justice. This Recueil, covering 20 years of case law (1953-1973), is on sale at the same addresses as the publications mentioned under heading II above.

	B.F.	Dkr.	D.M.	F.F.	Lire	Fl.	£
Volumes I to XV (and tables (1954-1969)	4,800	-	352	534	60,000	347.50	-
Volume XI (1965)	400	-	32	39	5,000	29	-
Volume XII (1966)	500	-	40	50	6,250	36.50	-
Volume XIII (1967)	500	-	40	50	6,250	36.50	-
Volume XIV (1968)	550	-	44	55	6,900	40	-
Volume XV (1969)	600	-	48	60	7,500	44	-
Volume XVI (1970)	750	-	60	83	9,375	54.50	-
Volume XVII (1971)	850	-	62.50	94	10,625	61.50	-
Volume XVIII (1972)	1,000	-	74	112	12,500	73	-
Volume 1973	1,200	180	88	134	15,000	87	10
Volume 1974	1,350	209	88	161	21,250	96	14.20

Volumes 1954 to 1972 are published in Dutch, French, German and Italian; the 1973 and subsequent volumes also in Danish and English.
Volumes for the years 1962 to 1972 will appear at regular intervals in the course of 1974 and 1975. Volumes for the years 1954 to 1961 will appear in the course of 1975 and 1976.

Subscription: for the 18 volumes... £ 150
price for individual volumes ... £ 15

IV. VISITS

The Court sits on Tuesdays, Wednesdays and Thursdays, except during the legal vacations (20 December to 6 January, the week before and after Easter and from 15 July to 15 September. Please also refer to the list (below) of public holidays - Luxembourg).

Visitors may attend the public hearings of the Court or the Chambers, provided sufficient room is available. No visitors are allowed to attend hearings in camera or hearings on interim measures.

Half an hour before the commencement of each public hearing a briefing will be given to groups of visitors, subject to prior notification of their intention to attend.

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PUBLIC HOLIDAYS IN LUXEMBOURG

In addition to the aforementioned legal vacations the Court building is also closed on the following days:

New Year's Day	1 January
"Carnival" Monday	
Easter Monday	
Ascension Day	
Whit Monday	
Labour Day	1 May
Luxembourg national holiday	23 June
Assumption Day	
"Schobermesse" Monday	1st Monday in September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

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Composition of the Court of Justice of the European Communities at 1st January 1975

President	LECOURT (Robert)
Presidents of Chambers	MERTENS DE WILMARS (Josse) - 1st Chamber MACKENZIE STUART (Alexander John) - 2nd Chamber
Judges	MONACO (Riccardo) DONNER (André) PESCATORE (Pierre) KUTSCHER (Hans) SØRENSEN (Max) O CAOIMH (O'KEEFFE) (Aindrias)
Advocates-General	TRABUCCHI (Alberto) MAYRAS (Henri) WARNER (Jean-Pierre) REISCHL (Gerhard)
Registrar	VAN HOUTTE (Albert)

SUMMARY REMINDER OF THE TYPES OF PROCEDURE BEFORE THE COURT OF JUSTICE

It will be remembered that under the Treaties a case may be brought before the Court of Justice either by a national court with a view to determining the validity or interpretation of a provision of Community law, or directly by the Community institutions, Member States or private parties under the conditions laid down by the Treaties.

A. References for preliminary rulings

The national court submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) it desires to refer to the Court of Justice. This document is sent by the registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a dossier designed to make known to the Court of Justice the background and limits of the questions referred.

After a period of two months during which the Commission, the Member States and the parties to the national proceedings may address statements to the Court of Justice, they will be summoned to a hearing at which they may submit oral observations, through their agents in the case of the Commission and the Member States or through lawyers who are entitled to practise before a court of a Member State.

After the Advocate-General has presented his opinion, the judgment given by the Court of Justice is transmitted to the national court through the registries.

B. Direct actions

Actions are brought before the Court by an application addressed by a lawyer to the Registrar (Case postale 1406, Luxembourg) by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor holding a chair of law in a university of a Member State where the law of such State authorizes him to plead before its own courts is qualified to appear before the Court of Justice.

The application must contain:

- the name and permanent residence of the applicant;
- the name of the party against whom the application is made;
- the subject matter of the dispute and a brief statement of the grounds on which the application is based;
- the submissions of the applicant;
- an indication of the nature of any evidence founded upon;
- the address for service in the place where the Court has its seat, with an indication of the name of the person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

- the measure the annulment of which is sought, or, in the case of an application against an implied decision, documentary evidence of the date on which an institution was requested to act;
- a document certifying that the lawyer is entitled to practise before a court of one of the Member States;
- where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

The parties must choose an address for service in Luxembourg. In the case of the Governments of Member States, the address for service is normally that of their diplomatic representative accredited to the Government of the Grand Duchy. In the case of private parties (natural or legal persons) the address for service - which in fact is merely a "letter box" - may be that of a Luxembourg lawyer or any person enjoying their confidence.

The application is notified to the defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them, followed by a reply on the part of the applicant and finally a rejoinder on the part of the defendants.

The written procedure thus completed is followed by an oral hearing, at which the parties are represented by lawyers or (in the case of the Community institutions or Member States) by agents.

After the opinion of the Advocate-General, the judgment is given. It is served on the parties by the Registry.

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 May 1974

(Firma J. Nold)

Case 4/73

1. CONCENTRATION BETWEEN UNDERTAKINGS - MINING COMPANIES - FUELS - TRADING RULES - TERMS OF BUSINESS - WHOLESALERS - RIGHT OF ACCESS TO DIRECT SUPPLIES - AUTHORIZATION (ECSC Treaty, Article 66)

2. COMMUNITY LAW - GENERAL PRINCIPLES OF LAW - FUNDAMENTAL RIGHTS OF THE PERSON - RESPECT ENSURED BY THE COURT - CONSTITUTIONS OF MEMBER STATES - INTERNATIONAL TREATIES

3. COMMUNITY LAW - GENERAL PRINCIPLES OF LAW - FUNDAMENTAL RIGHTS OF THE PERSON - RESPECT IN THE COMMUNITY LEGAL ORDER - RIGHT OF OWNERSHIP - FREEDOM TO ENGAGE IN TRADE OR PROFESSION - LIMITATIONS - SOCIAL FUNCTION OF CERTAIN RIGHTS - GENERAL INTEREST OF THE COMMUNITY - INTANGIBLE SUBSTANCE OF RIGHTS

1. The Commission has the right to authorize trading rules restricting the entitlement to direct supplies of fuels on the grounds of the need to rationalize distribution, provided that such rules are applied in a like manner to all the undertakings concerned.

2. Fundamental rights are an integral part of the general principles of law the observance of which the Court ensures. In safeguarding these rights the Court is bound to draw inspiration from the constitutional traditions common to the Member States and cannot uphold measures which are incompatible with the fundamental rights established and guaranteed by the Constitutions of these States.

Similarly, international treaties for the protection of human rights, on which the Member States have collaborated or of which they are signatories, can supply guidelines which should be followed within the framework of Community law.

3. If rights of ownership are protected by the constitutional laws of all the Member States and if similar guarantees are given in respect of their right freely to choose and practice their trade or profession, the rights thereby granted, far from constituting unfettered prerogatives, must be viewed in the light of the social function of the property and activities protected thereunder.

For this reason, rights of this nature are protected by law subject always to restrictions laid down in accordance with the public interest. Within the Community legal order it likewise seems legitimate that these rights should, if necessary, be subject to certain limits justified by the overall objectives pursued by the Community, on condition that the substance of these rights is left untouched. The above guarantees can in no respect be extended to protect mere commercial interests or opportunities, the uncertainties of which are part of the very essence of economic activity.

Note

The applicant, Firma J. Nold, a company carrying on the wholesale business of coal merchants, considered itself adversely affected by a decision of the Commission of 21 December 1972 relating to the authorization of new conditions of sale of Ruhrkohl AG (sales office for Ruhr coal). Under the terms of these regulations Nold had to undertake to purchase from the Ruhr coal sales office a minimum of 6,000 tonnes of coal per annum for the purpose of providing for domestic requirements and those of small industry. Since this quantity substantially exceeded its annual sales in this field, Nold had lost its position of main wholesaler, a position which provided it with numerous commercial advantages.

The applicant brought before the Court of Justice of the European Communities an application for annulment of the aforementioned decision, making two complaints against the Commission: the first alleging discrimination of a kind that placed it in a position less favourable than that of traders who continue to enjoy the status of main wholesaler and the other alleging infringement of its fundamental rights. On this last-mentioned point the applicant argued that the restrictions imposed by the new commercial regulations resulted in the profitability

of the undertaking being affected to the point of jeopardizing its existence and that this involved an impairment of a right similar to a property right protected by the constitutions of the Member States and various international agreements, in particular the European Convention on Human Rights.

The Court rejected the appeal but in the course of these proceedings it took the opportunity of emphasizing with particular force that fundamental rights are an intregral part of the general principles of law the observance of which it is its function to ensure, that in ensuring these rights, it is bound to draw upon constitutional traditions common to the Member States and that the international agreements concerning the protection of human rights in which the Member States co-operated or to which they adhered may provide guide-lines which must be taken into account in the framework of Community law. This judgment therefore provides a new clarification of the content of Community law.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

21 June 1974

(Jean Reyners v Belgian State)

Case 2/74

1. FREEDOM OF ESTABLISHMENT - RESTRICTIONS - ABOLITION - TRANSITIONAL PERIOD - EXPIRY - RULE ON EQUAL TREATMENT WITH NATIONALS - DIRECT EFFECT (EEC Treaty, Articles 7, 8 (7) and 52)

2. FREEDOM OF ESTABLISHMENT - DEROGATION - SCOPE - LIMITATION - OFFICIAL AUTHORITY - EXERCISE - DIRECT AND SPECIFIC CONNEXION - AVOCATS - TYPICAL ACTIVITIES NOT CONCERNED WITH (EEC Treaty, Article 55)

1. The rule on equal treatment with nationals is one of the fundamental legal provisions of the Community. As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States. In laying down that freedom of establishment shall be attained at the end of the transitional period, Article 52 thus provides an obligation to obtain a precise result, the fulfilment of which had to be made easier by, but not made dependent on, the implementation of a programme of progressive measures.

   Since the end of the transitional period Article 52 of the Treaty is a directly applicable provision despite the absence, in a particular sphere, of the directives prescribed by Articles 54 (2) and 57 (1) of the Treaty.

2. Having regard to the fundamental character of freedom of establishment and the rule on equal treatment with nationals in the system of the Treaty, the exceptions allowed by the first paragraph of Article 55 cannot be given a scope which would exceed the objective for which this exemption clause was inserted.

The exception to freedom of establishment provided for by the first paragraph of Article 55 must be restricted to those activities referred to in Article 52 which in themselves involve a direct and specific connexion with the exercise of official authority; it is not possible to give this description, in the context of a profession such as that of avocat, to activities such as consultation and legal assistance or the representation and defence of parties in court even if the performance of these activities is compulsory or there is a legal monopoly in respect of it.

Note

The applicant, who was born in Brussels, his parents being of Dutch nationality, retained his Dutch nationality notwithstanding his residence in Belgium, where he obtained the title of Doctor in Belgian law.

Upon endeavouring to enrol as an advocate with the Brussels Bar, he was refused admission by reason of his nationality. In Belgium there exists a provision which derogates from the strict nationality provisions laid down by Article 428 of the "code judiciaire" in favour of aliens. This Royal Decree of 24 August 1970 sets out a series of conditions, including one of reciprocity which the applicant was unable to satisfy, since the Dutch "Advocatenwet" provides that in order to be admitted to the Bar one must be of Dutch nationality.

He thereupon made application to the Belgian "Conseil d'Etat" for annulment of this provision in the Belgian Royal Decree, which in his view violated the Community principles on right of establishment.

The Conseil d'Etat thereupon by way of request for a preliminary ruling asked the Court of Justice of the European Communities whether since the end of the transitional period Article 52 of the EEC Treaty has become a "directly applicable" provision, notwithstanding the absence of implementing directives provided for under the Treaty, and also for the Court's interpretation of the provisions of Article 55 of the EEC Treaty, i.e. of "activities which in a (Member) State are connected, even occasionally, with the exercise of official authority".

These proceedings resulted in the intervention of numerous Member States and the opinions expressed sometimes show a certain "protectionist" attitude in favour of their own citizens where entry to a profession is concerned.

The Court of Justice in its judgment again emphasized the important Community principle of prohibition of any discrimination on the grounds of nationality and ruled that Article 52 is a "directly applicable" provision and that the exception under Article 55 of the EEC Treaty must be limited to activities that involve a direct and specific participation in the exercise of official authority. One cannot, the Court added, argue that such is the case with the many activities exercised by members of the professions, such as lawyers.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 July 1974

(Donato Casagrande v Landeshauptstadt München)

Case 9/74

1. PRELIMINARY RULINGS - NATIONAL LAW - INTERPRETATION - FACTORS DEPENDING ON COMMUNITY LAW - JURISDICTION OF THE COURT (EEC Treaty, Article 177)

2. ACTS OF AN INSTITUTION - REGULATIONS - BINDING FORCE - CONDITIONS OF APPLICATION - DETERMINATION - COMPETENT NATIONAL AUTHORITIES - NATURE OF SUCH AUTHORITIES IRRELEVANT (EEC Treaty, Article 189)

3. FREE MOVEMENT - WORKERS - NATIONALS OF A MEMBER STATE - EMPLOYMENT IN THE TERRITORY OF ANOTHER MEMBER STATE - CHILDREN - EDUCATION - ADMISSION UNDER THE SAME CONDITIONS AS THE NATIONALS OF THE HOST STATE - SCOPE (Regulation No. 1612/68 of the Council, Article 12, first paragraph)

1. Although under the preliminary rulings procedure the Court cannot judge a national law, it is competent to supply the national court with the principles of interpretation arising from Community law which could guide it in assessing the effects of the national law.

2. Since regulations, under Article 189 of the Treaty, have general application and are binding in their entirety and directly applicable in all Member States, it is irrelevant that the conditions of their implementation are laid down by rules issued by the central power, by the authorities of a country forming part of a Federal State or of other territorial entities or even by authorities which the national law equates with them.

3. In providing that the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to educational courses "under the same conditions as the nationals" of the host State, Article 12 of Regulation No. 1612/68 refers not only to rules relating to admission, but also to general measures intended to facilitate educational attendance.

Note

The applicant, an Italian national, was pursuing a course of secondary education in the Federal German Republic. His father, who had been employed there as a worker, had died.

Under the provisions of the Bavarian law for encouraging education, a person who attends certain classes in secondary education may be granted a "benefit for encouraging education" amounting to DM 70 per month. The applicant was refused this benefit on the grounds that the said law only refers to Germans, to stateless persons or to aliens benefiting from the right to asylum.

The Court of Justice of the European Communities had to rule on the matter, obviously not on the validity or the interpretation of legislative provisions of a national kind but on the interpretation of Article 12 of Council Regulation No. 1612/68 on the free movement of workers within the Community. This request for a preliminary ruling provided the Court with an opportunity of reaffirming the general scope of the Community provision, its compulsory effect and its direct applicability in every Member State, notwithstanding the fact that the conditions for applying it may be laid down by the national authorities.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 July 1974

(Van Zuylen Frères v Hag A.G.)

Case 192/73

1. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - RIGHTS - SPECIFIC SUBJECT MATTER OF THE PROPERTY - TRADE MARK RIGHT - PROTECTION - INFRINGEMENT (EEC Treaty, Article 36)

2. FREE MOVEMENT OF GOODS - INDUSTRIAL PROPERTY - TRADE MARK RIGHT - PRODUCT LEGALLY BEARING A TRADE MARK IN ONE MEMBER STATE - MARKETING IN ANOTHER MEMBER STATE - PROHIBITION - INADMISSIBILITY (EEC Treaty, Article 36)

1. Article 36 only admits derogations from the free movement of goods to the extent that such derogations are justified for the purpose of safeguarding rights that constitute the specific subject matter of industrial and commercial property.

Thus the application of the legislation relating to the protection of trade marks protects the legitimate holder of the trade mark against infringement on the part of persons who lack any legal title.

2. The exercise of a trade mark right tends to contribute to the partitioning off of the markets and thus to affect the free movement of goods between Member States, all the more so since - unlike other rights of industrial and commercial property - it is not subject to limitations in point of time.

Accordingly, one cannot allow the holder of a trade mark to rely upon the exclusiveness of a trade mark right - which may be the consequence of the territorial limitation of national legislation - with a view to prohibiting the marketing in a Member State of goods legally produced in another Member State under an identical trade mark having the same origin. This is also the case where a third party duly acquired the product in the first State.

Note

Hag A.G. (a company incorporated in Bremen under the style of Kaffeehandelsaktiengesellschaft) was the original holder of a patent for decaffeinating coffee. From 1907 (as regards Germany) and from 1908 (as regards Belgium and Luxembourg) it was the owner of trade marks for its coffee, of which the word "Hag" was the most important element. By means of an international registration of 28 May 1925, it ensured the protection of the trade mark in respect of those countries that were signatories to the so-called "Madrid Convention" to which Belgium and Luxembourg are parties.

In 1927 Hag A.G. set up a subsidiary in Belgium, Café Hag S.A. ("Hag/Belgium") which was wholly owned by it, through the agency of N.V. Koffie Hag, a Dutch subsidiary. Hag A.G.'s Belgian and Luxembourg trade marks were assigned to Hag/Belgium with effect from May 1935. In that same year the international registration of these trade marks for Belgium and Luxembourg was cancelled by Hag A.G.

Under the provisions of a Belgian "Decree-law" of 23 August 1924, all the shares in the capital of Hag/Belgium were placed under sequestration as enemy property. The obligation imposed upon the Allies by Article 6 of the final act of the Paris conference on war reparations of 14 January 1946, ratified by the Belgian Law of 30 March 1948, to collect and distribute enemy property, was, as regards Hag/Belgium, implemented by Belgium by the sale of the shares to the van Oevelen family.

On 18 June 1971, Hag/Belgium assigned its "Benelux Hag" trade marks in respect of Belgium and Luxembourg to the "société en commandite" van Zuylen frères ("VZF") without however transferring the undertaking. VZF does not itself produce decaffeinated coffee but purchases it from Hag/Belgium. The latter does not sell directly but always to wholesalers.

Whilst continuing to sell its coffee in Belgium under the trade mark "Decofa", Hag A.G. commenced in 1972 to deliver its coffee to Luxembourg retailers under the German "Hag" trade mark. VZF reacted by instituting proceedings for infringement of trade mark in Luxembourg on 3 November 1972. On 4 April 1973 VZF brought a second action for the

annulment of Hag A.G.'s trade mark registrations that had been effected subsequent to 1945 and which related to Belgium and Luxembourg. Before the hearing took place, a German trader applied to intervene in the second action with a view to asserting his rights of importing into Luxembourg, Hag products purchased by him from Hag A.G. at Bremen.

Without allowing him to intervene, the Tribunal of Luxembourg by judgment of 31 October 1973 stayed the proceedings and requested the Court to give its preliminary ruling on the following two questions (the second question being the trader's arguments):

1. "Should Article 85 and/or the rules for the free circulation of goods within the EEC, in particular Articles 5, 30 et seq., and especially Article 36 of the Treaty, be interpreted as meaning:

   that the present holder of a trade mark within a Member State (A) of the Community is entitled to resist, on the grounds of its rights in that trade mark, imports into the Member State (A) by the original holder of the same trade mark in another Member State (B) of goods from that Member State (B) bearing the same trade mark as the goods of the first Member State (A) (.....).

2. Would the answer to Question (1) be the same if the sale of the goods in Member State (A) was made not by the original holder of the trade mark in Member State (B), but by a third party, such as an importer, who had duly obtained the goods in Member State (B) from the original holder?"

In its judgment the Court finds firstly, that under the terms of the question there are not as between the two present holders any legal, financial, technical or economic links and that since Article 85 (agreements) is not in these circumstances applicable, the question must be examined solely in the light of the rules relating to the free movement of goods.

Admittedly, these rules do not prevent prohibitions or restrictions upon importations that are justified for reasons of the protection of industrial and commercial property. Nevertheless, whilst the Treaty does not affect the existence of rights recognized by the legislation of

Member States in industrial and commercial matters, the exercise of these rights may nevertheless, depending on the circumstances, be affected by the prohibitions of the Treaty. The Treaty allows derogations from the principle of free movement of goods only to the extent that they are justified for the purpose of safeguarding the rights that constitute the specific object of such property, that is to say protection against infringements.

There is clearly no question of infringement where several licensees share one and the same trade mark.

Besides, the exercise of a right to a trade mark may contribute to the partitioning of markets and thus affect the free movement of goods between Member States, all the more so since - unlike other rights in property-it is not subject to limitations in point of time.

Accordingly, it cannot be accepted that the exclusiveness of a trade mark right, which may be the consequence of territorial limitation under national legislation, may be invoked by the holder of a trade mark with a view to prohibiting the marketing in a Member State of goods legally produced in another Member State under an identical trade mark having the same origin.

Accordingly the Court ruled:

1. To prohibit the marketing in one Member State of a product legally bearing a trade mark in another Member State for the sole reason that an identical trade mark, having the same origin, exists in the first State, is incompatible with the provisions for the free movement of goods within the Common Market.

2. If the holder of a trade mark in a Member State may himself market the product covered by that trade mark in another Member State, then the same applies to a third party who has duly acquired this product in the first-named State.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

1 October 1974

(Firma Norddeutsches Vieh- und Fleischkontor)

Case 14/74

1. EEC TREATY - PRODUCTS ORIGINATING IN THE GERMAN DEMOCRATIC REPUBLIC - FREE CIRCULATION IN THE FEDERAL REPUBLIC OF GERMANY - NOT COMMUNITY PRODUCTS (EEC Treaty, Protocol on German Internal Trade)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - AGRICULTURAL PRODUCERS - GUARANTEE OF INCOME - PRICE MECHANISM - LIMITATION TO COMMUNITY PRODUCTS (EEC Treaty, Article 40)

1. The dispensation granted by the Protocol on German Internal Trade annexed to the Treaty does not have the result of making the German Democratic Republic part of the Community, but only that a special system applies to it as a territory which is not part of the Community. The importation of goods into the Federal Republic of Germany under the Protocol cannot therefore be regarded as importation from a third country, since it is German internal trade. Although such goods are entitled to circulate freely in the Federal Republic of Germany without customs clearance, they are not regarded by reason of this as having an origin in the Federal Republic of Germany.

2. The organization of the agricultural markets has established price mechanisms intended to give agricultural producers certain guarantees of income. The benefit of these measures is limited, in general to products of the Community, that is to say of those countries which contribute to the financing of the common agricultural policy.

Note

It was a question, as so often in the past, of the not inconsiderable refunds on the export of agricultural products out of the Community to third countries. The particular significance of this case lies in the fact that the products exported to Yugoslavia (swine bellies and cuts of bellies) had previously been imported into the Federal Republic of Germany from the German Democratic Republic.

The German export firm, which sought to benefit from the refund system under Community law, stated in its application for an export refund that the goods were of Community origin - which under the Community Regulation was a condition sine qua non. At the first the application was granted. In the course of a subsequent examination of the plaintiff's business to ascertain whether the market regulations were being complied with, the inspectors found that a part of the goods originated in the German Democratic Republic. The competent Customs Office (Hamburg-Jonas) thereupon demanded repayment of the refund which had already been granted and rejected the part of the claim which was still pending.

In the ensuing proceedings in the Hamburg Finanzgericht the plaintiff argued that the refund must apply also to goods which had been brought from the German Democratic Republic into the Federal Republic of Germany within the framework of the so-called inter-zonal trade. In support it referred to the Protocol on German Internal Trade and connected problems annexed to the EEC Treaty. In this it is stated:

> "Since trade between the German territories subject to the Basic Law for the Federal Republic of Germany and the German territories in which the Basic Law does not apply is a part of German internal trade, the application of this Treaty in Germany requires no change in the treatment currently accorded this trade."

The defendant Customs Office on the other hand maintained its opinion that the conditions for the grant of a refund were not fulfilled, since the criterion was whether the goods in question were of Community origin. This is not so in the case of goods which have their origin in the German Democratic Republic, even if they had been brought into the Federal Republic of Germany within the framework of inter-zonal trade.

The Finanzgericht referred the questions thus raised on the interpretation of the EEC Treaty and various Community Regulations to the European Court in Luxembourg for a preliminary ruling.

In his opinion delivered to the Court Mr Advocate-General Gerhard Reischl took the view that the Protocol has significance only for German internal trade. The sole function of the Protocol is - and this leads to a restrictive interpretation - to provide for the special relationship between the Federal Republic of Germany and the German Democratic Republic, that is, to avoid the division of Germany from being deepened by the application of Community law to German internal trade. On the other hand, trade between countries of the Community and third countries lies certainly outside the sphere of the Protocol. If the matter is seen in this light, it would mean going beyond the significance of the Protocol to derive from it any conclusion for the sphere of export refunds, which do not come within the terms of German internal trade, and, in particular, to try to read into it the fiction, supported by the plaintiff in the main action, with regard to the origin of goods in connexion with export refunds. The objective of the Protocol certainly does not extend so far.

In its judgment the Court states inter alia:

The aforementioned Protocol releases the Federal Republic of Germany only from the obligation to apply Community law to German internal trade. The release does not however have the consequence that the German Democratic Republic has become a part of the Community, but only that special rules apply to it as a territory not belonging to the Community. The importation of goods into the Federal Republic of Germany under the terms of the Protocol cannot therefore be regarded

as importation from third countries, since it appertains to the sphere of German internal trade. Even though it emerges from Article 1 of the Protocol that products having their origin in the German Democratic Republic may be admitted into the Federal Republic without customs clearance for free circulation, they do not thereby become goods having their origin in the Federal Republic of Germany.

The claim of the plaintiff in the main action must therefore be rejected. The refund Regulations of the Community in conjunction with the Protocol on German Internal Trade and connected problems cannot therefore be interpreted so as to give the power to grant a refund for agricultural products which have been brought into the Federal Republic of Germany from the Democratic Republic under the terms of the agreement on inter-zonal trade, if such products are re-exported from the Federal Republic to a third country.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 October 1974

(Union Syndicale v Council)

Case 175/73

and

(Syndicat Général v Commission)

Case 18/74

OFFICIALS - STAFF ASSOCIATIONS - CAPACITY AND ENTITLEMENT TO INSTITUTE PROCEEDINGS - LIMITS (EEC Treaty, Article 173 and 179) (Statute of the Court, Article 37) (Staff Regulations, Article 24a, 90 and 91)

The freedom of trade union activity recognized under Article 24a of the Staff Regulations means not only that officials and servants have the right without hindrance to form associations of their own choosing, but also that these associations are free to do anything lawful, especially by using the right of action, to protect the interests of their members as employees.

Thus a staff association which fulfils the required conditions is entitled, by virtue of the second paragraph of Article 173 of the EEC Treaty, to institute proceedings for annulment against a decision addressed to it and, under the conditions set out in Article 37 of the Statute of the Court, to intervene in disputes submitted to the Court.

On the other hand a direct action by a staff association cannot be entertained under the procedure of complaint and appeal established by Articles 90 and 91 of the Staff Regulations.

Note

In two judgments, the Court of Justice ruled on the admissibility of actions brought by trade unions of "European" officials.

In the first case, the Union syndicale-Service public européen (Brussels) had made an application, jointly with two officials of the Council, for annulment of a decision to appoint certain officials.

In the second case, the Syndicat général du personnel des organismes européens (Luxembourg) had sought annulment of a decision of the Commission to make a deduction from the salaries of officials who took part in a strike in support of a claim.

The Court of Justice dismissed the two applications submitted by the unions as inadmissible. The actions brought by the two individual applicants in the first case were ruled to be admissible.

The Court of Justice based its decision to reject the union applications on the same grounds in the two cases:

Under the general principles of labour law, the freedom of trade union activity recognized under the Staff Regulations of Officials means the right of officials and servants to form associations of their choosing without let or hindrance, and the right of these associations to take any legitimate action to defend their members' interests as employees.

The right to bring an action, before the Court of Justice as well as elsewhere, is an instrument available to these associations.

Under the Staff Regulations, however, only an individual may bring an action. Consequently, although by virtue of these Staff Regulations, actions brought by individuals are admissible, applications submitted by staff associations are not.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 October 1974

(Caisse régionale d'assurance maladie de Paris

and Giuseppina Biason)

Case 24/74

1. REQUEST FOR A PRELIMINARY RULING - EFFECTS OF A NATIONAL LAW AS AGAINST COMMUNITY LAW - POWERS OF THE COURT - LIMITS (EEC Treaty, Article 177)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - SYSTEMS OF SOCIAL SECURITY AND OF SOCIAL ASSISTANCE - DISTINCTION - INVALIDITY PENSION - SUPPLEMENTARY ALLOWANCE - BENEFIT WITHIN THE MEANING OF ARTICLE 1 (s) OF REGULATION NO. 3 - PERSON ENTITLED - TRANSFER OF RESIDENCE TO ANOTHER MEMBER STATE - ENTITLEMENT TO CONTINUED PAYMENT OF ALLOWANCE (Regulation No. 3, Art. 1 (b), Art. 1 (c), Art. 3, Art. 10 (1))

1. The Court can provide the national court with aids to interpretation derived from Community law which might guide it in an assessment of the effects of a national legislation.

2. Where a legislation which comes close to both a system of social security and a system of social assistance has ceased to concern itself with the assessment of need in the individual case - a characteristic feature of a system of assistance - and has conferred on the persons entitled a legally defined position, then it comes under the system of social security within the meaning of the Community regulations. This is the reason why a supplementary allowance, paid by a national solidarity fund on the basis of an invalidity pension to persons entitled to such pension, constitutes, to the extent that the persons concerned have a legally protected right to the grant thereof, a "benefit" within the meaning of Article 1 (s) of Regulation No. 3, and for that reason falls within the matters covered by this Regulation.

A person who transfers his residence to another Member State is entitled to continue to receive this benefit even if such supplementary allowance is by national legislation limited to persons residing within the national territory.

Note

On a reference from the Court of Appeal of Paris, the Court of Justice has ruled that an insured person who, as a result of salaried employment in a single Member State where he was living, has acquired the right to an invalidity pension under sickness insurance arrangements and who receives a supplementary allowance by virtue of this pension, preserves the right to receive it if he transfers his residence to the territory of another Member State: this applies in so far as the allowance comes within the scope of Regulation No. 3 and even though, under legislation in the country concerned, this supplementary allowance is available exclusively to persons who are resident within the national territory.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 October 1974

(Firma Demag AG v Finanzamt Duisburg-Süd)

Case 27/74

1. CUSTOMS DUTIES AND INTERNAL TAXATION - JOINT APPLICATION TO THE SAME CASE OF PROVISIONS RELATING THERETO - IMPOSSIBILITY THEREOF (EEC Treaty, Articles 12, 13 and 95)

2. PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS (EEC Treaty, Article 177)

3. TAX PROVISIONS - INTERNAL TAXATION - CONCEPT (EEC Treaty, Article 95)

1. Articles 12 and 13 on the one hand and 95 on the other cannot be applied jointly in the same case.

2. In the procedure for a preliminary ruling under Article 177 of the Treaty, the Court cannot classify a specific national tax for the purpose of applying Community law, since the interpretation of legislative and other acts of a national nature remains within the jurisdiction of the national court and this Court is competent only to interpret and assess the validity of the Community acts referred to in the said Article.

3. A charge which subjects without distinction industrial exports to other Member States to a financial charge by partially abolishing the exoneration from internal taxation and which is closely integrated into the national system of turnover tax, comes under internal taxation within the meaning of Article 95 et seq. of the Treaty, and cannot therefore constitute a charge having an effect equivalent to a customs duty within the meaning of Article 12 of the Treaty.

Note

A charge which subjects, on an indiscriminate basis, the export of industrial products to other Member States to a tax by partially withdrawing exemption from internal taxation and which is closely bound up with the national system of turnover taxes constitutes internal taxation within the meaning of Articles 95 et seq. of the EEC Treaty and does not therefore constitute a charge equivalent to a customs duty within the meaning of Article 12 of the Treaty.

This is the ruling which the Court gave in reply to a preliminary question referred to it by the Finanzgericht of Düsseldorf.

In 1967 and 1968, when the German economy was experiencing a considerable boom accompanied by a large balance of payments surplus, leading to fears of an unstable economic situation within the country, the German Government decided to put a brake on exports and to promote imports by recourse to a temporary alteration in the frontier countervailing charge, imposing a charge of 4 % on exports and reducing, by the same percentage, the charge on the import of goods liable to turnover tax.

In consequence of this, the Duisburg-Süd Finanzamt demanded from the Demag company prepayment of the special turnover charge on the exports it had effected.

Demag then appealed to the Finanzgericht of Düsseldorf, a German fiscal court, which, in turn, made a reference to the Court of Justice in Luxembourg for a preliminary ruling on the nature of these measures in the light of the provisions of the EEC Treaty.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 October 1974

(Transocean Marine Paint Association v Commission)

Case 17/74

COMPETITION - AGREEMENTS - PROHIBITION - EXEMPTION - CONDITIONS - INFORMING THOSE CONCERNED (EEC Treaty, Article 85 (3))

Since Article 85 (3) constitutes, for the benefit of undertakings, an exception to the general prohibition contained in Article 85 (1), the Commission must be in a position at any moment to check whether the conditions justifying the exemption are still present.

Accordingly, in relation to the detailed rules to which it may subject the exemption, the Commission enjoys a large measure of discretion, while at the same time having to act within the limits imposed upon its competence by Article 85.

On the other hand, the exercise of this discretionary power is linked to a preliminary canvassing of objections which may be raised by the undertakings.

They must therefore be clearly informed in sufficient time of the substance of the conditions which the Commission is contemplating attaching to exemptions and have an opportunity of submitting their observations to it. This is particularly so where the conditions in question impose appreciable burdens and are extensive in scope.

Note

The Transocean Marine Paint Association is an undertaking producing, inter alia, marine paints.

The members of the Association concluded amongst themselves agreements which were periodically renewable and whose object was to ensure a world-wide distribution of certain marine paints used for the maintenance of merchant ships and other craft. (This work is carried out at different ports while the ship is in service; consequently, the same type of paint must be available at various places).

These agreements must be notified to the Commission of the European Communities so that the latter can ascertain whether they are compatible with Common Market law, which prohibits all agreements between undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the Common Market.

The Commission has authorized the agreements in question on a number of occasions. However, at the last examination it decided that the members of the Association must keep it informed of any links by way of common directors or managers between a member of the Association and any other company or firm in the paints sector or any financial participation by a member of the Association in such outside companies or vice-versa, including all changes in existing links or participations.

The members of the Association brought an action before the Court of Justice for annulment of this part of the Decision.

The Court annulled this part and referred the case back to the Commission which, moreover, was ordered to bear the costs of the action.

The Court gives as the reason for its decision the fact that the requirement to notify any change in financial participation and in the composition of management bodies "was imposed in breach of procedural requirements .... the Commission must be given the opportunity to reach a fresh decision on this point after hearing the observations or suggestions of the members of the Association".

The Court also declared that the Commission cannot be obliged to anticipate the conditions and obligations which it has the right to attach to an exemption (from the prohibition on certain agreements under Article 85 (1)) under Article 85 (3).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 October 1974

(Officier van Justitie v J. Van Haaster)

Case 190/73

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - RATIONING OF PRODUCTION - QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT (EEC Treaty, Article 30)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - LIVE TREES AND OTHER PLANTS, BULBS, ROOTS AND THE LIKE, CUT FLOWERS AND ORNAMENTAL FOLIAGE - NATIONAL ORGANIZATION - RATIONING OF PRODUCTION - QUANTITATIVE RESTRICTIONS (Regulation No. 234/68 of the Council, Article 10)

1. A national organization of the market having the purpose of rationing production affects - or is at any rate capable of affecting - the freedom of trade in the internal trade of the Community and must accordingly be considered a measure having an effect equivalent to quantitative restrictions.

2. Article 10 of Regulation No. 234/68, interpreted within the framework of the totality of the provisions on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage, excludes the existence of any national system having the purpose of quantitatively restricting the cultivation of one of the products falling within the common organization of the market.

Note

Article 10 of Regulation No. 234/68, construed in the light of all the provisions on the establishment of a common organization of the market in live trees and other plants, excludes the existence of any national system intended to impose quantitative restrictions on the cultivation of one of the products covered by the common organization of the market. This is the Court's answer to a question referred by the Economic Magistrate at Haarlem (Netherlands). The case was brought before the Dutch court by a bulb grower charged with infringement of Dutch legislation which, going somewhat beyond Community rules, is intended to limit the land-area set aside for the cultivation of hyacinths.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

31 October 1974

(Centrafarm B.V. and Sterling Drug Inc.)
and
(Centrafarm B.V. and Winthrop B.V.)

Cases 15/74 and 16/74

1. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - RIGHTS - PROTECTION - EXTENT (EEC Treaty, Article 36)

2. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - PATENT - PRODUCT PROTECTED IN A MEMBER STATE - LICENCE TO SELL GRANTED BY THE PATENTEE IN ANOTHER MEMBER STATE - PROHIBITION ON SALE WITHIN THE COMMON MARKET - INADMISSIBILITY (EEC Treaty, Article 36)

3. COMPETITION - INFRINGEMENTS - FACTORS TO BE ELIMINATED - EXISTENCE IN THE MEMBER STATE - KEEPING IN FORCE OR INTRODUCTION IN ANOTHER MEMBER STATE OF MEASURES CONTRARY TO THE TREATY - PROHIBITION - TASK OF THE COMMUNITY AUTHORITIES

4. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - PATENT RELATING TO A PHARMACEUTICAL PRODUCT - DISTRIBUTION - HEALTH CONTROL BY THE PATENTEE - MISUSE OF COMMUNITY RULES - PROHIBITION (EEC Treaty, Article 36)

5. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - PATENT - PRODUCTS MARKETED WITHIN THE UNITED KINGDOM - IMPORTATION INTO THE NETHERLANDS BY THE PATENTEE BEFORE 1 JANUARY 1975 - ARTICLE 42 OF THE ACT OF ACCESSION - FIELD OF APPLICATION

6. COMPETITION - AGREEMENTS BETWEEN PARENT COMPANY AND SUBSIDIARIES - ADMISSIBILITY - CRITERIA (EEC Treaty, Article 85)

1. Whilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commerical property, yet the exercise of these rights may nevertheless, depending on the circumstances, be affected by the prohibitions in the Treaty, since Article 36 admits of derogations from the free movement of goods only where such derogations are justified for the purpose of safeguarding rights which constitute the specific subject matter of this property.

2. The exercise, by the patentee, of the right which he enjoys under the legislation of a Member State to prohibit the sale, in that State, of a product protected by the patent which has been marketed in another Member State by the patentee or with his consent is incompatible with the rules of the EEC Treaty concerning the free movement of goods within the Common Market. In this connexion, it is of no significance to know whether the patentee and the undertakings to which the latter has granted licences do or do not belong to the same concern. It is also a matter of no significance that there exist, as between the exporting and importing Member States, price differences resulting from governmental measures adopted in the exporting State with a view to controlling the price of the product.

3. It is one of the functions of the Community authorities to eliminate the factors which tend to distort competition between Member States, in particular by harmonization of national measures for controlling prices and by prohibiting aids that are incompatible with the common market, as well as by exercising their powers in the field of competition.

   However the existence of such factors in a Member State cannot justify the keeping in force or introduction by another Member State of measures incompatible with the rules on the free movement of goods, especially in the field of industrial and commercial property.

4. The proprietor of a patent relating to a pharmaceutical product cannot avoid the incidence of Community rules concerning the free movement of goods for the purpose of controlling the distribution of the product with a view to protecting the public against defects therein.

5. Article 42 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties cannot be invoked to prevent importation into the Netherlands, even before 1 January 1975, of goods put onto the market in the United Kingdom by the patentee or with his consent.

6. Article 85 of the Treaty is not concerned with agreements or concerted practices between undertakings belonging to the same concern and having the status of parent company and subsidiary, if the undertakings form an economic unit within which the subsidiary has no real freedom to determine its course of action on the market, and if the agreements or practices are concerned merely with the internal allocation of tasks as between the undertakings.

Note

Patents must not obstruct the free movement of goods within the European Community; they must not create new trade restrictions. This is what the Court of Justice of the European Communities confirmed at the conclusion of proceedings in a matter of patents which had been impatiently awaited by the pharmaceutical industry. As in earlier similar proceedings (Parke Davis, Deutsche Grammophon), the Court has confirmed that protected products also may freely circulate throughout the Community.

The decision given by the Court on a reference for a preliminary ruling was concerned with questions submitted by the "Hoge Raad" of the Netherlands. Centrafarm, a Dutch company, who are wholesalers in pharmaceutical products, had imported from Britain "Negram", a medicine protected by patents; the prices of pharmaceutical products in Britain are lower than those which are applied in some countries on the continent. Sterling Drug, the American parent company who own the patent, as well as its subsidiary, brought proceedings in the light of these importations, relying on Dutch patent law. Early in 1974 the "Hoge Raad" stayed the proceedings pending a ruling on the part of the Court of Justice of the European Communities.

The Court of Justice of the European Communities found that the patents have the sole purpose of preventing infringement and that they must not be used or abused for purposes of commercial policy. The existence of a substantial price difference between certain Member States, as in the case of pharmaceutical products, is of little consequence in this respect. Besides, the Court confirmed that, contrary to the theory argued by the holder of the patent, pharmaceutical industries must not undertake tasks - eg. the protection of consumers - which belong to public authorities. The Court having ruled - following in this respect the arguments put forward by the European Commission and by the Advocate-General - that the principle of free movement of goods constitutes a Community law which is equally applicable to pharmaceutical products, the pharmaceutical industry is confronted with a new situation. The judgment allows the importation of protected pharmaceutical products originating in all Member States.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 November 1974

(Firma Friederich HAAGA, GmbH)

Case 32/74

COMPANIES WITHIN THE MEANING OF THE SECOND PARAGRAPH OF ARTICLE 58 OF THE EEC TREATY - COMPULSORY DISCLOSURE - EXTENT - PROVISIONS AS TO REPRESENTATION - APPOINTMENT OF A SINGLE DIRECTOR (First Council Directive of 9 March 1968, Article 2 (1) (d), second sentence)

In view of the intensification of trade patterns following the creation of the Common Market and in the interest of legal transactions between nationals of different Member States, it is important that any person wishing to establish and develop trading relations with companies situated in other Member States should be able easily to obtain essential information relating to the constitution of trading companies and to the powers of persons authorized to represent them; the relevant information should therefore be expressly stated in official registers or records, even if certain information follows automatically from national legislation or may appear self-evident.

Article 2 (1) (d), second sentence, of the First Council Directive of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community, must be interpreted as meaning that where the body authorized to represent a company may consist of one or of several members, disclosure must be made not only of the provisions as to representation applicable in the event of the appointment of several directors, but also, in the event of the appointment of a single director, of the fact that the latter represents the company alone, even if his authority to do so clearly flows from national law.

Note

The German Federal Court of Justice submitted to the Court of Justice of the European Communities a question on the interpretation of the First Council Directive of 9 March 1968 on co-ordination, with a view to making them equivalent throughout the Community, of safeguards required by Member States of companies, in order to protect the interests both of members and of third parties, in relation to the compulsory disclosure of certain details as to the bodies authorized to represent a company vis-à-vis third parties.

Within the field of the preliminary ruling procedure, this case represents certain novel features. It is within the framework of a non-litigious procedure that the Bundesgerichtshof submitted its questions to the Court of Justice of the European Communities. The matter had been submitted to this German appellate jurisdiction by a lower court with a view to determining the national jurisprudence and it made use of a reference for a preliminary ruling with a view to obtaining an interpretation of a co-ordinating directive which no doubt forms part of the "acts of the institutions of the Community" mentioned in Article 177 of the EEC Treaty.

The facts can be summarized as follows: the official in charge of the companies register required Haaga, a limited company, to state, in the event of there being only a single director, that the latter is authorized to represent the company alone. The company objected to this decision on the grounds firstly, that this statement is superfluous, since when a company has only a single director, he alone represents it and furthermore that this requirement does not emerge from the wording of the German law on limited companies which puts the directive of 9 March 1968 into force.

The Bundesgerichtshof, which was the final court of appeal dealing with the matter, found it necessary to interpret the relevant provisions of the directive with a view to ensuring that the German implementing law was in conformity with the requirements of Community law.

Anxious to ensure legal certainty in dealings between a company and third parties within the framework of the intensification of trade between Member States, the Court of Justice of the European Communities ruled that where the body authorized to represent the company may consist of one or several members, disclosure must be made not only of the provisions as to representation applicable in the event of the appointment of several directors, but also, in the event of the appointment of a single director, of the fact that the latter represents the company alone, even if his authority to do so clearly flows from national law.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 November 1974

(Roquette v French State)

Case 34/74

AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - SHORT-TERM ECONOMIC POLICY - FLUCTUATION OF CURRENCIES - MONETARY COMPENSATORY AMOUNTS - OBJECTIVE - DERIVED PRODUCTS - CHARGE ON PRODUCTS IMPORTED FROM THIRD COUNTRIES - CONCEPT (Regulation No. 974/71, Article 4 a (2))

The "charge on products imported" from third countries, which, under the terms of Article 4 a (2) of Regulation No. 974/71, as amended by Regulation No. 509/73, determines the upper limit for compensatory amounts applicable by reason of the fall in value of a currency, consists, in respect of derived products, whose price depends on the price of basic products covered by intervention arrangements under the common organization of agricultural markets, solely of the variable component of the levy, intended to take account of the prices of basic products, to the exclusion of the fixed component, intended to protect the processing industry.

Note

The Court of Justice of the European Communities had to rule on the interpretation of Regulation No. 974/71 of the Council of 12 May 1971 in relation to certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currency of certain Member States, with a view to judging whether the application of compensatory amounts on the export of amyloid products, provided for by Regulation No. 218/74 of the Commission of 25 January 1974, laying down compensatory amounts in execution of Regulation No. 974/71, was in accordance with the Regulation.

The facts are as follows: Roquette Frères, a company established in France, is mainly concerned in the manufacture of amyloid products derived from maize, which are largely intended for export.

As from 28 January 1974, the French customs administration required the company to pay compensatory amounts on its exports of amyloid products both to Member States and to third countries.

Since the company considered the payment of compensatory amounts on amyloid products to be unjustified since the compensatory amount upon maize, the basic product, was at that time zero, it appealed against the French customs administration to the Tribunal d'Instance of Lille, which by way of reference for a preliminary ruling referred to the Court of Justice of the European Communities the question, in relation to the charge on products imported from third countries whose price depends on the price of the products covered by intervention arrangements under the common organization of agricultural markets, whether this charge consists of the total of the variable component, intended to take account of differences in the prices of basic products, and the fixed component, intended for the protection of the industry, or solely of the variable component, intended to take account of the prices of basic products.

The Court ruled that the "charge on products imported" from third countries must, in respect of the products covered by intervention arrangements under the common organization of agricultural markets, be considered as consisting solely of the variable component intended to take account of the prices of basic products.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 November 1974

(Rzepa)

Case 35/74

1. SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY - PENSION - ARTICLES 27 AND 28 OF REGULATION NO. 3 - APPLICATION BY ANALOGY - BENEFITS - APPORTIONMENT - CONDITION - AGGREGATION OF PERIODS OF INSURANCE COMPLETED UNDER DIFFERENT LEGISLATIONS (Council Regulation No. 3, Article 26 (2), 27, 28)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY, OLD AGE AND DEATH - BENEFITS - RECOVERABLE ADVANCE - LIMITATION - APPLICATION OF NATIONAL LAW (Council Regulation No. 4, Article 34 (3))

1. Application by analogy of Articles 27 and 28 of Regulation No. 3 to the cases referred to under Article 26 (1) means that apportionment of benefits may not be made unless it has been necessary, in order to give rise to entitlement, to aggregate beforehand the periods completed under different legislations.

2. As Article 34 (3) is integrated with the provisions of national social security laws and supplements them, any limitation or time-limit which may apply must, in the present state of the law, be dictated by national social security law.

Note

A worker of Polish origin but who up to 31 October 1959 was recognized as a UNO refugee, was employed in Belgium and in Germany and because of this employment has proved completion of sickness and invalidity insurance periods in these countries.

In an action which it brought as late as 1972 for partial reimbursement of sums paid to the defendant between 1 January 1959 and 31 October 1959, the Belgian insurer argued that the portion of the Belgian benefit equivalent to the benefit granted by the German insurer in respect of the same incapacity represented only an advance which was recoverable under the Community regulations. The period of limitation applying to the action, which under Belgian social security law is two years, having been pleaded against the entitlement to recover, the Court of Justice of the European Communities was, by a reference for a preliminary ruling on the part of the Tribunal du Travail of Mons, asked to rule what are the periods of limitation under Community law, the date when the periods begin to run and under what circumstances the period may be interrupted.

The Court ruled that the system of Regulations Nos. 3 and 4 (Social security for migrant workers) is based on a simple co-ordination of national legislation in matters of social security, whilst the rules as to limitation applicable under national law remain in force, so that any limitation or time-limit that may apply is, in the present state of the law, to be found in the national social security law.

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In Memoriam - The late Mr Joseph Gand

At the public hearing on 22 October, the President of the Court of Justice, Mr Robert Lecourt, pronounced the following tribute to Mr Joseph Gand, Member of the Conseil d'Etat, Advocate-General at the Court of Justice of the European Communities from 1964 to 1970, who died on 4 October 1974.

The legal year had scarcely begun when news plunged our Court into mourning: Joseph Gand was no more. On the anniversary both of his arrival among us and the termination of his service, he left this world, in his 62nd year.

It was on 8 October 1964 - exactly ten years ago - that Joseph Gand, appointed Advocate-General to the Court, took the oath before you. On 6 October 1970 - four years ago already - he terminated his Community work to take up again his duties with the French Conseil d'Etat, which he had interrupted for six years.

He had arrived at the Court with all the prestige of a career which had at each stage been enriched with new experiences.

A licence en droit (law degree), a diplôme d'études supérieures de droit public et d'économie politique (a certificate for advanced studies in public law and political economy), and a diplôme de l'Ecole libre des sciences politiques had contributed to open the doors of the Conseil d'Etat for him. Appointed auditeur in 1941, Maître des requêtes in 1946, Commissaire du Gouvernement in the litigation department as from 1947, he first of all devoted himself for a long time to these duties which involved him actively in the development of the case-law of the high administrative court.

But this was only a preparation for very responsible duties. Soon he was to be entrusted for two years with administering more than 1½ million officials, whose regulations attained a measure of complexity which may easily be imagined. From 1959 to 1961 he was Directeur Général de l'Administration et de la Fonction publique.

After he had added to these activities that of Maître de conférences at the Ecole Nationale d'Administration and then of Professor at the Institut d'Etudes Politiques, Paris, he was appointed Conseiller d'Etat in 1963; he thus had experience and authority in many spheres of public life and this marked him out for the position of Advocate-General at our Court, left free by the departure of Mr Maurice Lagrange.

He immediately identified himself with his new duty, to the extent that he was the first to describe it as that of a non-hierarchical public ministry. He had amassed too much experience in the various posts which he had occupied for the Community civil service to be any mystery to him. He refrained however from wishing to appear as a specialist in this field alone. The Community law in its entirety attracted him by its novelty, its progressive development and its potentiality. When he left us six years later he was obviously inspired by the necessity to see it taking root, and his farewell speech revealed the depth of his attachment. Community law, he told us, "is not the monopoly of anyone, not even of the Court; it is our common task. This is why - he added - at the time when I am leaving the European Court, where I have been for the past six years, to rejoin the national court from which I came, I have the impression of changing neither my work nor my horizon".

Alas! Why did illness first, and then death, so quickly spoil these promises and not allow our former colleague to be the living bond which he proposed he should be between the French high administrative court and our Court!

Scarcely had he returned to the Conseil d'Etat when his health was suddenly gravely shattered. He was seized by a stroke while at work. He had to have a complete rest for many months. After a long interval he slowly resumed work, which his colleagues at the Conseil d'Etat endeavoured to keep within the narrow limits that the doctors advised. But the trouble which was to carry him off had struck him too seriously. When in January 1973 he gave us the pleasure of being present at the formal session devoted to the reception of the Judges and Advocate-General from the new Member States, those of us who had known him were painfully surprised by the visible signs left on him by his illness.

The painful foreboding which we had was, alas, to give place at the beginning of this month to the sad outcome which is the cause of our meeting this morning.

I assure Mrs Joseph Gand and his family and the French Conseil d'Etat of how the Court, its entire staff, and in particular those who worked with our former colleague, share their grief. We shall keep in affectionate memory a man who, with the competence of a lawyer and the experience of high administrative offices, brought us also those qualities of heart without which there is no loyalty.