Information on the Court of Justice of the European Communities

1977 – II

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. II

1977

Information Office, Court of Justice of the European Communities,
B.P. 1406, Luxembourg.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

P.O. Box No. 1406, Luxembourg

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TURKEY

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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I - Information on current cases (for general use)

1. Hearings of the Court

The calendar of public hearings is drawn up each week. It is sometimes necessary to alter it subsequently; it is therefore only a guide. This calendar may be obtained free of charge on request from the Court Registry. In French.

2. Judgments and opinions of Advocates-General

Photocopies of these documents are sent to the parties and may be obtained on request by other interested persons, after they have been read and distributed at the public hearing. Free of charge. Requests for judgments should be made to the Registry. Opinions of the Advocates-General may be obtained from the Press and Information Branch. As from 1972 the London Times carries articles under the heading "European Law Reports" covering the more important cases in which the Court has given judgment.

II - Technical information and documentation

A - Publications of the Court of Justice of the European Communities

1. Reports of Cases before the Court

The Reports of Cases before the Court are the only authentic source for citations of judgments of the Court of Justice.

The volumes for the years 1954 to 1972 are published in Dutch, French, German and Italian; the volumes for 1973 onwards are also published in English and in Danish. An English edition of the volumes for 1954-72 will be completed by the end of 1977, the volumes for 1962-71 inclusive having already been published.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and supplements.

3. Bibliography of European case-law

Concerning judicial decisions relating to the Treaties establishing the European Communities. 1965 edition with supplements.

4. Selected instruments on the organization, jurisdiction and procedures of the Court

1975 edition.

These publications are on sale at, and may be ordered from:

l'OFFICE DES PUBLICATIONS DES COMMUNAUTÉS EUROPÉENNES,
Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

Belgium:	Ets. Emile Bruylant, Rue de la Régence 67, 1000 BRUSSELS
Denmark:	J. H. Schultz' Boghandel, Møndergade 19, 1116 COPENHAGEN K
France:	Editions A. Pedone, 13, Rue Soufflot, 75005 PARIS
Germany:	Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 KOLN 1
Ireland:	Messrs. Greene & Co., Booksellers, 16, Clare Street, DUBLIN 2
Italy:	Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 PADUA M. 64194
Luxembourg:	Office des publications officielles des Communautés européennes, Case Postale 1003, LUXEMBOURG
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, 's GRAVENHAGE
United Kingdom:	Sweet & Maxwell, Spon (Booksellers) Limited, North Way, ANDOVER, HANTS, SP10 5BE

Other Countries: Office des publications officielles des Communautés européennes,
Case Postale 1003,
LUXEMBOURG

B - Publications issued by the Press and Legal Information service of the Court of Justice

1. Proceedings of the Court of Justice of the European Communities

Weekly summary of the proceedings of the Court published in the six official languages of the Community. Free of charge. Available from the Press and Information Branch; please indicate language required.

2. Information on the Court of Justice

Quarterly bulletin containing the heading and a short summary of the more important cases brought before the Court of Justice and before national courts.

3. Annual synopsis of the work of the Court of Justice

Annual booklet containing a summary of the work of the Court of Justice covering both cases decided and associated work (seminars for judges, visits, study groups, etc.).

4. General booklet of information on the Court of Justice

These four documents are published in the six official languages of the Community while the general booklet is also published in Spanish and Gaelic. They may be ordered from the information offices of the European Communities at the addresses given above. They may also be obtained from the Information Service of the Court of Justice, B.P. 1406, Luxembourg.

C - Compendium of case-law relating to the Treaties establishing the European Communities

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

Extracts from cases relating to the Treaties establishing the European Communities published in German and French. Extracts from national judgments are also published in the original language.

The German and French editions are available from:

Carl Heymann's Verlag,
Gereonstrasse 18-32,
D 5000 KÖLN 1,
Federal Republic of Germany.

As from 1973 an English edition has been added to the complete French and German editions. The first two volumes of the English series are on sale from:

ELSEVIER - North Holland -
Excerpta Medica,
P.O. Box 211,
AMSTERDAM,
Netherlands.

III - Visits

Sessions of the Court are held on Tuesdays, Wednesdays and Thursdays every week, except during the Court's vacations - that is, from 20 December to 6 January, the week preceding and the week following Easter, and from 15 July to 15 September. Please consult the full list of public holidays in Luxembourg set out below.

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures.

Half an hour before the beginning of public hearings a summary of the case or cases to be dealt with is available to visitors who have indicated their intention of attending the hearing.

* * *

Public holidays in Luxembourg

In addition to the Court's vacations mentioned above the Court of Justice is closed on the following days:

New Year's Day	1 January
Carnival Monday	variable
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Hallows' 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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IV - Summary of 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 or tribunal 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 or tribunal 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) which it wishes 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 file intended to inform the Court of Justice of the background and scope of the questions referred.

During a period of two months the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which 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 delivered 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 (B.P. 1406, Luxembourg), by registered post.

Any lawyer who is entitled to practise before a court of a Member State or a professor occupying 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 the grounds on which the application is based;
the form of order sought by the applicant;
the nature of any evidence offered;
an address for service in the place where the Court of Justice has its seat, with an indication of the name of a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

the decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;
a certificate that the lawyer is entitled to practise before a court of a Member State;
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 defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defence.

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

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

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1976 to 1977

(order of precedence)

H. KUTSCHER, President

A. M. DONNER, President of First Chamber

P. PESCATORE, President of Second Chamber

J.-P. WARNER, First Advocate General

J. MERTENS DE WILMARS, Judge

H. MAYRAS, Advocate General

M. SØRENSEN, Judge

LORD MACKENZIE STUART, Judge

G. REISCHL, Advocate General

A. O'KEEFFE, Judge

F. CAPOTORTI, Advocate General

G. BOSCO, Judge

A. TOUFFAIT, Judge

A. VAN HOUTTE, Registrar

COMPOSITION OF CHAMBERS

First Chamber

President:	A. M. DONNER
Judges:	J. MERTENS DE WILMARS
	A. O'KEEFFE
	G. BOSCO
Advocates General:	J.-P. WARNER
	H. MAYRAS

Second Chamber

President:	P. PESCATORE
Judges:	M. SØRENSEN
	LORD MACKENZIE STUART
	A. TOUFFAIT
Advocates General:	G. REISCHL
	F. CAPOTORTI

O P I N I O N S

and

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

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(monetary compensatory amounts - monetary measures)
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Case 111/76 - Officier van Justitie v B. van den Hazel
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Case 71/76 - Thieffry v Conseil de l'Ordre des Avocats
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(competition)

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 April 1977

Opinion 1/76

Opinion 1/76 given pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty*

1. International agreements - Conclusion thereof by the Community - Authority

   (EEC Treaty, Art. 210)

2. International agreements - Agreement on navigation on the Rhine - Conclusion thereof by the Community - Participation of Member States in the conclusion thereof - Justification for and limits thereof

   (EEC Treaty, second paragraph of Article 234; revised Convention of Mannheim for the Navigation of the Rhine of 17 October 1868 and Convention of Luxembourg of 27 October 1956 on the Canalization of the Moselle)

3. International agreements - Agreements concluded with the participation of the Member States - Effect of agreements by virtue of the conclusion thereof by the Community

   (EEC Treaty, Art. 228 (2))

4. Common policy - Transport - Inland navigation - Attainment thereof - Agreement with third countries - Public international organism - European laying-up fund for inland waterway vessels - Establishment thereof with the participation of the Community - Grant of powers of decision - Legality

   (EEC Treaty, Arts. 74 and 75)

5. European laying-up fund for inland waterway vessels - Structure of the organs thereof - Rôle of the institutions of the Community and the Member States vis-à-vis one another - Decision-making procedure - Alteration of the structure of the Community and of the Community decision-making procedure - Adverse affect on the requirements of unity and solidarity - Incompatibility with the Treaty

   (EEC Treaty, Preamble, paragraph 2; Arts. 3 and 4)

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* - "The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court of Justice is adverse, the agreement may enter into force only in accordance with Article 236".

6. European laying-up fund for inland waterway vessels - Direct applicability of measures adopted - Only executive powers - (Question not settled)

7. European laying-up fund for inland waterway vessels - Provisions concerning jurisdiction - Fund Tribunal - Possible conflict of jurisdiction with the jurisdiction of the Court of Justice - Impossible for the judges of the court to serve on the Fund Tribunal

(EEC Treaty, Art. 177)

1. Whenever Community law has created for the institutions of the Community powers within its internal system for the purpose of attaining a specific objective, the Community has authority to enter into the international commitments necessary for the attainment of that objective even in the absence of an express provision in that connexion. This is particularly so in all cases in which internal power has already been used in order to adopt measures which come within the attainment of common policies. It is, however, not limited to that eventuality. Although the internal Community measures are only adopted when the international agreement is concluded and made enforceable, the power to bind the Community vis-à-vis third countries nevertheless flows by implication from the provisions of the Treaty creating the internal power and in so far as the participation of the Community in the international agreement is necessary for the attainment of one of the objectives of the Community.

2. The participation of specific Member States, together with the Community, in the conclusion of an agreement concerning inland navigation is justified, as regards navigation on the Rhine, by the existence of certain international conventions which preceded the EEC Treaty and are capable of forming an obstacle to the attainment of the scheme laid down by the agreement. The participation of these States must however be considered as being for the sole purpose of carrying out the undertaking to make the amendments necessitated by the implementation of the scheme concerned. Within these limits, that participation is justified by the second paragraph of Article 234 of the Treaty and cannot therefore be regarded as encroaching on the external power of the Community.

3. The legal effect with regard to the Member States of an agreement concluded by the Community within its sphere of jurisdiction results, in accordance with Article 228 (2) of the Treaty, exclusively from the conclusion thereof by the Community.

4. In order to attain a common policy, such as the common transport policy governed by Articles 74 and 75 of the Treaty, the Community is not only entitled to enter int contractual relations with a third country but also has the power, while observing the provisions of the Treaty, to co-operate in setting up an international organism, to give the latter appropriate powers of decision and to define, in a manner appropriate to the objectives pursued, the nature, elaboration, implementation and effects of the provisions to be adopted within such a framework.

5. The conclusion of an international agreement by the Community cannot have the effect of surrendering the independence of action of the Community in its external relations and changing its internal constitution by the alteration of essential elements of the Community structure as regards the prerogatives of the institutions, the decision-making procedure within the latter and the position of the Member States vis-à-vis one another. More particularly, the substitution, in the structure of the organs of the proposed fund, of several Member States in place of the Community and its institutions, the alteration of the relationship between Member States as laid down by the Treaty, in particular by the exclusion or non-participation of certain States in the activities provided for and the grant of special prerogatives to certain other States in the decision-making procedure are incompatible with the constitution of the Community and more especially with the concepts which may be deduced from the recitals of the preamble to and from Articles 3 and 4 of the Treaty. An international agreement the effect of which is also to contribute to the weakening of the institutions of the Community and to the surrender of the bases of a common policy and to the undoing of the work of the Community is incompatible with the provisions of the Treaty.

6. The question whether the grant to a public international

organ separate from the Community of the power to adopt decisions which are directly applicable in the Members States comes with the powers of the institution does not need to be solved, since the provisions of the agreement concerned define and limit the powers in question so clearly and precisely that they are only executive powers.

7. An international agreement concluded by the Community is, so far as the latter is concerned, an act of one of the institutions within the meaning of subparagraph (b) of the first paragraph of Article 177 of the Treaty and therefore the Court has jurisdiction to give a preliminary ruling on the interpretation of such an agreement. Since it is possible that a conflict may arise between the provisions concerning jurisdiction set out in the Treaty and those laid down within the context of the proposed agreement according to the interpretation which might be attached to the provisions of the latter, the Fund Tribunal could only be established within the terms concerned on condition that judges belonging to the Court of Justice, who are under an obligation to give a completely impartial ruling on the contentious questions which may be brought before the Court, are not called upon to serve on it.

N o t e

In an opinion given on 26 April and published on 28 April 1977, the Court of Justice of the European Communities declared that the draft Agreement on the establishment of a European Laying-up Fund for the Inland Waterway Vessels is incompatible with the Treaty establishing the European Economic Community. The Commission and the Member States directly involved in Rhine navigation had prepared the Agreement with Switzerland on the instructions of the Council of the EEC.

The Court of Justice raised no objections to either the economic objectives of the Agreement or the creation of a "Laying-up Fund", which would be managed jointly with Switzerland. Its negative opinion is based solely on the fact that the draft Agreement amounts to giving a privileged position to the States which are directly involved in Rhine navigation, to the detriment of the Community and its institutions whose structure, competence and internal decision-making power would thus be challenged.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 April 1977

Thieffry

Case 71/76

1. Freedom of establishment - Objectives of the Treaty - Implementation - Absence of Community directives - National provisions or practice - Obligations of the Member States
(EEC Treaty, Articles 5, 52 and 57)

2. Freedom of establishment - Foreign diploma - Recognition of equivalence - University effect and civil effect - Distinction - Competence of the State of establishment - Requirements of Community law - Compliance
(EEC Treaty, Article 52)

3. Freedom of establishment - National of a Member State - Exercise of a professional activity in another Member State - Profession of advocate - Diploma obtained in the country of origin - Recognition of equivalence with the national diploma of the country of establishment - Absence of Community directives - Requirement of the diploma of the country of establishment - Restriction incompatible with the Treaty
(EEC Treaty, Articles 52 and 57)

1. Freedom of establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty. In so far as Community law makes no special provision, these objectives may be attained by measures enacted, pursuant to Article 5 of the Treaty, by the Member States. If freedom of establishment can be ensured in a Member State either under the provisions of the laws and regulations in force, or by virtue of the practices of the public service or of professional bodies, a person subject to Community law cannot be denied the practical benefit of that freedom solely by virtue of the fact that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted. Since the practical enjoyment of freedom of establishment can thus in certain circumstances depend upon national practice or legislation, it is incumbent upon the competent public authorities - including legally recognized professional bodies - to ensure that such practices or legislation are applied in accordance with the objective defined by the provisions of the Treaty relating to freedom of establishment.
Law reforming certain legal and judicial professions.

As a result, the Cour d'Appel, Paris, was led to ask the Court of Justice to give a ruling on the following preliminary question:

2. With regard to the distinction between the academic effect and the civil effect of the recognition of equivalence of foreign diplomas, it is for the competent national authorities, taking account of the requirements of Community law in relation to freedom of establishment, to make such assessments of the facts as will enable them to judge whether a recognition granted by a university authority can, in addition to its academic effect, constitute valid evidence of a professional qualification. The fact that a national legislation provides for recognition of equivalence only for university purposes does not of itself justify the refusal to recognize such equivalence as evidence of a professional qualification. This is particularly so when a diploma recognized for university purposes is supplemented by a professional qualifying certificate obtained according to the legislation of the country of establishment.

3. When a national of one Member State desirous of exercising a professional activity such as the profession of advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

N o t e

After the Reyners case in 1974, Thieffry raises the problem of the exercise of the profession of Advocate.

The facts are as follows: Mr Thieffry, a Belgian national, holds a doctorate in Belgian law. In 1974 he obtained recognition of the diploma for his doctorate in Belgian law as a qualification equivalent to a licentiate's degree in French law. In 1975 he also obtained the Certificat d'Aptitude à la Profession d'Avocat (C.A.P.A.) (qualifying certificate for the profession of Advocate).

Mr Thieffry then applied to take the oath with a view to his registering for the period of practical training at the Ordre des Avocats à la Cour de Paris (Paris Bar). His application was rejected on the ground that he offered no diploma evidencing a licentiate's degree or a doctor's degree in French law, as required by the French

"When a national of one Member State desirous of exercising the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the University authority of the country of establishment and which has enabled him to sit in the latter country the Advocate's professional qualifying examination - which he has passed - does the act of demanding the national diploma prescribed by the law of the country of establishment constitute, in the absence of the directives provided for in Article 57 (1) and (2) of the EEC Treaty, an obstacle to the attainment of the objective of the Community provisions in question ?"

The Court of Justice referred to the reasoning behind the principle of freedom of establishment and stated that under Article 3 of the Treaty, the activities of the Community shall include inter alia the abolition of obstacles to freedom of movement for persons and services. With a view to attaining this objective the first paragraph of Article 52 provides that restrictions on freedom of establishment shall be abolished by progressive stages in the course of the transitional period, and Article 53 underlines the irreversible nature of the liberalization achieved in that regard.

In order to make it easier for persons to take up and pursue activities as self-employed persons, Article 57 assigns to the Council the duty of issuing directives concerning, first, the mutual recognition of diplomas and, secondly, the co-ordination of the provisions laid down by law or administrative action in Member States concerning the taking up and pursuit of such activities.

In a general programme for the abolition of restrictions on freedom of establishment, which was adopted on 18 December 1961, the Council proposed to eliminate not only overt discrimination but also any form of disguised discrimination.

The principle of freedom of establishment, subject to observance of professional rules justified by the general good, is one of the objectives of the Treaty.

Those objectives may be attained by measures adopted by the Member States, in so far as Community law itself has made no special provision. However, where the freedom of establishment provided for in Article 52 can be ensured by means of national provisions, the practical benefit of such freedom cannot be denied to a person subject to Community law for the sole reason that, for a particular profession, the directives provided for by Article 57 of the Treaty have not yet been adopted.

As regards the present case in particular, the question has arisen whether a distinction should be drawn, as regards the equivalence of diplomas, between University recognition, granted with a view to the pursuit of certain studies, and recognition having "civil effect", granted with a view to the pursuit of a professional activity.

Since that distinction falls within the ambit of the national law of the different States, it is for the national authorities to assess its consequences, taking into account the objectives of Community law.

The fact that national legislation provides for recognition of equivalence only for university purposes does not in itself justify a refusal to accept such equivalence as evidence of qualification to enter a profession.

The Court has ruled that when a national of one Member State desirous of exercising a professional activity such as the profession of Advocate in another Member State has obtained a diploma in his country of origin which has been recognized as an equivalent qualification by the competent authority under the legislation of the country of establishment and which has thus enabled him to sit and pass the special qualifying examination for the profession in question, the act of demanding the national diploma prescribed by the legislation of the country of establishment constitutes, even in the absence of the directives provided for in Article 57, a restriction incompatible with the freedom of establishment guaranteed by Article 52 of the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 May 1977

Koninklijke Scholten Honig N.V. v Council and Commission of the European Communities

Case 101/76

Measures adopted by an institution - Regulation - Concept

A regulation is a measure which applies to objectively determined situations and produces legal effects with regard to categories of persons regarded generally and in the abstract.

The nature of a measure as a regulation is not called in question by the possibility of determining more or less precisely the number or even the identity of the persons to whom it applies at a given moment as long as it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter.

The fact that a legal provision may have different actual effects for the various persons to whom it applies is not inconsistent with its nature as a regulation when that situation is objectively defined.

N o t e

The facts: This case concerns a sweetening agent known as glucose with a high fructose content or else as isoglucose or isomerose. It is manufactured from any type of starch but most often from maize.

It has properties analogous to those of sugar syrup used in the manufacture of foodstuffs. The development of the product began in the United States, a country which has a sugar deficit but a surplus of cereals. Manufacture of the product became profitable as a result of the rise in the price of sugar and the shortage of that product. In the common market, through the action of the Community production refund for starch, the manufacture of glucose with a high fructose content has also become profitable and might well constitute a threat to the sugar industry. At present, three or four undertakings manufacture the product, though large-scale production cannot commence for two years. The sugar industry feels threatened and has brought the matter before the Community authorities. The latter, by means of the two regulations at issue, Nos. 1862/76 of the Council of 27 July 1976 and 2158/76 of the

Commission of 31 August 1976, have reduced the amount of the production refund for starch used in the manufacture of glucose with a high fructose content for the 1976/1977 marketing year and have provided for it to be completely abolished for the 1977/1978 marketing year.

The largest manufacturer of glucose with a high fructose content, Koninklijke Scholten-Honig N.V., has requested the annulment of the Community provisions which provide for the reduction and abolition of the production refunds. The Council and the Commission have raised an objection of inadmissibility to this request for annulment, based in particular on the general nature of the measures in question. This dispute has led the Court to analyse the wording of Articles 173 and 189 of the Treaty in relation to the provisions impugned.

Article 173 of the EEC Treaty empowers a natural or legal person to contest a decision addressed to that person or a decision which although in the form of a regulation or a decision addressed to another person is of direct and individual concern to the former. The objective of that provision is to prevent the Community institutions from being able to preclude an application by an individual against a decision which concerns him directly and individually merely by choosing the form of a regulation. By virtue of Article 189 of the EEC Treaty the criterion for distinguishing between a regulation and a decision is whether the measure at issue is of general application or not. Applying this principle to the provisions at issue, it is clear that a regulation which provides for the reduction of a production refund for a whole marketing year with regard to a certain product processed from cereals and rice and for its complete abolition from the following marketing year is by its nature a measure of general application within the meaning of Article 189 of the Treaty.

In fact, that regulation applies to situations which have been objectively specified and produces legal effects with regard to categories of persons envisaged generally and in the abstract.

Moreover, the legislative nature of a measure is not called in question by the possibility of determining more or less precisely the number or even the identity of the individuals to whom it applies at a given moment where it is established that it is applied by virtue of an objective legal or factual situation defined by the measure in relation to the objective of the latter.

By refusing to acknowledge the legislative nature of rules on production refunds only because they concern a specific product and by considering that such rules affect the manufacturers of that product by virtue of a factual situation which differentiates them from all other persons, the concept of a decision would be made so wide as to jeopardize the system of the Treaty. The application has been dismissed as inadmissible and the applicant has been ordered to bear the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 May 1977

Jansen

Case 104/76

1. Social security for migrant workers - Social security contributions - Reimbursement - Regulations Nos. 3 and 1408/71 - Matters covered - Extent - Social security schemes taken in their entirety
(Regulation No. 3 of the Council, Article 2; Regulation No. 1408/71 of the Council, Article 4)

2. Social security for migrant workers - Social security contributions - Reimbursement - Regulation No. 3 - No specific rule - Application of the general rules - Regulation No. 1408/71 - Specific rule - Temporal application - Not retroactive
(Regulation No. 3 of the Council; Regulation No. 1408/71, Article 10(2))

3. Social security for migrant workers - Social security contributions - Reimbursement - Legal options under the legislation of a Member State - Regulation No. 3 - No express provisions - Exercise of options
(Regulation No. 3 of the Council)

1. Article 2 of Regulation No. 3 and Article 4 of Regulation No. 1408/71, which lay down the matters covered by those regulations, deal with the various national social security schemes in their entirety. The reimbursement of social security contributions therefore forms part of the matters covered by those regulations.

2. Since Regulation No. 3 does not contain any specific provision relating to the reimbursement of contributions the general rules affirmed by that regulation and by the provisions of the Treaty to which it gives effect, such as the rule on equality of treatment and that on the waiving of residence clauses, are applicable.

Article 10(2) of Regulation No. 1408/71, which constitutes a specific provision and introduces a new rule in respect of the reimbursement of contributions, cannot, however, be extended to facts which occurred outside the period covered by that regulation.

3. Although the provisions of Article 51 of the EEC Treaty and of the regulations adopted to give it effect ensure that, for the purpose of acquiring and retaining the right to benefit, migrant workers enjoy aggregation of all periods taken into account under the laws of the several countries, they cannot however be interpreted, in the absence of express provisions, as preventing persons so favoured from exercising

the legal options open to them under the legislation of one or other of the Member States, such as the right of applying in certain circumstances for the reimbursement of social security contributions.

Therefore, Community law, as it stood at the time of the adoption of Regulation No. 3, cannot be interpreted as excluding an option available under a national legislation with regard to the reimbursement of social security contributions.

N o t e

The questions raised in this case concern the interpretation of various provisions of the Community regulations on social security and are intended to determine their possible affect on the reimbursement of social security contributions upon termination of compulsory insurance. Following her marriage, in 1965, the plaintiff in the main action, a German national, obtained reimbursement of the contributions previously paid by her, in accordance with the German legislation then in force, but remained a member of the German pension insurance scheme for a further period between 1965 and 1968.

That social insurance relationship was terminated following the plaintiff's cessation of employment in Germany as a consequence of the transfer of her domicile to the Netherlands in May 1968, and she claimed from the German social security institution reimbursement of the sum of the 27 monthly contributions which she had paid during that period under the German law which provides that contributions shall be reimbursed to the person entitled to receive them where that person is no longer obliged to be a member of a social insurance scheme. That request was rejected on the ground that the person concerned, although from that time compulsorily subject to Netherlands general pension insurance, could not be deemed no longer to be subject to compulsory insurance for the purposes of German law.

The case prompted the Landessozialgericht to refer to the Court of Justice a number of preliminary questions. The first question asks whether the system of reimbursement of contributions was already contained within the ambit of Regulation No. 3 or whether the position was different from that since provided by Regulation No. 1408/71, and whether the latter regulation merely clarified a legal situation which existed already or whether it made provision for the first time for the system of reimbursement of contributions.

The Court has stated that there is no doubt that in so far as it forms an integral part of the provisions governing a specific social security scheme, the reimbursement of contributions comes within the ambit of Regulation No. 3. However, that regulation does not contain any specific provision relating to the reimbursement of contributions. The same ideas underlie Regulation No. 1408/71, which has in the meantime replaced Regulation No. 3. Article 10 (2) of Regulation No. 1408/71 contains a specific provision relating to the reimbursement of contributions, thereby introducing a new rule under which, in order to decide the question whether for the purposes of reimbursement of contributions a person has

ceased to be subject to compulsory insurance in a particular Member State, his status with regard to the social security legislation in any other Member State must be taken into consideration. Since this is a new provision, it cannot be extended to facts which occurred outside the period covered by the regulation.

The Court has ruled that:

(1) The reimbursement of social security contributions comes within the ambit of the general provisions of Regulation No. 3, by virtue of the determination under Article 2 of the matters covered by that regulation.

(2) The same interpretation must be given to Article 4 of Regulation No. 1408/71. The application of the specific rule contained in Article 10 (2) must, however, remain limited to the period covered by that regulation.

The national court also asked whether the relevant provisions of Community law are primarily intended to serve:

to guarantee and reinforce the rights of citizens of the Communities to freedom of movement; and

to maintain all rights or social security entitlements already acquired in a Member State in particular with regard to a subsequent provision for old-age, for example by aggregating insurance periods which are capable of being taken into account.

The Court stated that the provisions which secure for migrant workers the benefit of aggregation cannot be interpreted as preventing persons so favoured from exercising the legal options open to them under the legislation of one or other of the Member States, such as the right of applying for the reimbursement of social security contributions. Such an interpretation would fail to respect the freedom of persons who are members of the various social security systems to decide on their own best interests.

Finally, the Court has ruled that:

(3) Provided that the conditions laid down by the national legislation applicable are satisfied, Regulation No. 3 does not prevent the reimbursement of social security contributions by reason of the fact that the person concerned falls within the ambit of another social security scheme following the transfer of his residence to another Member State.

(4) Under the system laid down by Regulation No. 3, the objectives pursued by the Treaty and by the regulation itself did not justify the refusal of the reimbursement of social security contributions to a person who could claim the benefit of such reimbursement under a national legislation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 May 1977

Pretore of Cento v Person or Persons Unknown

Case 110/76

Community revenue - Payment - Claims - Legal proceedings - Capacity of the Member States
(Regulation (EEC, Euratom, ECSC) No. 2/71 of the Council, Arts. 1, 6(2) and (3), 7(1) and 13(2))

In the present state of Community law only the Member States and their authorities are empowered to take proceedings before national courts for the purpose of claiming payment of Community revenue constituting own resources.

N o t e

This case arose in the context of criminal proceedings opened against persons unknown for possible fraud in relation to the smuggling of goods covered by the Common Customs Tariff and subject to agricultural levies. Italian procedural law requires notice of the opening of criminal proceedings to be given to all "injured parties" and for the purposes of the application of this provision of domestic law the Court has been asked whether, by virtue of the provisions of the Council Decision of 21 April 1970, the Community may possibly be regarded as an "injured party" in the case of a smuggling offence, either alone or together with the individual Member States to which the levying of customs duties for and on account of the Community has been assigned. Must the national court notify the Community that criminal proceedings have been instituted in respect of the smuggling offence so as to enable it to apply for recovery of the customs duty?

By virtue of Article 6 (1) of the said decision own resources assigned to the Communities, which include duties under the Common Customs Tariff, are to be collected by the Member States in accordance with their own provisions laid down by law, regulation or administrative action. It follows that the Member States are responsible for instituting proceedings for recovery of own resources and must continue to take action for this purpose.

In reply to the questions put by the Pretore of Cento, the Court of Justice has ruled that in the present state of Community law, the Member States and their authorities are alone empowered to take proceedings before national courts for the purpose of claiming payment of Community revenue constituting own resources.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 May 1977

H.O.A.G.M. Perenboom v Inspecteur der Directe Belastingen

Case 102/76

Social security for migrant workers - Work performed in another Member State - Payment of contributions on remuneration required by the State of residence - Not permissible

(Regulation No. 3 of the Council, Art. 12, Regulation No. 1408/71 of the Council, Art. 13)

Both Article 12 of Regulation No. 3 and Article 13 of Regulation No. 1408/71 prevent the State of residence from requiring payment, under its social legislation, of contributions on the remuneration received by a worker in respect of work performed in another Member State and therefore subject to the social legislation of that State.

N o t e

During 1972 Mr Perenboom, a Netherlands national, worked in Germany while resident in the Netherlands, first from 14 June to 18 August and then from 2 October to 21 December.

The worker concerned was subject to the social security legislation of the Federal Republic of Germany and paid social security contributions thereunder in respect of those periods of work, while for the remaining part of the year he was subject to the Netherlands general insurance scheme which is applicable to all persons aged between 15 and 65 who are resident in the Netherlands.

As a result of his membership of that scheme the worker was required to pay contributions pursuant to the legislation of the State of residence upon the wages which he received in the State in which he worked in proportion to that part of the year during which he was not working in that State. The person concerned contested the legality of that assessment, claiming that he was thereby subject to double taxation, which is contrary to general legal principles and unacceptable under Community law. This led the Netherlands court before which the case was brought to ask the Court of Justice to state whether, where a worker who has been employed for part of the year in a Member State other than the State of residence and is subject during that time to the social security legislation of the State in which he works while he is subject to that of the State of residence for the remainder of the year, Article 12 of Regulation No. 3 permits the wages earned by the worker and assessed for contributions in the State in which he works, pursuant to the social security legislation applied there, also to be taxed by way of contributions in the State of residence in proportion to the period during which the worker was not employed in the State in which he worked.

The Court has replied to this question with a ruling that pursuant both to Article 12 of Regulation No. 3 and Article 13 of Regulation No. 1408/71 the State of residence may not, pursuant to its own social security legislation, levy contributions on wages earned by the worker in respect of employment in another Member State which is thereby subject to the social security legislation of that State.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 May 1977

Roomboterfabriek "De Beste Boter"

Joined Cases 99 and 100/76

1. Agriculture - Butter - Disposal at reduced price - Invitation to tender - Processing of butter - Deposit - Release - Conditions - Successful tenderer not carrying out processing himself - Obligations

(Regulation No. 1259/72 of the Commission, Arts. 6 (1) (c) and 18; Regulation No. 1237/73 of the Commission)

2. Agriculture - Butter - Disposal at reduced price - Invitation to tender - Processing of butter - Deposit - System - Validity

(Regulation No. 1259/72 of the Commission, Art. 18 (2) (a))

1. Article 18 of Regulation No. 1259/72 as amended by Regulation No. 1237/73 must be interpreted as meaning that even where the successful tenderer does not himself carry out processing it is necessary to establish that the processed products comply with the conditions laid down in Article 6 (1) (c) of the regulation and that they have been produced within the period prescribed before the deposit may be released.

2. The system regarding the processing deposit laid down by Regulation No. 1259/72 rests on a proper legal basis and was adopted in accordance with the opinion of the Management Committee concerned; as the forfeiture of the deposit is not in the nature of a penalty for non-fulfilment of an independent obligation, the system does not exceed what is appropriate and necessary to attain the objective desired.

N o t e

This case is concerned with questions on the interpretation and validity of the Commission regulation on the disposal of butter at a reduced price to certain Community processing undertakings.

With a view to disposal of surplus butter, the Commission established a scheme involving the sale of butter by tender at a reduced price to certain Community processing undertakings. However, the undertakings can benefit from this scheme only on condition that they enter into certain obligations consisting essentially in having the butter processed into concentrated butter, in having certain substances incorporated into it, in having that product processed only into certain prescribed products and in doing so within 6 months, in keeping stock records and in undertaking that, for any subsequent resale of concentrated butter, the same obligations as those referred to above shall form part of the contract of sale.

With a view to ensuring that the processing obligation is carried out, the successful tenderer must lodge a deposit, the amount of which is fixed at a level designed to cover the difference between the market price of butter and the minimum sale price. That processing deposit is released only for quantities in respect of which the successful tenderer has furnished proof that the conditions described have been met. The first question asks whether the successful tenderer, who does not himself carry out the processing, can have the deposit released by furnishing proof that the butter is being used for the purpose laid down by the regulation or whether he must also within 6 months prove that the conditions laid down in respect of resale have been fulfilled.

The plaintiffs in the main action assert that it is not lawful to make the successful tenderer for the butter liable for the failure on the part of the ultimate user of the product to observe the undertakings relating to processing, since such irregularity is not imputable to the successful tenderer.

The Court has stated that it is necessary to take appropriate precautions to ensure that butter sold on these terms should not reach the normal market, but should indeed be processed within a period which enables the lawfulness of the operation to be verified. In reply to the question referred to it, the Court has ruled that Article 18 of Regulation No. 1259/72 as amended by Regulation No. 1237/73 must be interpreted as meaning that even where the successful tenderer does not himself carry out the processing it is necessary to establish that the processed products comply with the conditions laid down in Article 6(1)(c) of the regulation and that they have been produced within the time-limit therein prescribed before the deposit may be released.

The second question asks whether Article 18, thus interpreted, is compatible with the superior rules of Community law and in particular with the principle of proportionality. After analysing the nature of the processing deposit laid down in the Commission regulation, the Court has ruled that there is no factor of such a kind as to affect the validity of the Community provisions in question here.

CCURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 May 1977

Officier van Justitie v Beert van den Hazel

Case 111/76

1. References for a preliminary ruling - Jurisdiction of the Court - Limits
(EEC Treaty, Art. 177)

2. Agriculture - Common organization of the market - Infringement by the Member States of the Community rules - Not permissible
(EEC Treaty, Art. 40)

3. Measures adopted by an institution - Adoption - Implementing measures - Trade and joint-trade institutions - Implementing measures adopted independently by the latter - Exclusion

4. Community law - Practices contrary to Community law encouraged by the Community authorities - Like measures taken by a public institution of a Member State - Not permissible

5. Agriculture - Poultry for slaughter - Slaughter - Imposition of quotas - Not permissible
(Regulation No. 123/67 of the Council, Arts. 2 and 13)

1. Whilst the Court cannot, within the framework of Article 177 of the Treaty, give a ruling on the interpretation and validity of provisions of national legislation or regulations it may nevertheless provide the national court with an interpretation on the issues coming within Community law which will enable that court to resolve the legal problem before it.

2. Once the Community has, pursuant to Article 40, legislated for the establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it.

3. Whilst the adoption of Community measures does not necessarily imply that the implementing measures should be in all respects identical throughout the Community it nevertheless precludes measures adopted independently by trade and joint-trade organizations each in a specifically national framework since uncoordinated action is of such a nature as to cause discrimination between producers and consumers and to disturb trade between the Member States.

4. The circumstance that the Community authorities encouraged practices which are not in accord with Community law does not allow the Court to concede that like measures taken by a public institution of a Member State are compatible with Regulation No. 123/67.

5. Regulation No. 123/67, especially Articles 2 and 13 thereof, must be interpreted as making measures enacted by the national authorities to impose a quota on the slaughtering of poultry incompatible with those provisions.

N o t e

Mr van den Hazel, who runs a poultry slaughterhouse, was charged and found guilty at first instance by the Economische Politierechter of infringing the Verordening Produktie Slachtpluimveesector 1974 (Regulation concerning the Production of Poultry for Slaughter 1974). That provision prohibits poultry slaughterhouses from slaughtering between 1 July 1974 and 1 January 1975 more fowls than the corresponding number of kilogrammes live-weight stated in the allocation form issued to them by the Produktschap voor Pluimvee en Eieren (Production Board for Poultry and Eggs). Since the Openbaar Ministerie doubted whether this regulation was compatible with the provisions of Community law (after the judgment of the Court of Justice in Case 190/73, Van Haaster /1974/ ECR 1123), it submitted an appeal against the judgment of the Economische Politierechter. The Community provisions which, it was maintained, had been infringed were the Council Regulation of 13 June 1967 on the common organization of the market in poultrymeat and Articles 30 to 37 of the Treaty on the elimination of quantitative restrictions between Member States. The case prompted the Gerechtshof, Amsterdam, to refer to the Court of Justice a preliminary question as to whether the Council regulation and, if appropriate, Articles 30 to 37 of the Treaty, must be interpreted as prohibiting measures in the poultrymeat sector restricting production and marketing of the same kind as those implemented by the national legislation referred to.

In order to remedy a surplus on the poultrymeat market and an appreciable fall in prices which were recorded in 1974, in that year the Council granted a financial aid for publicity campaigns to promote consumption of those products, whilst the Commission on the other hand supported exports by increasing the refunds and suggested that the producers of the various Member States should take action voluntarily to limit the production of poultry for slaughter.

Since producers had not been able to take this voluntary action in the Netherlands, the trade organization for that sector, with the concurrence of the Netherlands Minister of Agriculture, adopted a measure limiting the slaughter of poultry.

Thus the question is whether, in view of the encouragement by the Community authorities to reduce production in order to counter the fall in prices, the national measure in dispute must be considered as incompatible with the provisions of Community law.

The Court has stated that it follows both from the general tenor and the provisions of the regulation that, as regards the internal trade of the Community, the organization of the market in the product in question is based upon freedom of commercial transactions under conditions of fair competition.

Although the Community provisions provide, in order to facilitate the adjustment of supply to market requirements, that recourse may be had to action by trade organizations, this is subject to the express condition that Community measures are concerned, to the exclusion of measures relating to withdrawal from the market.

The Court has ruled that Council Regulation No. 123/67, especially Articles 2 and 13 thereof, must be interpreted to the effect that measures enacted by the national authorities to impose a quota on the slaughter of poultry are incompatible with those provisions.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 May 1977

Hoffmann-La Roche v Centrafarm Vertriebsgesellschaft Pharmazeutischer Erzeugnisse mbH

Case 107/76

1. Questions referred for a preliminary ruling - Interlocutory proceedings for an interim order - Reference of such cases to the Court - Validity
(EEC Treaty, second paragraph of Art. 177)

2. Questions referred for a preliminary ruling - Interlocutory proceedings for an interim order ("einstweilige Verfügung") - Reference of such cases to the Court - Proceedings on the substance of the case - Institution thereof - Possibility - Duty to refer cases to the Court - None
(EEC Treaty, third paragraph of Article 177)

1. The summary and urgent character of a procedure in the national court does not prevent the Court from regarding itself as validly seised under the second paragraph of Article 177 whenever a national court or tribunal considers that it is necessary to make use of that paragraph.

2. The third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a national court or tribunal is not required to refer to the Court a question of interpretation or validity mentioned in that article when the question is raised in interlocutory proceedings for an interim order ("einstweilige Verfügung") even where no judicial remedy is available against the decision to be taken in the context of those proceedings, provided that each of the parties is entitled to institute proceedings or to require proceedings to be instituted on the substance of the case and that during such proceedings the question provisionally decided in the summary proceedings may be re-examined and may be the subject of a reference to the Court under Article 177.

N o t e

The main action has arisen between the Hoffmann-La Roche and Centrafarm undertakings and relates to a question concerning a trade-mark right.

The plaintiff in the interlocutory action in the national court manufactures Valium under a licence which it has obtained from Hoffmann-La Roche AG, Basle, and sells it in the Federal Republic of Germany under the name Valium Roche.

Valium and Roche are trade-marks protected by international registration and owned by Hoffmann-La Roche. Another subsidiary of the Roche-SAPAC organization makes Valium Roche in Great Britain under a licence from Hoffmann-La Roche, puts it on the market and markets it at prices which are considerably lower than those charged in Germany.

The defendant in the interlocutory action in the national court, Centrafarm, is the legally independent German marketing company of the Netherlands drug undertaking Centrafarm BV. Centrafarm (Germany) purchases from its Netherlands parent company Valium Roche which the latter has purchased in Great Britain and puts it on the market in Germany under the names Valium and Roche, together with the name "Centrafarm".

The plaintiff, which regards the conduct of the defendant as an infringement of the trade-mark rights of the undertaking from which it has obtained a licence, asked the Landgericht Freiburg for an interim injunction prohibiting the defendant from using in the course of its business dealings in medicinal preparations the names Valium and/or Roche.

When the Landgericht Freiburg granted the interim injunction requested, the defendant appealed to the Oberlandesgericht, which asked the Court of Justice to give a preliminary ruling on three questions.

In the first question the Court was asked whether the court of a Member State is under a duty to refer a question concerning the interpretation of Community law to the Court of Justice of the European Communities for a ruling when such question arises during interlocutory proceedings for an interim injunction, when in such proceedings no appeal lies against the court decision, but when on the other hand it is open to the parties to have the question concerning the subject-matter of the interlocutory proceedings made the subject-matter of an ordinary action, during which a reference under the third paragraph of Article 177 of the Treaty establishing the European Economic Community would have if necessary to be made.

That procedural question was the only one to be dealt with by the Court in this case.

The third paragraph of Article 177 provides that "where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice".

The particular objective of that provision is to prevent a body of national case-law not in accord with the rules of Community law from coming into existence in any Member State.

The requirements arising from that purpose are satisfied as regards summary and urgent proceedings, such as the proceedings in the present case relating to interim measures, where an ordinary main action permitting the re-examination of any question of law provisionally decided in the summary proceedings, must be instituted, either in all circumstances, or when the unsuccessful party so requires.

The Court held that the third paragraph of Article 177 of the EEC Treaty must be interpreted as meaning that a national court or tribunal is not required to refer to the Court a question of interpretation or ofvalidity mentioned in that article when the question is raised in interlocutory proceedings for an interim injunction ("einstweilige Verfügung"), even where no judicial remedy is available against the decision to be taken in the context of the proceedings, providing that each of the parties is entitled to institute proceedings or to require proceedings to be instituted on the substance of the case and that during such proceedings the question provisionally decided in the summary proceedings may be re-examined and may be the subject of a reference to the Court under Article 177.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 May 1977

Fratelli Cucchi v Avez S.p.A.

Case 77/76

1. Agriculture - Common organization of the markets - Sugar - Sugar-marketing years 1975/1976 to 1979/1980 - Aids - Grant - Financing - System
(Regulation No. 3330/74 of the Council, Art. 38)

2. Customs duties - Charges having equivalent effect - Concept
(EEC Treaty, Arts. 9, 13 (2))

3. Customs duties - Charges having equivalent effect - Concept - Internal taxation - Distinction - Jurisdiction of national court
(EEC Treaty, Arts. 9, 13(2), 95)

4. Agriculture - Common organization of the markets - Functioning - Producer prices - Formation - Community rules - Interference by Member States - Limitation - Case of Regulation No. 3330/74 - Infringement - Individual rights

1. Authorization under Article 38 of Regulation (EEC) No. 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing these aids, whatever its character or conditions, is compatible with Community law.

In the financing of the aid granted, the national authorities are in particular subject not only to the obligations arising under the Treaty but also to those arising under the other provisions of Regulation (EEC) No. 3330/74.

2. The prohibitions contained in Articles 9 and 13 are aimed at any tax demanded at the time of or by reason of importation and which, being imposed specifically on imported products to the exclusion of a similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product.

3. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full. It is for the national court to define the duty in question.

4. It also follows from Regulation No. 3330/74 and in particular from Article 33 thereof that, even apart from cases of disturbance provided for in the said provisions, the functioning of a common organization of the markets and in particular the formation of producer prices must in principle be governed by the general Community provisions as laid down in general rules amended annually with the result that any specific interference with this functioning is strictly limited to the cases expressly provided for. Hence under Regulation (EEC) No. 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by limiting the effects of an alteration in the level of Community prices, whether as regards intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No. 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks have been subject to the national measure.

N o t e

The Cucchi Brothers undertaking, plaintiff in the main action, instructed Avez S.p.A., Milan, defendant in the main action, to import into Italy from the Federal Republic of Germany 10,000 kg of sugar, 4,000 of which were delivered on 28 June 1976 and the remainder of which were to be delivered during the following July.

Avez asked Cucchi, in addition to the price for the goods, for repayment of two taxes called respectively surcharge (sovrapprezzo) and special surcharge (sovrapprezzo straordinario) in accordance with the measures of the Comitato Interministeriale dei Prezzi (C.I.P.) (Interdepartmental Committee on Prices).

The plaintiff in the main action considered that the surcharge and the special surcharge were incompatible with the rules of Community law and brought proceedings against the other party before the Pretore for a declaration that it owed nothing to the latter in respect of the charges in question.

The Court first makes some general observations.

It is clear from the order referring the matter to the Court that the answer to the questions submitted will enable the national court to determine the compatibility or otherwise with Community law of two taxes (called respectively a surcharge and a special surcharge) introduced by the C.I.P. the proceeds of which are used to finance adaptation aids to the Italian beet producers and sugar-processing industry.

The Italian Government contends that the grant of these aids was expressly authorized by Community regulation and that this authorization empowers it to find the funds necessary for financing by means which appear to it to be the fairest within the limits of Community law.

1. The question relating to the surcharge

The first question is whether Article 13 (2) of the Treaty, Article 21 (2) of Regulation (EEC) No. 3330/74 and Article 20 (2) of Regulation No. 1009/67/EEC prevent the application, in trade between the Member States on the market in sugar, of a measure of national taxation which is imposed on each quantity of sugar, whether home-produced or imported, and the proceeds of which are used for the exclusive benefit of national sugar refineries and beet-producers.

The fact that a charge applies without distinction to domestic products as well as to products from other Member States gives rise to the question whether the taxation at issue falls within the prohibition in Articles 9 and 13 or the rule against discrimination in matters of internal taxation laid down by Article 95. Clearly, one and the same scheme of taxation cannot belong to both categories, since the charges referred to in Articles 9 and 13 must be simply abolished whereas Article 95 provides solely for the elimination of any form of discrimination, direct or indirect, in the treatment of the domestic products of a Member State and of products originating in other Member States.

In reply to the first question, the Court ruled that a duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full.

2. The questions relating to the special surcharge

In its observations, the Italian Government stated that the sole purpose of the tax in question, which was imposed only once, was to make good the deficit in the Equalization Fund caused by the grant, during the previous marketing year, of aids authorized under Article 38 of Regulation (EEC) No. 3330/74 the amount of which was greater than the proceeds of the ordinary surcharge collected during that year.

Another question is whether it is compatible with Community regulations to impose, during the change-over from one sugar marketing year to another, a pecuniary charge by the act of a national government on sugar held at a given date in undertakings without any prior authorization from the Community institutions.

In reply the Court has ruled that under Regulation (EEC) No. 3330/74 the Community is, in the absence of express derogation, alone competent to adopt specific measures involving intervention in the machinery of price formation, in particular by limiting the effects of an alteration in the level of Community prices, whether this concerns intervention prices or the rate of exchange of the national currency in relation to the unit of account; an infringement in this respect of Regulation (EEC) No. 3330/74 may be the subject of proceedings before the national courts brought by any natural or legal person whose stocks were subject to the national measure.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 May 1977

Interzuccheri S.p.A. v Ditta Rezzano e Cavassa

Case 105/76

1. Agriculture - Common organization of the markets - Sugar - Sugar-marketing years 1975/1976 to 1979/1980 - Aids - Grant - Financing - System
(Regulation No. 3330/74 of the Council, Art. 38)

2. Customs duties - Charges having equivalent effect - Concept
(EEC Treaty, Arts. 9, 13 (2))

3. Customs duties - Charges having equivalent effect - Concept - Internal taxation - Distinction - Jurisdiction of national court
(EEC Treaty, Arts. 9, 13 (2), 95)

1. Authorization under Article 38 of Regulation (EEC) No. 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing these aids, whatever its character or conditions, is compatible with Community law.

In the financing of the aid granted, the national authorities are in particular subject not only to the obligations arising under the Treaty but also to those arising under the other provisions of Regulation (EEC) No. 3330/74.

2. The prohibitions contained in Articles 9 and 13 are aimed at any tax demanded at the time of or by reason of importation and which, being imposed specifically on imported products to the exclusion of a similar domestic product, results in the same restrictive consequences on the free movement of goods as a customs duty by altering the cost price of that product.

3. A duty falling within a general system of internal taxation applying to domestic products as well as to imported products according to the same criteria can constitute a charge having an effect equivalent to a customs duty on imports only if it has the sole purpose of financing activities for the specific advantage of the taxed domestic product, if the taxed product and the domestic product benefiting from it are the same, and if the charges imposed on the domestic product are made good in full. It is for the national court to define the duty in question.

N o t e

This case is the same as the foregoing one but is confined to the question relating solely to the surcharge (see Question 1 in the judgment in Case 77/76).

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

8 June 1977

Kommanditgesellschaft in Firma Merkur Aussenhandel GmbH & Co.

v Commission of the European Communities

Case 97/76

Agriculture - Common organization of the markets - Monetary measures - Trade in agricultural products - Disturbances - Compensatory amounts - Abolition or modification - Injury suffered by traders - Liability of Commission - Conditions

The liability of the Community for injury suffered by traders as a result of the adoption of legislative measures governing the system of compensatory amounts could only be incurred if, in the absence of any overriding public interest, the Commission were to abolish or modify the compensatory amounts applicable in a specific sector with immediate effect and without warning and in the absence of any appropriate transitional measures and if such abolition or modification was not foreseeable by a prudent trader.

N o t e

The action seeks an order for the payment of damages by the European Economic Community in compensation for the injury which the applicant claims to have suffered as a result of Regulation No. 1497/76 of the Commission, the effect of which was to modify certain compensatory amounts.

The applicant maintains that as a result of the modification it was prevented from performing in full contracts of sale, entered into before the entry into force of the regulation, for the delivery to two Danish companies and to one English company of products under tariff heading No. 23.07 B I (c) 1 containing more than 50% by weight of tapioca.

Article 1 of Regulation No. 1497/76 provides that "for products falling within subheading 23.07 B I (c) 1 ... of the Common Customs Tariff, containing more than 50% by weight of products falling within heading No. 07.06 ... thereof the accession compensatory amounts or monetary compensatory amounts shall be those applicable to products falling within subheading 07.06 A thereof". Tariff heading 07.06 refers to a group of nutritious roots and tubers "with high starch content".

On the entry into force of Regulation No. 1497/76 there were no monetary compensatory amounts applicable to the products under tariff subheading 07.06 A and the accession compensatory amounts applicable to trade with the United Kingdom were less than those applicable to the products covered by subheading 23.07 B I (c) 1. It was appropriate to limit subject-matter of the action to the monetary compensatory amounts alone, since, as the accession compensatory amounts did not affect the system of advance-fixing provided for by the Community rules, the Commission could in no way be held responsible.

In this case the Court stated the general principle that the aim of the system of compensatory amounts is to obviate the difficulties which monetary instability may create for the proper functioning of the common organizations of the market, rather than to protect the individual interests of traders.

Regulation No. 1497/76 is a legislative measure adopted by the Community in the area of economic policy in the higher interest of the proper functioning of such market organizations.

In those circumstances, although the possibility of protecting the legitimate interests of the trader cannot be excluded, nevertheless the Commission could only be rendered liable for the damage suffered by such traders as a result of the adoption of legislative measures governing the above system if in the absence of any overriding public interest of a contrary nature the Commission were to abolish or modify the compensatory amounts applicable in a specific sector with immediate effect and without warning and in the absence of any appropriate transitional measures and if the abolition or modification was not foreseeable by a prudent trader.

It is clear that in this instance the regulation at issue did not take effect immediately and without warning, since its entry into force had been fixed for the 15th day after its publication in the Official Journal, and since the Commission cannot be said to have adopted the measure in dispute in violation of the principle of the protection of the legitimate expectation of the parties concerned.

Finally, as the product in dispute contains 90% of tapioca it could, even before the entry into force of Regulation No. 1497/76, have been defined as having a "high starch content" and therefore have been classified under subheading 07.06 A, which refers to precisely that type of product.

The Court therefore rejected the application as unfounded and ordered the applicant to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 June 1977

S.r.l. Ufficio Henry Ameyde

v S.r.l. Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti in Circolazione Internazionale (U.C.I.)

Case 90/76

1. Insurance against civil liability in respect of motor vehicles – Traffic within the Community – Green card – Checks at frontiers – Abolition – Measures to that effect – Authorization of national provisions or agreements between national insurers' bureaux which are incompatible with the rules of the Treaty – Inadmissibility

(Council Directive No. 72/166/EEC, Commission Recommendation No. 73/185/EEC and Commission Decision No. 74/166/EEC)

2. Insurance against civil liability in respect of motor vehicles – Traffic within the Community – Vehicles insured in a Member State – Damage caused in the territory of another Member State – Rules – Sole responsibility of a national insurers' bureau by virtue of a national provision or an agreement between national bureaux – Possibility of recourse to undertakings specializing in the settlement of accident claims – Compatibility with Community rules on competition

(EEC Treaty, Art. 90(1), Art. 85 and Art. 86)

3. Insurance against civil liability in respect of motor vehicles – Traffic within the Community – Vehicles insured in a Member State – Damage caused in the territory of another Member State – National insurers' bureau – Conduct tending to exclude undertakings specializing in the settlement of accident claims – Infringement of Community rules on competition – Finding by the national court

(EEC Treaty, Art. 85, Art. 86 and Art. 90)

4. Discrimination within the meaning of Articles 52 and 59 of the EEC Treaty – Prohibition – Criteria

5. Insurance against civil liability in respect of motor vehicles – Traffic within the Community – Vehicles based in a Member State – Damage caused in the territory of another Member State – Payment to accident victims – Final decision reserved to the national insurers' bureau of that State or to insurance companies having an establishment there – Discrimination – Absence

(EEC Treaty, Art. 52 and Art. 59)

1. Council Directive No. 72/166/EEC of 24 April 1972, Commission Recommendation No. 73/185/EEC of 15 May 1973 and Commission Decision No. 74/166/EEC of 6 February 1974 which seek to abolish checks on the green card at frontiers between Member States cannot be regarded as authorizing the existence of national provisions or agreements between national insurance bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.

2. A national provision or an agreement between national bureaux established in the context of the green card system which declares that the national bureau bears sole responsibility for the settlement of claims for damage caused in the territory of that Member State by vehicles insured by foreign insurance companies but which still allows the national bureau or its members to rely on undertakings whose business consists solely in the settlement of accident claims on behalf of insurers in the sense of the handling and investigation of claims, is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86.

3. A decision or a course of conduct of a national bureau or concerted practices of its members which have the object or effect of excluding undertakings whose business consists solely in the settlement, in the restricted sense referred to above, of accident claims on behalf of insurers, may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition contained in Article 90 of the Treaty in conjunction with Article 86. It is for the national court to determine whether the conditions for the application of those prohibitions are fulfilled.

4. For discrimination to fall under the prohibitions contained in Articles 52 and 59 it suffices that such discrimination results from rules of whatever kind which seek to govern collectively the carrying on of the business in question. In that case it is not relevant whether the discrimination originated in measures of a public authority, or on the other hand, in measures attributable to individuals.

5. Rules or conduct having the effect of reserving to the national bureau of a Member State or to its members or to insurance companies with an establishment there the final decision as to the payment of damages to victims of accidents caused in the territory of that State by vehicles normally based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty if the exclusion of other categories of undertakings is not based on the criterion of nationality.

N o t e

In the main action an Italian company, a subsidiary of a Netherlands company, carrying on business as a loss adjuster, is suing the Ufficio Centrale Italiano di Assistenza Assicurativa Automobilisti (the Central Italian Office for Motor Vehicle Insurance) (UCI).

The loss adjuster complains that, as a result of a decision of the UCI, or of a decision of its members or of a concerted practice of the latter, it has been excluded from the market for the settlement of claims in respect of accidents caused by foreign vehicles in Italy, in which it specializes. The loss adjuster is responsible for "settling" accident claims, which must be understood to mean that he investigates such claims and in certain cases checks the risks proposed for insurance but does not make the final decision to authorize payment, which may only be adopted by the insurer. The loss adjuster receives his orders from the insurer and is the latter's agent. He acts as an assistant to the insurer. Loss adjusters consider that they are members of a profession. They are paid fees the amount whereof varies according to the complexity of the matter.

The plaintiff in the main action, the Van Ameyde company of loss adjusters, asked the national court to declare illegal the claim of the UCI, the defendant in the main action, that the business of investigating and settling claims arising out of accidents caused by vehicles insured abroad shall be exclusively entrusted to insurance companies which are members of the defendant and, in consequence, to declare illegal any action by the UCI in respect of third parties intended to restrict the plaintiff's freedom of action and to deprive it of business.

The UCI is the national bureau for motor vehicle insurance against civil liability in Italy and it comprises the majority of insurers in that field. Under the so-called "green card" system it is responsible for the settlement of claims arising out of accidents caused by foreign vehicles insured by foreign insurance companies under the terms of the agreements between the national bureaux of the countries which take part in the system.

How does the green card system work?

Since the system of compulsory insurance against civil liability for motor vehicles has been adopted in Italy the UCI has been required to assume direct responsibility for settling the amount of compensation arising out of any accident caused in Italy by a foreign vehicle whose driver is in possession of a green card.

The insurance obligation is regarded as discharged where the user is in possession of an international certificate of insurance issued by the appropriate foreign organization, known as the "Paying Bureau". The inter-bureaux agreements which form an integral part of the green card system provide that where an accident gives rise to a claim against an insured person the bureau of the country in which the accident occured, known as the "Handling Bureau", handles and settles the claim as if it had issued the policy.

By virtue of an optional clause the Paying Bureau may request the Handling Bureau to leave the handling and settlement of claims to a nominated correspondent; that correspondent remains responsible to the Handling Bureau for the handling of such claims.

At the Community level Directive No. 72/166/EEC of the Council of 24 April 1972 (Official Journal, English Special Edition, 1972 (II), p. 360), on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, is intended to facilitate the free movement of goods and persons by the abolition of checks on green cards at the frontiers between the Member States. The Commission recommendation of 15 May 1973 and the Commission decision of 6 February 1974 lay down detailed rules for the application of the Council directive.

The main action was brought before the Tribunale Civile e Penale di Milano, which referred certain questions to the Court of Justice for a preliminary ruling.

The first question asks whether the aforementioned directive, recommendation and decision are to be interpreted as authorizing provisions of national law, agreements, decisions and practices agreed between the

national insurers' bureaux, or action by an individual national bureau or of the undertakings in membership thereof which have as their object and effect the restriction of the activity of loss adjusters as regards the payment of claims in respect of accidents caused by vehicles from another country.

The Court held that the directive, recommendation and decision in question which seek to eliminate the checks on the green card at frontiers between the Member States cannot be regarded as authorizing the existence of national provisions or agreements between national insurance bureaux or their members which are incompatible with the provisions of the Treaty relating to competition, the right of establishment and the freedom to provide services.

The second question asks whether Articles 85, 86 and 90 of the Treaty, which govern competition, prohibit any provision of national law, any inter-bureau agreement or any decision, concerted practice or action which tends to exclude loss adjusters from the work of meeting claims arising out of the use of foreign vehicles, even though they may have been appointed by the insurers of the vehicle causing the damage who are based in its country of origin.

The Court held:

(a) A national provision or an agreement between the national bureaux established in the context of the green card system which declares the national bureau solely responsible for settlement for damage caused on the territory of that Member State by vehicles insured by foreign insurance companies but which leaves intact the possibility for the national bureau or its members to rely on undertakings whose activities consist solely in settling accident claims on behalf of insurers by handling and investigating claims is not incompatible with Article 90 (1) of the Treaty in conjunction with Articles 85 and 86;

(b) A decision or conduct by a national bureau or concerted practices by its members which are intended to exclude or which may have the effect of excluding undertakings whose activities consist solely in the settlement in the sense referred to above of losses on behalf of insurers may possibly fall under the prohibition of Article 85 and, if the national bureau is in a dominant position, under the prohibition of Article 90 of the Treaty in conjunction with Article 86.

The third question asks whether Articles 7, 52 and 59 of the Treaty prohibit any provision of national law or any action the effect of which is directly or indirectly to obstruct in a Member State the effective exercise of the activity of a loss adjuster established in the territory of the said Member State, even if the provision or the action is the work of a national insurers' bureau within the meaning of the above-mentioned Directive.

The Court held that any rules or conduct which have the effect of reserving to the national bureau of a Member State or to its members or insurance companies which are established there the final decision as to the payment of damages to victims of accidents caused on the territory of that State by vehicles which are normally based in another Member State are not discriminatory within the meaning of Articles 52 and 59 of the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 June 1977

Blottner v Het Bestuur der Nieuwe Algemene Bedrijfsvereniging

Case 109/76

1. Social security for migrant workers - "Present or future" national rules within the meaning of Article 1 (j) of Regulation No. 1408/71 - Concept - Provisions in force before the adoption of the Community regulations - Exclusion not permissible

2. Social security for migrant workers - Invalidity insurance - Periods of insurance completed - Legislation in force at the time when the worker was employed - Cessation before the adoption of the Community rules - Different legislation in force at the time when the risk materializes - Right to benefits (Regulation No. 1408/71 of the Council, Art. 40, Art. 45 (3))

1. The structure of the system of harmonization of national legislation established by the regulation is based upon the principle that a worker must not be deprived of the right to benefits merely because of an alteration in the type of legislation in force in a Member State. Therefore the concept of "present or future" measures within the meaning of Article 1 (j) of Regulation No. 1408/71 must not be interpreted in such a way as to exclude measures which were previously in force but had ceased to be so when the said Community regulations were adopted.

2. The concept of "legislation" contained in Article 45 (3) must be widely interpreted so as to refer both to measures in force at the time when the risk materializes and to measures in force at the time when the worker was subject to the legislation. For the acquisition of a right to benefits on the basis of Article 40 of Regulation No. 1408/71 payable by an institution of a Member State referred to at the beginning of Article 45 (3) it is in principle sufficient that a worker who is subject to the legislation of another Member State at the time when the risk insured against materializes or, if this is not the case, who has a right to benefits under the legislation of another Member State, can establish insurance periods or, at least, periods of employment and/or periods treated as such completed under a legislation which, although in force at the time when the worker was employed, had ceased to be in force before the adoption of

Regulation No. 1408/71, even if that legislation was of a different type from that which is in force at the time when the risk materializes.

N o t e

The Court held that for the acquisition of a right to benenfits on the basis of Article 40 of Regulation (EEC) No. 1408/71 payable by an institution of a Member State referred to at the beginning of Article 45 (3) it is in principle sufficient for a worker who is subject to the legislation of another Member State at the time when the risk insured against materializes or, if this is not the case, who can claim a right to benefits under the legislation of another Member State, to be able to establish insurance periods or, at least, periods of employment and/or periods treated as such completed under legislation which, although in force at the time when the worker was employed, had ceased to be in force before the adoption of Regulation No. 1408/71 even if this legislation was of a different type from the legislation in force at the time when the risk materializes.

The facts are as follows:

Mrs Blottner, a German national having her permanent residence in Berlin, was employed in the Netherlands where she resided from 1928 to 1940. She then returned to Germany where she worked until 1946. She has not worked since that date.

In 1973 she suffered an accident which rendered her unfit for work. Since the competent social security institutions refused to pay her a pension on the ground of unfitness for work in respect of her periods of employment in Germany and the Netherlands, Mrs Blottner twice instituted proceedings, first, in Germany, which led the competent institution to grant her the pension and, soncondly, in the Netherlands, which resulted in the preliminary question referred in this case.

The Netherlands institution recognized that Mrs Blottner was in principle entitled to claim benefits under Article 45 (3) of Regulation No. 1408/71. However, it refused to pay her an invalidity pension on the ground that, since she was not employed when the accident occurred, she did not fulfil the material condition as to insurance required by the Wet op de Arbeidsongeschiktheidsverzekering (Law on Insurance against Incapacity for Work) in order to acquire a right to benefit in the Netherlands and, furthermore, that her degree of incapacity to carry out her usual "work" (household tasks) was less than the minimum of 15% laid down by that law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 June 1977

Richard Hugh Patrick v Ministre des Affaires Culturelles

Case 11/77

1. Freedom of establishment - Restrictions - Abolition - Transitional period - Expiration - Rule on equal treatment with nationals - Direct effect
(EEC Treaty, Arts. 7, 8 (7) and 52)

2. Freedom of establishment - New Member States - Restrictions - Abolition - Entry into force
(EEC Treaty, Art. 52)

3. Freedom of establishment - Access to certain professions - Requirement of qualifications - Abolition - Council directives - Absence - Denial of benefit of freedom of establishment - Not permissible
(EEC Treaty, Arts. 52, 57 (1))

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 imposes an obligation to attain 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 has been 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. In the absence of transitional provisions concerning the right of establishment in the Treaty of Accession of 22 January 1972, the principle contained in Article 52 has, in the case of the new Member States and their nationals, been fully effective since the entry into force of the said Treaty, that is, since 1 January 1973. Thus a Member State cannot, after 1 January 1973, make the exercise of the right to free establishment by a national of a new Member State subject to an exceptional authorization in so far as he fulfils the conditions laid down by the legislation of the country of establishment for its own nationals.

3. The legal requirement, in the various Member States, relating to the possession of qualifications for admission to certain professions constitutes a restriction on the effective exercise of the freedom of establishment the abolition of which is, under Article 57 (1), to be made easier by directives of the Council for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. Nevertheless, the fact that those directives have not yet been issued does not entitle a Member State to deny the practical benefit of that freedom to a person subject to Community law when the freedom of establishment provided for by Article 52 can be ensured in that Member State by virtue in particular of the provisions of the laws and regulations already in force.

N o t e

In the wake of the lawyers (Cases 2/74, Reyners, and 71/76, Thieffry), an architect has prompted the Court of Justice to interpret Articles 52 to 54 of the EEC Treaty concerning the right of establishment.

Mr Patrick, a British national who holds the certificate of the Architectural Association and who wished to transfer his office to France, applied for authorization to practice the profession of architect there. His application was rejected by decision of the Minister for Cultural Affairs dated 9 August 1973, on the ground that such authorization "pursuant to the provisions of the Law of 31 December 1940 continues to be exceptional if there is no reciprocal agreement between France and the applicant's country of origin". The ministerial decision continues that in the absence of a specific agreement for this purpose between the Member States of the EEC and in particular between France and the United Kingdom, the Treaty establishing the European Economic Community cannot take the place of such an agreement, since Articles 52 to 58 concerning freedom of establishment refer, for the attainment of that objective, to Council directives which have not yet been issued.

This case led the Tribunal Administratif de Paris to ask the Court of Justice whether, "in the State of Community law on 9 August 1973 ... a British national was entitled to invoke in his favour the benefit of the right of establishment to practice the profession of architect in a Member State of the Community".

The Court did not accept the argument that the direct effect of the rule of equal treatment with nationals contained in Article 52 is weakened by the fact that the Council has not issued the directives provided for in Articles 54 and 57.

The Court stated that, in fact, after the expiry of the transitional period the directives provided for by the Chapter on the right of establishment have become superfluous with regard to implementing the rule on nationality, since this is henceforth sanctioned by the Treaty itself with direct effect. With regard to the new Member States and their nationals, the principle contained in Article 52 takes full effect after the entry into force of the Treaty of Accession, that is, on 1 January 1973.

The Court ruled that, with effect from 1 January 1973, a national of a new Member State who can produce a qualification recognized by the competent authorities of the Member State of establishment as equivalent to the diploma issued and required in that State enjoys the right to be admitted to the profession of architect and to practice it under the same conditions as nationals of the Member State of establishment without being required to satisfy any additional conditions.

Thus, pursuing the terminology of the case, the Court of Justice has placed a new "brick" in the wall of freedom of establishment, which is one of the keystones of the Community.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 June 1977

Balkan-Import-Export GmbH v Hauptzollamt Berlin-Packhof

Case 118/76

Community charge - Imposition - Exemption - Grounds of natural justice - National law - Applicability - Strict limits

The distribution of functions between the Community and the Member States may justify the application, by a national authority, of a rule of natural justice for which provision is made under its national legislation in connexion with the formalities applicable to the imposition of a charge introduced by Community law.

On the other hand, a national authority is not entitled to apply the provisions of its national law to an application for exemption, on grounds of natural justice, from charges due under Community law, where to do so would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question.

N o t e

This reference for a preliminary ruling raises the question what rules or principles of law are applicable to a discretionary exemption on grounds of natural justice from monetary compensatory amounts imposed on the importation of agricultural products from a third country. The questions put to the Court refer to proceedings commenced before the Finanzgericht Berlin concerning the levy of compensatory amounts on an importation of sheep's cheese from Bulgaria.

The Court had previously given a preliminary ruling on the interpretation and validity of the provisions in question in this case, to the effect that there were no elements capable of affecting the validity of the regulations of the Council and of the Commission (Case 5/73, Balkan, [1973] II ECR 1091).

Following that judgment of the Court the plaintiff in the main action sought exemption from the monetary compensatory amounts claimed from it, in view of the fact that payment of those amounts would lead, in that specific case, to a result which was contrary to the objectives of the Community regulations and which should be corrected by the application of the principles of natural justice enshrined in the general law regarding taxation. This request was rejected by the customs authorities and the plaintiff brought an action against that rejection before the Finanzgericht Berlin, which has referred several preliminary questions to the Court.

The first question asks whether a national customs authority is entitled and, if necessary, obliged on grounds of natural justice, to deal with applications for exemption from charges due to the Community (in this instance, monetary compensatory amounts) on the basis of national law.

In short, where does the division of powers between the Community and the Member States lie with regard to the institution and collection of the charge in question?

All questions concerning the basis of assessment, the manner of imposition and the amount of the charge in question are fixed by Community law, whereas collection and the formalities attendant thereon are entrusted to the competent administrative bodies of the Member States. The application of a rule of natural justice enshrined in national legislation could perhaps be taken into consideration, always subject to the strict condition that it does not alter the scope of the provisions of Community law.

The Court has ruled that a national customs authority is not entitled, on grounds of natural justice, to deal with an application for exemption from charges due pursuant to Community law (in this instance, monetary compensatory amounts) on the basis of national law, in so far as to do so would alter the effect of the Community rules relating to the basis of assessment, the manner of imposition or the amount of the charge in question.

A second question asked whether there is any legal basis (possibly under Community law) for exemption from payment of monetary compensatory amounts on the grounds of natural justice. The Court replied in the negative.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 July 1977

Bela-Mühle Josef Bergmann KG and Grows-Farm GmbH & Co. KG

Case 114/76

Granaria B.V. and Hoofdproduktschap voor Akkerbouwprodukten

Case 116/76

Olmühle Hamburg AG and Hauptzollamt Hamburg-Waltershof -

Firma Kurt A. Becher and Hauptzollamt Bremen-Nord

Joined Cases 119 & 120/76

1. Agriculture - Common organization of the markets - Community arrangements - Burden of costs - Discriminatory distribution between the various agricultural sectors - Not permissible

(EEC Treaty, Art. 39 and second subparagraph of Art. 40 (3))

2. Agriculture - Common organization of the markets - Skimmed-milk powder held by intervention agencies - Compulsory purchase - Council Regulation (EEC) No. 563/76 - Invalidity

1. Community arrangements which impose a discriminatory distribution of the burden of costs between the various sectors of agricultural production cannot be justified for the purpose of attaining the objectives of the common agricultural policy.

2. Council Regulation No. 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs is null and void.

N o t e

The foregoing references request the Court of Justice to rule on the validity of Regulation (EEC) No. 563/76 of the Council of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feedingstuffs.

In identical judgments the Court has ruled that the regulation in question is null and void for the following reasons:

Regulation No. 563/76 was adopted at a time when stocks of skimmed-milk powder purchased by the intervention agencies under Regulation No. 804/68 of the Council on the common organization of the market in milk and milk products had reached a very high level and were continuing to increase despite the measures adopted to curb over-production and to increase the disposal of skimmed-milk powder.

The system established by Regulation No. 563/76, which came to an end on 31 October 1976, was aimed at reducing stocks by increased utilization, in feedingstuffs, of the protein contained in skimmed-milk powder.

To that end the regulation linked the grant of the aids provided for in respect of certain vegetable products containing protein and the free circulation in the Community of certain imported forage products to the obligation to purchase certain quantities of skimmed-milk powder.

In order to ensure that that obligation was discharged the aid was granted and the products in question put into free circulation only after provision of a security or presentation of certain forms of proof of the purchase and denaturing of the prescribed quantities of skimmed-milk powder.

It emerges from the provisions of Commission Regulation (EEC) No. 753/76, laying down detailed rules for the sale of skimmed-milk powder for use in animal feed, that in comparison with the market price of soya oil-seed cake, which is a vegetable product with a value as forage comparable to that of skimmed-milk powder, the prices fixed for the resale of the skimmed-milk powder held by the intervention agencies and the costs of denaturing to be borne by the purchaser resulted in an obligation to purchase the powder at a price approximately three times its value as forage.

The security - which was released only on production of proof of the purchase of a certain quantity of skimmed-milk powder - was fixed at such a sum that, if it was forfeit, its effect on the prices of feedingstuffs was slightly greater than the increase in price resulting from the purchase of the skimmed-milk powder.

Regulation No. 563/76 provided that as regards contracts concluded before the date of its entry into force the burden of the costs arising under the arrangements laid down by that regulation were to be borne by the successive buyers of the products in question.

The regulation contained no similar provision providing users of feedingstuffs, such as breeders of poultry and pigs, with the possibility of reflecting the increase in costs in the price of their products.

The validity of that system has been challenged on the grounds, in particular, that it conflicts with the aims of the common agricultural policy as defined in Article 39 of the Treaty and violates the prohibition on discrimination contained in the second subparagraph of Article 40 (3) and the principle of proportionality between the aim sought and the means used.

In the light of the close connexion between those two grounds it is appropriate to consider them together:

According to Article 39 the objectives of the common agricultural policy are to ensure the rational development of agricultural production, to ensure a fair standard of living for the whole of the agricultural community, to stabilize markets, to assure the availability of supplies and to establish a reasonable level of prices for supplies to consumers.

Although Article 39 thus enables the common agricultural policy to be defined in terms of a wide choice of measures of guidance and intervention, nevertheless the second subparagraph of Article 40 (3) provides that the common organization of the agricultural markets shall be limited to pursuit of the objectives set out in Article 39.

Furthermore, the second subparagraph of Article 40 (3) states that the common organization of the markets "shall exclude any discrimination between producers or consumers within the Community".

Thus, the statement of objectives in Article 39, taken together with the rules contained in the second subparagraph of Article 40 (3), fixes criteria which are at once positive and negative by which the lawful nature of the measures adopted in that area may be judged.

The system established by Regulation No. 563/76 constituted a temporary measure intended to remedy the effects of a persistent imbalance in the common organization of the market in the sector of milk and milk products.

That system is characterized by the imposition, not only on producers in the milk sector but also, and in particular, on those in the other agricultural sectors, of a financial burden taking the form, first, of a compulsory purchase of certain quantities of a forage product and, secondly, of the fixing of a purchase price for that product at a level three times higher than that of the goods for which that product was substituted.

The obligation to purchase at such a disproportionate price constituted a discriminatory distribution of the burdens between the various agricultural sectors.

Furthermore, the imposition of such an obligation was not necessary in order to obtain the objective sought, that is, the disposal of the stocks of skimmed-milk powder.

Therefore it could not be justified within the context of the achievement of the objectives of the common agricultural policy.

The reply had therefore to be that Council Regulation No. 563/76 is null and void.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 July 1977

Schouten B.V. v Hoofdproduktschap voor Akkerbouwprodukten

Case 6/77

1. Agriculture - Common organization of the markets - Levy - Regulation No. 120/67/EEC, Art. 15 (2) - Interpretation - Criteria

2. Agriculture - Common organization of the markets - Aim

3. Agriculture - Common organization of the markets - Importation - Threshold price - Variation - Levy applicable on the day on which the application for the certificate is lodged - Increased by the amount of the premium - Adjustment

(Regulation No. 120/67/EEC of the Council, Art. 15 (2))

1. Article 15 (2) of Regulation No. 120/67 is one of the fundamental rules on the Community system of levies and must be interpreted not only in the light of its wording but also of the principles governing the operation of that system and of its objectives within the context of the common agricultural policy.

2. The Community levy, which is primarily intended to protect and stabilize the Community market, in particular by preventing price fluctuations on the world market from affecting prices within the Community, involves the imposition of a charge which makes it possible to "cover the difference between prices ruling outside and within the Community".

3. Article 15 (2) of Regulation No. 120/67/EEC of the Council must be interpreted as meaning that a variation in the threshold price valid in the month of importation into the Community leads to an adjustment of the levy applicable on the day on which the application for the certificate is lodged, as increased by the amount of the premium.

N o t e

In August 1974 Schouten imported several consignments of maize on the basis of certificates fixing in advance the amount of the levy applicable to that product. On the authority of those certificates the Hoofdproduktschap voor Akkerbouwprodukten calculated the levy applicable, first, by adjusting the levy in force on the day on which the application for a licence was lodged in relation to the threshold price applicable during the month of importation, and, secondly, by adding to that levy the premium referred to in Article 2 of Regulation No. 140/67 of the Council. Schouten objected that such a calculation was incorrect since, according to a proper interpretation of the applicable provisions, it was first necessary to apply the premium to the levy in force on the day on which application for a licence was lodged and then to adjust that levy to the threshold price applicable during the month of importation.

The College van Beroep voor het Bedrijfsleven considered that it was appropriate to ask the Court to give a preliminary ruling on the following question:

"Must Article 15 (2) of Regulation No. 120/67/EEC of the Council be interpreted to mean that a variation of the threshold price in force during the month of importation from the threshold price in force on the day on which the licence is applied for results in a corresponding adjustment of the levy in force on that day, that is to say, of the levy fixed as increased by the premium, or in a corresponding adjustment of the levy alone, so that the premium, regardless of the nature and size of the variation from the threshold price, is chargeable in full?"

The Court has ruled that:

"Article 15 (2) of Regulation No. 120/67/EEC of the Council is to be interpreted as meaning that a variation of the threshold price in force during the month of importation into the Community results in an adjustment of the levy in force on the day on which the licence was applied for as increased by the amount of the premium".

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