Information on the Court of Justice of the European Communities

N. XXI

1976

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

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

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Telegrams: CURIA Luxembourg.

This Bulletin is distributed free of charge to judges, advocates and practising lawyers in general on application to one of the Information Offices of the European Communities at the following addresses:

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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. 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. (Orders for the United States may be addressed to the Communities' Information Office in Washington or in New York, at the addresses given on page 1).

3. 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 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 1962-70 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

New edition published in 1975.

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

1'OFFICE DES PUBLICATIONS DES COMMUNAUTES EUROPEENNES,
5, Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

Belgium:	Ets. Emile Bruylant, Rue de la Regence 67, 1000 BRUSSELS
Denmark:	J. H. Schultz - Boghandel, Møntergade 19, 1116 COPENHAGEN K
France:	Editions A. Pedone, 13, Rue Soufflot, 75005 PARIS

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. 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.

2. 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.).

3. General booklet of information on the Court of Justice

These three documents are published in the six official languages of the Community while the general booklet is also published in Spanish and Irish. They may be ordered from the information offices of the European Communities at the addresses given on page 1. 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 volume of the English series is 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	
Easter Monday	
Ascension Day	
Whit Monday	
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	
"Schobermesse" Monday	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

* * *

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 1976-1977

(Order of Precedence)

H. KUTSCHER, President

A. 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'CAOIMH, (O'KEEFFE), Judge

F. CAPOTORTI, Advocate-General

G. BOSCO, Judge

A. TOUFFAIT, Judge

A. VAN HOUTTE, Registrar

Extracts from Addresses read at the Formal Hearing of 7 October 1976 on the occasion of the partial renewal of the composition of the Court

Address by President R. Lecourt at the Formal Hearing of 7 October 1976 on the departure of Mr Advocate-General Trabucchi

Why must it be that the address that the President of the Court, acting in his personal capacity, customarily makes upon the renewal of the Court every three years, must, on this occasion, start on a sour note in the context of the Community today.

How can one fail to observe with sadness that not all the members of the Court have yet been appointed on the very day when, as the Treaty requires, they ought to have taken up their duties? The Community is a legal entity and not a mere arrangement founded on convenience. The institutional provisions of the Treaties and the dates when they are to be applied are binding and leave no room for discretion.

Yet for the first time since its creation, the Court of Justice - required by Article 164 to ensure that in the application of the Treaty the law is observed - finds itself in the humiliating position of seeing the renewal of its composition impeded and its work disrupted.

Moreover the established practice whereby the renewal of the composition of our Institution always took place several weeks before the beginning of the judicial vacation, since the time when our work expanded to cope with the abundance of litigation, has this year been changed in so novel and disconcerting a way that it has already resulted in the cancellation of several hearings, held up urgent cases, obstructed the efforts of the Court to adjudicate speedily upon the questions referred by the national courts, and brought about delays in the latter which are not of the Court's own making.

This situation has also caused the departure of Mr Advocate-General Trabucchi.

It is thus, my dear colleagues, that you will be deprived of the aid of this great civil lawyer, at the very moment when the first cases arising from the Brussels Convention would have rendered his opinions particularly valuable.

In marking, with regret, your going away, Mr Advocate-General, how can I do otherwise than stress the common legal destiny which brings together yet a little more closely the two Members of our Court who are leaving it today. With a difference of only a few weeks, they will have been associated with its work over the same period. For you have been amongst us for many a year. A judge first, and then an Advocate-General, you are not only one of the most eminent of jurists but also a friend and colleague with a warm and open heart.

The jurist who arrived at Luxembourg at the beginning of 1962 already enjoyed an enviable reputation.

What now of the man? Over the years, we have learnt to know him and to appreciate him. He is an "honnête homme" in the classical sense of the term, that is to say a man nourished on the refinements of culture. He was unable to hide for long his taste for literature and poetry, and his love of the great writers - Dante and Manzoni in particular - and of certain modern writers also, provided that they avoid the pitfalls of abstraction. The true aesthete that you are, in literature as in art, has a love of the beautiful provided that it represents something, and that its meaning is clear. In you the classical splendour of a Tiepolo seems to find an echo in the form of voices within which can be sensed in your very eloquence. In matters of taste, at least, you will not deny that you are conservative! So are you also in your rôle of pater familias in the true sense of the term, that is to say, not only in your family but also in your village of Illasi and in your university. You know how to combine firmness with kindness; sometimes - it is said - strictness with advice. Your colleagues, at all events, have only found in you a harmonious mixture of friendship and loyalty. In reality, behind the Roman mask, the face of a generous man attempts to hide, but in vain.

Such is the memory of you that will remain with all those who were your colleagues and it is one which they will unfailingly associate with Mrs Trabucchi. At all events, your colleagues will again rediscover the essential features of the jurist and friend that they have had the fortune to know in the course of fifteen years of work in common. The reports of the cases before our Court will preserve from the time you have spent among us the indelible mark of a great judge whose departure will be keenly regretted.

* * *

Address by Mr Advocate-General Trabucchi, 7 October 1976

Thank you, Mr President,

In this short reply, consisting of a few recollections, reflections and a tribute to the Court I am leaving, my first thought is naturally of you.

The stages of my long life as a lawyer are measurable in decades. Last year, I completed 40 years in my Chair at Padua; today I recall my twenty years' association with the Court of Justice, five of them as counsel, eleven as a judge and four as Advocate-General. But, when I look more closely at my working life, there seems no point in trying to express its essential unity in terms of time and although, while at the Court, I continued to concern myself with civil law, I have always tried (and I hope that this will continue to be true of the Chair I occupy) to imbue the minds of the young with the ideals of Community law, whose creation, deep significance and substantial contribution to the life of Europe are all associated with this Court.

We have witnessed its birth and seen it grow as other historic developments have grown but, in this case, the architect and builders were not peoples but the men who, in this workshop, wielded the tools of law...

... to draw to a close: it is already evening and the labourer must wend his way homeward.

The Italian Government took a decision on my behalf which I dare not take myself, even though the time had come to take it. In any case, anyone who works with a will knows that he must go on to the best of his ability so long as Providence gives him the strength - even when he changes jobs. In this sense, the principles of European law can be studied with the same zeal in Italy as in Luxembourg.

On the sound principle of replacing me with a younger man, the Italian Government has appointed as my successor my colleague and friend Francesco Capotorti, who has also served as a judge of this Court. I offer him my very special good wishes.

... My parting words are addressed to all my colleagues, Judges, Advocates-General and the Registrar. As I go, I realize how much I have learnt from them and of this I am certain, my wife and I will take with us cherished memories of them and of the kind ladies who did so much to make us happy during our stay in Luxembourg.

The Advocate-General who, in the broadest sense of the words, is the amicus curiae, remains the friend of the judges at work and in their private lives. Although, Members of the Court, I dare not describe myself, in my recent capacity as your Advocate-General, as a Virgil showing Dante the way through the "forest wild" of legal principles and regulations, today I can at least say to all:

"non aspettar mio dir più nè mio cenno
libero, dritto e sano è tuo giudizio".

To the Advocates-General, as my dearest and closest colleagues, I should like, in the words of the same poet, to leave you with an expression of faith in your task:

"fatti sicur chè noi semo a buon punto
non stringer, ma rallarga ogni vigore".

Now, as we continue to look ahead, the time has come to hand over.

So I conclude with a greeting to all the officials of the Court, to this dear city whose guests we are, to the Grand Duke and his family, who have always extended the greatest courtesy to me and my wife, to the authorities of this worthy State, to the Community and to the men who, through it, represent the new Europe.

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Speech delivered by Mr Hans Kutscher, President of Chamber,
7 October 1976

More than fourteen years ago, on 18 May 1962 to be precise, at a session as solemn as that which we are attending today, our colleague André Donner made the speech of welcome in honour of Judge Robert Lecourt, who had just taken up his duties at this our Court. What a pleasant duty that was compared to the sad task which falls to me today - to deliver the speech of farewell to President Robert Lecourt, who is about to leave us.

I said "sad task"; I did not say "difficult task", because, Mr President, when one is called upon to give an account of your outstanding achievements in the service of our institution one finds no shortage of material. The speaker also has some difficulty in demonstrating a virtue which, in our deliberations, you have always shown yourself to possess to the highest degree, that of brevity. As regards another of your most admirable gifts, your unparalleled eloquence, any attempt at emulation is doomed to failure: to pay Robert Lecourt the tributes which he deserves would require his own oratorical brilliance and style.

May a modest speaker therefore take courage by beginning with a passage appearing in the speech which marked your entry to the Court. On that occasion our colleague, Mr Donner said: "We are ... you and I, the sons of ancient maritime cities: you of Rouen, I of Rotterdam. You will therefore understand me when I say that the judge is the anchor which prevents the ship of law from going adrift". Coming as I do from Hamburg, I feel I can treat the first part of that statement as applying to myself: as regards the second part, I would like to extend a little the maritime parallel which it draws.

Is not a Court of Justice comparable to a ship which, unable to lie at anchor in the harbour, is called upon each day to put to sea? Of course, the voyages made by our ship are not so spectacular as those of the great ocean-going vessels which are our political institutions. Modesty and realism call upon us to admit that its voyages are rather those of a coastal trader. If, in this simile, our continent is the written law,

which merely requires interpretation, it must be admitted that, like the coastal trader, the judge cannot carry out his task by nervously remaining close in shore. Of course, he must not go too far away, he must remain in contact with the lard, but he must also be prepared to put out into the deeper, stormier waters which represent, in nautical terms, the vast areas of law for which the texts provide no solutions and which therefore require the judge to use his own imagination constructively and faithfully, indeed to show a creative courage.

To avoid both reefs and banks and to resist the tides which threaten to engulf it, the pilot of such a ship must be experienced, wise and fearless. You, Mr President, have been such a pilot. It is largely thanks to your presidency that the motto of your former and future home, the city of Paris, "fluctuat nec mergitur" may be applied to our ship.

It was at the end of a remarkable career in your own country that you took up your duties at the Court of Justice...

... Any assessment of President Lecourt would be incomplete if, in addition to the eminent jurist, one failed to refer to the convinced European. How can we fail to see the traces of this fruitful combination in the wording of our judgments and in their spirit? From the first, the precedence of Community law and its direct applicability within the national legal systems - to mention only two of the basic principles laid down by the established case-law of the Court - were certainly in line with the most profound convictions of all its members. However, without betraying the secrecy of our deliberations, we may and must pay tribute to the impetus which you have given in this way and to which you have been able to give expression in such masterly fashion.

I must digress here in order to emphasize that your profoundly European views matured and strengthened long before your arrival at the Court. You are, in fact, a part of that generation and group of French men and women which takes a wider view of politics and which, by the end of the war if not before, had realized that only a united Europe was capable of survival and that it should be constructed to take the place of the eternal quarrels which had marked relations between the nations

of our continent. To quote a phrase recently and most aptly coined by your friend Alain Poher, President of the Senate of the French Republic, it was necessary for that generation to "define the future". The performance of your duties at the Court has enabled you, Mr President, to implement this "definition" by encouraging the development of a case-law which is genuinely supernational in both orientation and spirit.

For that case-law to be effective, it required the understanding and support of both national courts and their judges. It is largely thanks to your own initiative and foresight that, for some years now, the Court has been in permanent contact with those members of national judiciaries who are, even more often than we, required to interpret and apply Community law. Meetings and conferences organized in Luxembourg three times a year enable the members of the Court and representatives of the judiciary of each Member State to discuss the problems of Community law. Thus, under your aegis, the Court has sought informal face to face discussions with judges and lawyers. Your expectations have been realized, since the opportunities which Community law makes available to the national courts are today widely known and used.

Let me add that in this way an atmosphere has developed which, marked by a spirit of cordiality and fellowship, has none of the formality of strictly professional relationships. Members of national judiciaries have been able to establish a relationship of trust with both the members of the Court and with their colleagues in the other Member States. In this way, then, closely-knit and lasting friendships have been formed.

As a result of your own initiative and on the very eve of your departure these contacts culminated in a conference which was both judicial and academic. It was honoured by the presence of the Minister for Justice or his counterpart from each of the nine States and brought together in our building eminent representatives from all branches of the legal profession in each State: judges and senior officials of the ministries, university professors and lawyers...

... You have just finished writing a book entitled "L'Europe des Juges". In this work you have bequeathed to the Community your experience, your

hopes and your beliefs. Please allow me, Mr President, to conclude by quoting the observation with which your book ends. It expresses - although of course without the slightest intention to do so on the part of the author - the lasting credit which, in the eyes of all your friends, you have gained in the service of the Court: "The legal foundations of Europe have been laid; it will now be possible to build upon them".

* * *

Address by the President, R. Lecourt, at the Formal Hearing of 7 October 1976 on the occasion of his departure

The setting of a term to a demanding office at a not unduly advanced age may be beneficial to the institution which becomes part of one on retirement, when for 15 years it has been the vehicle for an ideal which the institution has shown to be "more real than reality", as the German philosopher has it.

As we meet in this, our last sitting together, I must thus address you first of all, my dear colleagues who, through the words of President Kutscher - whom I thank most sincerely - have with such sensitivity just renewed in one who for 9 years has presided over your deliberations a confidence which has never been wanting.

I came to the Court when it was dealing with the first disputes arising from the Treaties of Rome and I retire as it deals with the first cases stemming from the Convention on jurisdiction. In this period our colleagues from the new Member States joined us. It has thus been my privilege to be associated with a crucial stage in the life of your Court.

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The judicial landscape has certainly changed in that period.

Let us recall it to mind.

In 1962 the Treaty of Rome gave rise to the first important cases.

A year later you recognized the right of private citizens to have the Treaties applied directly in their courts and even against their own State. Thousands were to avail themselves of this remedy.

Thereafter you refused to allow the slightest barrier between it and the national courts. These courts have applied on more than 400 occasions what the Court terms "judicial co-operation".

Finally in the same period, certainly vintage years for the Community, you derived from the Treaties the basic principle that law based on the Treaties takes precedence over all national laws, even those subsequently enacted, and, despite objections which have generally been overcome, the supreme courts in our Member States were to espouse this principle.

Some years later you laid down that the matters falling within the Community sphere could not be removed from it. Numerous judgments in agricultural matters or in the external relations of the Community were to protect the Community heritage against any tendency to alienate it.

Within a few years you have thus distilled from the Treaties the principles of what has become uniform law common to nine States and 250 million citizens.

A uniform law. But for what purpose? The answer lies in fifteen years of case-law: in order to protect persons and to preserve their common future.

The protection of persons?

To begin with, the protection of the rights of workers and their families.

From the outset you have refused to allow them to lose, in the maze of unharmonized systems of social security, established or potential rights in any Member State. You have indeed refused to render the security of the worker and his relatives subject to an optional system of assistance.

Some years later you declared that the principle of equal pay for men and women should, in specific circumstances, be directly applicable.

At the same time you inferred from the principle of non-discrimination all its consequences concerning the free movement of persons.

You have crowned your protective work by developing the concepts of misuse of powers, legal certainty, the protection of legitimate expectations and you have recognized your duty to protect the rights of individuals within the Community system.

Nevertheless nothing has deflected you from maintaining the principles of the Treaty. You are unremitting in your concern that customs barriers be dismantled. You counter tax discrimination, State aids and unlawful cartels. You uphold the rules of the common agricultural policy despite their complexity and draw the legal consequences from the completion of the transitional period.

To assess this work as a whole one has only to consider: where would the Community and the Common Market be today without the principle of direct effect, which was nevertheless disputed in Van Gend en Loos; the precedence of Community law, which was disputed in the case of Costa v Enel; the free movement of goods, which is nevertheless beset with problems arising in particular from the enlargement of Article 36 of the Treaty; and finally the beneficial side-effects, for the Member States as a whole, of judgments which those States sometimes think initially give them cause for complaint?

The very firmness of your judgments have not hindered understanding, compliance and respect, despite inevitable and indeed necessary criticisms to which you at a recent conference voluntarily submitted yourselves. The judgments have acquired an authority which has been testified on many occasions by the institutions, the States and the courts as well as by legal writers as a whole.

What of the institutions? Your Court has criticized them and declared null and void measures of the Commission or regulations of the Council but both of them have none the less faithfully complied with its judgments. They have indeed gone further in that they have voluntarily incorporated in a new regulation the essence of the Court's decisions in social matters or enlarged the scope of its judgments concerning freedom of establishment.

What of the Member States? They have been penalized, 25 times in all, for failure to fulfil their obligations. They have been frustrated by your judgments in cases brought by their citizens. None the less the

States have complied with your rulings. Better still, they have - in the great majority of cases spontaneously - adapted their legislation to comply with your case-law - on the one hand they accelerated the entry into force of the value-added tax, on the other they adjusted their State monopolies and even granted to the families of migrant workers benefits reserved to their own citizens. Furthermore they have increased your powers with regard to jurisdiction and more recently in the sphere of the Community patent. Need I add that the heads of State have made a point of showing their confidence in you in many ways, either in the audiences which they have granted to you or on the occasion of the visits made by three of them - soon to be four, I am told - or by way of the contribution to the adornment of your Palace of Justice which certain States have made in the form of notable works of art.

As for the courts, consider the regard which they have for your institution, your decisions and yourselves. This is reflected each year in the two study meetings which were established as from 1968 following the successful experiment in 1965 and in the judicial study visits which have been held annually since 1969 and which afford approximately 2,500 members of national courts the opportunity of acquainting themselves personally with your Court. You have gained the same impression on the occasion of the regular visits which you have made each year since 1968 to the national courts at their invitation. Has there not just been a further demonstration of this regard at the conference held there last week of the most senior members of the judiciary from the nine Member States? Moreover the increase in requests for preliminary rulings constitutes irrefutable evidence of this, in particular when such requests, 270 in fifteen years, are submitted by courts for whom this procedure is merely optional. I may say that the fame of your Court goes beyond the boundaries of the Community as is shown in particular by its relations with the European Court of Human Rights, the Swiss Federal Court or the International Court of Justice. This explains why you have been concerned to establish, through an efficient information service and the quarterly bulletin which it distributes, close relations with the courts, bars, legal periodicals and universities of the Member States.

Finally, is it necessary to call attention to the abundance of the commentaries by legal writers, the number and quality of those who have

annotated your judgments, in order to point out that the rigour of your judgments has not harmed the standing of your Court?

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If such is your work and such the regard to which it gives rise are these simply the manifestation of a spontaneous generation? Does it not rather result from a threefold experience which you have used as your chart?

The first of these is independence. You have shown that this entails action rather than enactment. The independence is not compromised by schools of thought, economic groups or the concerns of States, despite the weakness of the system of triennial renewal which has just inflicted upon your Court a paralysis, emanating from elsewhere, from which it has hitherto been preserved: let us hope that it is temporary ...

This freedom of action leads every one of you to keep his own concerns at arm's length, so much so that if by chance he failed to do so this would certainly be brought to his notice through the collegial rules and its effects countered within an objectively motivated Community body.

Prudence is the sister of independence. It requires you to remain aloof from the forum without however ignoring the consequences of your judgments. Indeed have you not just demonstrated this when, in order to avoid the serious retroactive effects of an interpretation of the Treaty enjoined by law, the boldness of a new legal construction was suggested by prudence itself. Kierkegaard indeed foresaw the impetus underlying your decision when he referred to the "passion for the possible".

Like your predecessors under earlier presidents, those cardinal virtues have been employed in the service of a rigour which has rarely been found wanting. For the firmest structures do not withstand the continual erosion of exceptions. It is because, faithful to the Treaty, you refuse to diminish its scope and uphold its letter, objectives and spirit, that the work of the Court has acquired a value which would have been quickly lost if the Court had lost sight of its essential rôle.

A judge is not a waxwork figure in the closed world of a rigid legal system. Frigid legalism does not accord with a time fraught with perils in that it would aggravate matters by delaying the development of the Community antidote which our countries have wished to receive.

I have for 15 years witnessed a work which, one day perhaps, will prove to be historic; I have been called three times to act as your President; I have experienced the Community spirit, the hope and esteem which distinguishes your Court; I have experienced with you the same difficulties and the same joys; I have enjoyed with you the confidence of the other institutions and of all the Member States; with you I have appreciated the worth and friendship of the staff of the Court headed by the Registrar; finally I have been able to rely upon the wisdom and the faithful friendship of Professor Roger-Michel Chevallier, on the spirit of initiative and devotion of Marie-Claude Hoffmann and Christiane Weber, upon the punctual diligence of Émile Delcour and of André Bouchez: all this makes me all the more deeply conscious today of the sorrow attendant upon a departure albeit foreseen and of a debt of gratitude of whose dimensions I am fully aware.

At a point in my life when the shadows cast by the milestones of what is for convenience called a career grow a little longer each day, I cannot conceal from you as I take my leave my faith in the Community which has been entrusted to your care and which, above all the satisfactions I have derived from public life, has constituted the grand design towards which I have been proud to work together with you, a work which has just now come to an end.

* * *

Address by President R. Lecourt at the Formal Hearing of 7 October 1976 on the occasion of the assumption of office by Judge Giacinto Bosco

It was last February that Mr Capotorti, after the departure of Mr Monaco, was appointed a judge of your Court. His arrival amongst us constituted an important step in a brilliant university career which until that time had taken place mainly at Naples and at Rome. Immediately upon taking up his duties, he made apparent the breadth of his knowledge, the liveliness of his mind and the subtlety of his thinking. It now comes about, my dear colleagues, that the advantages which you derived from these qualities in preparing your judgments have been taken away from you. For he ceases to be a judge; but he becomes an Advocate-General. Hence it is that in another way you will continue to benefit from his assistance and from now on you will be able to extract the essential elements of your decisions from the weighty opinions that he will deliver to you.

Mr Giancinto Bosco, who succeeds him as a judge, is not unknown to us. Both at Rome and at Luxembourg our Court has had a number of occasions to meet him in the high offices bestowed upon him by his country.

He belongs to a great family of Southern jurists, both by birth and through his studies. Is Naples the cradle of Community law in the Peninsula? At all events it was at Santa Maria Capua Vetere that, in 1905, our new colleague was born. It was at the University of Naples that in 1925 he acquired his degree in law.

Attracted by the teaching vocation he "went up" to Rome where, from 1929, he was a lecturer in international law. He became a professor in 1932. Thereafter he graced the universities of Urbino, Florence and, again and finally, Rome, devoting himself to the disciplines of public law, in particular international law and, yet more particularly, to the law of international organizations.

... A university, diplomatic, and political career of such breadth could not fail to prepare you, my dear colleague, for fulfilling the judicial and Community functions with which you are invested today. Without doubt, your profound knowledge of European law, together with the experience which your previous functions have enabled you to acquire and with the qualities which have so often been apparent in your person, will enable you to make a decisive contribution to this Court's work of integration. You are very welcome here.

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D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 May 1976

Adriaan De Peijper, Centrafarm

Case 104/75

1. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - CONCEPT (EEC Treaty, Art. 30)

2. QUANTITATIVE RESTRICTIONS - PHARMACEUTICAL PRODUCTS - IMPORTATION - MARKETING - RESTRICTION - PROHIBITION - EXCEPTION WITHIN THE MEANING OF ARTICLE 36 OF THE EEC TREATY - CONDITIONS

1. National rules or practices which result in imports being channelled in such a way that only certain traders can effect these imports, whereas others are prevented from doing so, constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

2. National rules or practices which do restrict imports of pharmaceutical products or are capable of doing so are only compatible with the Treaty to the extent to which they are necessary for the effective protection of health and life of humans.

   National rules or practices do not fall within the exception specified in Article 36 if the health and life of humans can be as effectively protected by measures which do not restrict intra-Community trade so much.

   In particular Article 36 cannot be relied on to justify rules or practices which, even though they are beneficial, contain restrictions which are explained primarily by a concern to lighten the administration's burden or reduce public expenditure, unless, in the absence of the said rules or practices, this burden or expenditure clearly would exceed the limits of what can reasonably be required.

Where

a pharmaceutical product prepared in accordance with a uniform method of preparation and qualitative and quantitative composition is lawfully in circulation in several Member States, in the sense that, in pursuance of the national systems of legislation of these States, the requisite authorizations have been granted in relation to that product to the manufacturer or the person responsible for putting the product on the market in the Member State in question;

the fact that such authorizations have been granted in each of the Member States is made known by general notice being given by official publication or in some other way;

this product is in every respect similar to a product in respect of which the public health authorities of the Member State into which the first product has been imported already possess the documents relating to the method of preparation and also to the quantitative and qualitative composition, since these documents were produced to them previously by the manufacturer or his duly appointed importer in support of an application for authorization to place them on the market;

national rules or practices which make it possible for a manufacturer of the pharmaceutical product in question and his duly appointed representative, simply by refusing to produce the documents relating to the medicinal preparation in general or to a specific batch of that preparation, to enjoy a monopoly of the importing and marketing of the product, must be regarded as being unnecessarily restrictive and cannot therefore come within the exception specified in Article 36 of the Treaty, unless it is clearly proved that any other rules or practices would obviously be beyond the means which can be reasonably expected of an administration operating in a normal manner.

It is only if the information or documents to be produced by the manufacturer or his duly appointed importer show that there are several variants of the medicinal preparation and that the differences between these variants have a therapeutic effect that there would be any

justification for treating the variants as different medicinal preparations, for the purpose of authorizing them to be placed on the market and as regards producing the relevant documents, it being understood that the answer to the first question remains valid as regards each of the authorization procedures which have become necessary.

N o t e

In 1973 the Centrafarm undertaking purchased from a wholesale trading company established in the United Kingdom various consignments of valium tablets and imported them into the Netherlands in their original form as valium produced by the factory of the Hoffmann-La Roche concern in the United Kingdom. The tablets were then repacked by Centrafarm in packages carrying its name and the name "Diazepam" - the generic name of the preparation concerned - and delivered to several pharmacists in the Netherlands. On the basis of these facts the Public Prosecutor for the district of Rotterdam brought criminal proceedings before the Cantonal court against the managing director of Centrafarm on the ground that he had supplied medicaments imported from the United Kingdom without the authorization of the Netherlands authorities and that he was not in possession of certain documents relating to those medicaments, namely the "file of particulars" and the "records" required by the Decree on pharmaceutical preparations.

The file of particulars is a document which the importer must possess "in relation to any pharmaceutical processing of a pharmaceutical preparation which he is importing"; it must contain the composition, method of preparation and particulars of the processing of the product and must be marked as "Seen and approved" by the person who is responsible for manufacture abroad. This dossier must be "certified" by the competent authorities for the purpose of authorizing the sale of the product within the Netherlands. The records refer to each actual consignment of the product which the importer wishes to put on the market and must certify its conformity with the particulars stated in the file of particulars.

The managing director of Centrafarm does not contest the facts alleged against him but claims that it was impossible for him to comply with the

provisions at issue. He relies on the fact that the medicaments were manufactured by a British producer forming part of a Swiss concern, that they were purchased from a wholesaler established in the United Kingdom and that they were the subject of parallel importation into the Netherlands.

In essence, the national court has requested the Court of Justice to state by way of a preliminary ruling whether rules and practice of this type are contrary to Community law as constituting a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 of the Treaty and not benefiting from the exception provided by Article 36 in favour of restrictive measures justified on grounds of the protection of health and life of humans.

Putting the questions to the Court of Justice, the national court gave a precise statement of the facts of the case:

> A pharmaceutical product with a uniform method of preparation is lawfully in circulation in several Member States, and is accompanied by all the authorizations required by the laws of those States;
>
> The issue of such authorizations in each of the Member States concerned is a matter of public knowledge;
>
> That product is in all respects identical to a product for which the health authorities of the importing Member State are already in possession of documents relating to its method of preparation and qualitative and quantitative composition, those documents having previously been submitted by the manufacturer or his authorized importer in support of a request for permission to market.

The Court of Justice has been asked to rule whether in such circumstances the national authorities have adopted a measure equivalent to a quantitative restriction, prohibited by the Treaty, when they render the grant of the authorization to put a product on the market, requested by the parallel importer, subject to the submission of documents identical

to those which had already been submitted by the manufacturer or his authorized importer. The Court has ruled that national rules or practice which lead to the channelling of imports, in the sense that only certain traders may undertake them, whilst others are excluded, constitute a measure having an effect equivalent to a quantitative restriction within the meaning of Article 30 of the Treaty.

As for the reasons for prohibiting or restricting importation which may be justified on the basis of the provisions of Article 36 on the protection of health and life of humans, the Court has interpreted them as meaning that they must be necessary for the purposes of effective protection of the health and life of humans and that such protection must be ensured in the manner which least restricts intra-Community trade. The Court has ruled that in a factual situation such as that outlined in the first question, national rules or practice which permit the manufacturer of the pharmaceutical product in question and his authorized representatives to monopolize the importation and marketing of the product, merely by refusing to submit the documents relating to the medicament in general or to a specific consignment of that medicament, must be considered to be more restrictive than necessary and cannot therefore benefit from the exception contained in Article 36 of the Treaty, unless it is clearly established that any other rules or practice would clearly exceed the capabilities of a normally active administration. The Court has replied to the third question put by the national court, which introduced the concept of a difference in the composition or manufacture of the products, by ruling that it is only when it appears from the information or documents to be submitted by the manufacturer or his authorized importer that several varieties of the medicament exist and that the differences between those varieties entail a difference of therapeutic effect, that the authorities would be justified in treating those varieties as different medicaments for the purposes of the authorization to market, as far as the submission of the relevant documents is concerned, on the understanding that, for each of the necessary authorization procedures, the answer given to the second question remains valid.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

2 June 1976

Firma Kurt Kampffmeyer and Others v. The European Economic Community

Joined Cases 56 to 60/74

1. EEC PROCEDURE - NON-CONTRACTUAL LIABILITY - FINDING - IMMINENT AND FORESEEABLE DAMAGE - DAMAGE UNCERTAIN - APPLICATION TO THE COURT - ADMISSIBILITY - SUBSEQUENT CLAIMS OF THE PARTY CONCERNED - NATURE (EEC Treaty, Art. 215)

2. EEC - NON-CONTRACTUAL LIABILITY - LEGISLATIVE ACT INVOLVING A CHOICE OF POLICY - DAMAGE - INFRINGEMENT OF A SUPERIOR RULE OF LAW (EEC Treaty, Art. 215)

3. AGRICULTURE - COMMON AGRICULTURAL POLICY - OBJECTIVES - STABILIZATION OF THE MARKET - CONCEPT (EEC Treaty, Art. 39)

4. AGRICULTURE - COMMON AGRICULTURAL POLICY - OBJECTIVES - TEMPORARY PRIORITY GIVEN TO SOME OBJECTIVES - LAWFULNESS (EEC Treaty, Art. 39)

1. Article 215 of the Treaty does not prevent the Court from being asked to declare the Community liable for imminent damage foreseeable with sufficient certainty even if the damage cannot yet be precisely assessed. In the circumstances of the case the subsequent claims of the parties concerned that the Community be ordered to pay the specific amounts which were successively amended cannot be regarded as constituting an amendment of the application or as fresh issues.

2. Where the matter deals with a legislative act involving choices of economic policy, there is no liability on the part of the Community for damage which individuals may have suffered by reason of this act, bearing in mind the provisions of Article 215, second paragraph, of the Treaty, unless there is a sufficiently flagrant infringement of a superior rule of law protecting the individual.

3. The concept of stabilization of the markets cannot cover the maintenance at all costs of positions already established under previous market conditions.

4. In the context of the common agricultural policy the institutions may temporarily give priority to some of the objectives of Article 39 over other objectives referred to therein.

N o t e

Five German cereal meal producers have brought an action against the European Economic Community for damages pursuant to the second paragraph of Article 215 of the EEC Treaty.

The applicants claim to have been adversely affected by the Community rules on prices and aids in the agricultural sector, particularly in respect of durum wheat. Whereas production of common wheat in the Community shows a surplus, there is generally a shortage of durum wheat and moreover production is localized in certain areas of France and Italy. Because of their greater proximity to production areas, French and Italian durum wheat mills can supply 80% of their needs from the Community market. German cereal meal producers are in practice obliged to purchase their total requirement of durum wheat in third countries at the threshold price or the world market price, whereas their French competitors can satisfy their requirements largely by the purchase of home-grown wheat at the intervention price or at a slightly higher level. The damage alleged by the German applicants lies in the fact that the French meal producers are tending to oust their German competitors from the German market in durum wheat meal and are compelling them, by means of dumping practices, to sell their German meal at a loss in order not to suffer even greater losses in their portion of the market.

By applications submitted in July 1974 the applicant undertakings sought to obtain a declaration that the Community was obliged to compensate them for the damage which they suffered during the 1974/75 cereal marketing year by reason of the rules on prices and aids relating to durum wheat contained in the various regulations adopted in 1974 by the Council.

By statements submitted in October 1974 the defendants, the Council and the Commission, raised an objection of inadmissibility on the ground that the applications, which were submitted before the beginning of the 1974/75 cereal marketing year, attempted to establish the Community's

liability in respect of possible damage, whereas Community law admits of an action to establish liability on the part of the Community only in respect of compensation for presently existing damage.

The Court rejected this objection of inadmissibility, stating that the legal systems in force in most if not all Member States recognize an action for a declaration of liability based upon future damage which is sufficiently certain. Since the damage which might result from the factual situation and the regulations was imminent the applicants could reserve the right to specify later the amount of any such damage, and the subsequent conclusions of the applicants that the Community be ordered to pay them the amounts specified and subsequently amended cannot be regarded as constituting a modification of the application or as fresh issues.

As regards the substance of the case the Court had to examine whether the provisions adopted for the 1974/75 cereal marketing year were of such a nature as to aggravate the disadvantages suffered by the German cereal meal producers and whether the institutions of the Community were, pursuant to the fundamental principle of equality of treatment of partners in the Common Market, under a duty to reduce the disadvantage suffered by German and Benelux cereal meal producers, either by reducing the aids provided for, thereby eliminating their influence on price levels for durum wheat harvested in France, or by compensating for the effect of that influence by [illegible] the threshold price so as to bring it closer to the intervention price. The Court has ruled that this case involves a legislative activity, involving choices of economic policy (to ensure the stability of the market by encouraging the cultivation of durum wheat, which is in short supply) and that the Community could be liable only in the event of a sufficiently flagrant infringement of a superior rule of law protecting the individual, which is not the case here.

Pursuing this line of argument, the Court has examined whether, in elaborating its policy on aid, the Council regulation did not wrongfully handicap German cereal meal producers in relation to their French competitors. When the Council adopted the regulation the 1974/75 marketing year had not

begun and at that time the reduction of the threshold price in relation to the intervention price could only be of academic interest, since the level of prices on the world market was considerably in excess of that provided for by the Community rules and in these circumstances the institutions cannot be blamed for not having reduced the difference between the two prices save to the extent adopted.

Nor can they be blamed for not adopting possible remedies suggested by the applicants, such as a refund to German cereal meal producers of the import levy on durum wheat coming from third countries. Indeed, in a year as exceptional as 1974/75 it would not have been wise to experiment with measures so difficult to implement.

It could not therefore be said that there was a sufficiently flagrant infringement of the rules and principles of the Treaty on which the applications were based and the Court has dismissed them and ordered each party to bear its own costs.

* * *

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

2 June 1976

Firma Milch- Fett- und Eier-Kontor GmbH v Hauptzollamt Hamburg-Jonas

Case 125/75

1. AGRICULTURE - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - REGULATION No. 1041/67, ARTICLE 4 (1) - GENERAL APPLICATION

2. AGRICULTURE - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - VARIATION - GRANT - CONDITIONS - REGULATION No. 1041/67, ARTICLE 4 - INTERPRETATION

3. AGRICULTURE - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - GRANT - CONDITIONS - MARKET OF DESTINATION - ARRIVAL OF THE GOODS - PROOF - OBJECTIVE CRITERIA - POWERS OF MEMBER STATES (Regulation No. 1041/67, Art. 4)

1. Article 4 (1) of Regulation No. 1041/67 is a provision of general application and applies in all cases where there is a refund, even if the refund has been varied according to the destination.

2. Article 4 of Regulation No. 1041/67 must be interpreted in conformity with Article 6 of Regulation No. 876/68 and, where the refund is varied, means that the goods must have been given customs clearance and put into free circulation at the destination.

3. Only objective criteria can be taken into account in answering the question whether goods have reached the market at their destination. The Member States - that is to say the agency of each Member State entrusted with paying the export refunds - have been lawfully authorized to require proof that the product in question has been imported into a third country.

N o t e

In 1970 the plaintiff in the main action, Firma Milch- Fett- und Eier-Kontor, concluded a pooling agreement for the export of German intervention butter.

On the basis of that agreement it sold 3,000 metric tons of butter to a Belgian company (which was a party to the agreement) stating - at the time of confirmation of the sale - that the destination was Morocco. That butter was resold to another Belgian company (also a party to the agreement), to be delivered either at Tangier or Casablanca. This second Belgian purchaser undertook to deliver the consignment to Danzig to a Czechoslovakian company, which in fact took place. In respect of that exportation the defendant in the main action, the customs office at Hamburg-Jonas, paid the basic amount of the refund applicable for all third countries, whereas the plaintiff in the main action had obtained an export licence, fixing the refund in advance, for Morocco, Algeria and Tunisia, which were destinations carrying a higher rate of refund. The many adventures befalling this butter have led the Court of Justice to interpret the Community regulations on detailed rules for the application of export refunds.

The Court has ruled that in the case of a variation of the refund, the goods must have been cleared through customs and released into free circulation at their destination and that the question whether the goods have reached the market in the country of destination may be answered only on the basis of objective criteria, so that it is of little importance to inquire whether the exporter who submitted the request did or did not know, at the given date, that the goods would finally be shipped to another country.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 June 1976

EMI Records Limited v CBS United Kingdom Limited

Case 51/75

1. INDUSTRIAL PROPERTY - PROTECTION - TRADE-MARK RIGHT - EXERCISE - PROPRIETOR OF A MARK IN ALL THE MEMBER STATES OF THE COMMUNITY - SIMILAR PRODUCTS BEARING THE SAME MARK AND COMING FROM A THIRD COUNTRY - IMPORTATION INTO THE COMMON MARKET AND MARKETING THEREIN - PREVENTION - CONFORMITY WITH THE PROVISIONS OF THE TREATY (EEC Treaty, Art. 9 (2), Art. 10 (1), Art. 36 and Art. 110)

2. COMPETITION - RESTRICTIVE AGREEMENTS - TRADE-MARK RIGHT - EXERCISE - PROHIBITION (EEC Treaty, Art. 85 (1))

3. COMPETITION - RESTRICTIVE AGREEMENTS - TRADERS WITHIN THE COMMON MARKET AND IN THIRD COUNTRIES - TRADE-MARK RIGHT - EXERCISE - PRODUCTS ORIGINATING IN THIRD COUNTRIES SIMILAR TO THOSE PROTECTED BY A MARK WITHIN THE COMMUNITY - OFFER - REDUCTION - PROHIBITION (EEC Treaty, Art. 85 (1))

4. COMPETITION - RESTRICTIVE AGREEMENTS - TERMINATION OF VALIDITY - SUBSEQUENT EFFECTS - PROHIBITION - APPLICATION - LIMITS - NATIONAL TRADE-MARK RIGHTS - EXERCISE (EEC Treaty, Art. 85 (1))

5. COMPETITION - DOMINANT POSITION ON THE MARKET - TRADE-MARK RIGHT - EXERCISE - SIMILAR PRODUCTS COMING FROM A THIRD COUNTRY UNDER THE SAME MARK - DISTRIBUTION WITHIN THE COMMON MARKET - PREVENTION - ABUSE OF A DOMINANT POSITION - ABSENCE (EEC Treaty, Art. 86)

6. INDUSTRIAL PROPERTY - PROTECTION - TRADE-MARK RIGHT - EXERCISE - PROPRIETOR OF A MARK IN THE MEMBER STATES - POWER TO PREVENT THE EXERCISE BY A THIRD PARTY OF THE SAME TRADE-MARK OWNED IN A THIRD COUNTRY - OBLITERATION OF THE MARK ON THE PRODUCTS CONCERNED FOR THE PURPOSES OF EXPORTS TO THE COMMUNITY - AFFIXING OF A DIFFERENT MARK - PERMISSIBLE CONSEQUENCES.

1. Neither the rules of the Treaty on the free movement of goods nor those on the putting into free circulation of products coming from third countries nor, finally, the principles governing the common commercial policy, prohibit the proprietor of a mark in all the Member States of the Community from exercising his right in order to prevent the importation of similar products bearing the same mark and coming from a third country.

   Nor may the provisions of the Treaty on the free movement of goods be invoked for the purpose of prohibiting the proprietor of the mark in the territories of the Member States from exercising his right in order to prevent another proprietor of the same mark in a third country from manufacturing and marketing his products within the Community, either himself or through his subsidiaries established in the Community.

2. A trade-mark right, as a legal entity, does not possess those elements of contract or concerted practice referred to in Article 85 (1).

   Nevertheless the exercise of that right might fall within the ambit of the Treaty if it were to manifest itself as the subject, the means, or the consequence of a restrictive practice.

3. A restrictive agreement between traders within the Common Market and competitors in third countries that would bring about an isolation of the Common Market as a whole which, in the territory of the Community, would reduce the supply of products originating in third countries and similar to those protected by a mark within the Community, might be of such a nature as to affect adversely the conditions of competition within the Common Market. In particular if the proprietor of the mark in dispute in the third country has within the Community various subsidiaries established in different Member States which are in a position to market the products at issue within the Common Market such isolation may affect trade between Member States.

4. For Article 85 to apply to cases of agreements which are no longer in force it is sufficient that such agreements continue to produce their effects after they have formally ceased to be in force.

An agreement is only regarded as continuing to produce its effects if from the behaviour of the persons concerned there may be inferred the existence of elements of concerted practice and of co-ordination peculiar to the agreement and producing the same result as that envisaged by the agreement.

This is not so when the said effects do not exceed those flowing from the mere exercise of the national trade-mark rights. And in particular when a foreign trader can obtain access to the Common Market without availing himself of the mark in dispute.

5. Although the trade-mark right confers upon its proprietor a special position within the protected territory this, however, does not imply the existence of a dominant position within the meaning of Article 86, in particular where several undertakings whose economic strength is comparable to that of a proprietor of the mark operate in the market for the products in question and are in a position to compete with the said proprietor.

   Furthermore, in so far as the exercise of a trade-mark right is intended to prevent the importation into the protected territory of products bearing an identical mark, it does not constitute an abuse of a dominant position within the meaning of Article 86 of the Treaty.

6. In so far as the proprietor of a mark in the Member States of the Community may prevent the sale or the manufacture by a third party within the Community of products bearing the same mark held in a third country, the requirement that such third party must, for the purpose of his exports to the Community, obliterate the mark on the products concerned and perhaps apply a different mark forms part of the permissible consequences of the protection which the national laws of each Member State afford to the proprietor of the mark against the importation of products from third countries bearing a similar or identical mark.

N o t e

Columbia records are well known but what is generally unknown is the fact that a record bearing that trade-mark may have been produced either by

the company EMI or by CBS. The case has its roots in 1887 when a company was set up in the United States specializing in the production and utilization of "graphophones". That company became the owner of the trade-mark Columbia which, in 1917, it assigned to the British subsidiary which it had created in several countries, including those which now make up the Community. That American company, which became CBS, nevertheless reserved that trade-mark for the United States and for other third countries.

The trade-mark Columbia is therefore at present held in a certain number of countries composing the Member States of the Communities by the British company "EMI Records Limited" and in other countries, including the United States, by the American company "CBS Inc." which has a subsidiary in each of the Member States here concerned, the United Kingdom, Germany and Denmark.

The proceedings in the main action arose as a result of sales within the Community, through the European subsidiaries of CBS, of products bearing the trade-mark Columbia, manufactured in the United States. This led EMI to have recourse to the national courts, requesting that CBS be ordered to cease production, importation and sale within the Community of records bearing the trade-mark "Columbia".

CBS claimed that the principles of the free movement of goods and free competition authorize it to undertake such importations.

The national courts seised of the case, that is to say the High Court of Justice, London, the Landgericht Köln and the Maritime and Commercial Court, Copenhagen, put to the Court of Justice in Luxembourg the question whether the proprietor of a mark in a Member State of the Community may exercise his exclusive right to prevent the importation or marketing in that Member State of products bearing the same mark coming from a third country or manufactured in the Community by a subsidiary of the proprietor of the mark in that country. As regards the free movement of goods, the Court emphasizes that Articles 30 and 36 of the Treaty provide that quantitative restrictions and measures having equivalent effect shall be prohibited between Member States and that restrictions justified on grounds of the protection of industrial and commercial property shall not constitute a disguised restriction on trade between Member States. Consequently, the

exercise of a trade-mark right in order to prevent the marketing of products coming from a third country under an identical mark does not affect the free movement of goods between Member States and does not come under the prohibitions set out in the Treaty.

As regards the provisions of the Treaty on Community commercial policy it is nowhere provided that the Member States shall extend to trade with third countries the principles governing the free movement of goods between Member States. The measures agreed by the Community in certain international agreements, such as the ACP -EEC convention of Lomé or the agreements with Sweden and Switzerland, cannot be relied upon by other third countries.

With regard to the rules on competition it must be emphasized that the exercise of a trade-mark right cannot fall within the ambit of the prohibitions contained in the Treaty unless it is the subject, the means or the consequence of an agreement or a restrictive practice. But it appears from the file that the foreign trader can obtain access to the Common Market without availing himself of the mark in dispute and, in those circumstances, it appears that the requirement that the proprietor of the identical mark in a third country must, for the purposes of his exports to the protected market, obliterate that mark forms part of the permissible consequences flowing from the protection of the mark.

The Court has ruled:

1. The principles of Community law and the provisions on the free movement of goods and on competition do not prohibit the proprietor of the same mark in all the Member States of the Community from exercising his trade-mark rights, recognized by the national laws of each Member State, in order to prevent the sale or manufacture in the Community by a third party of products bearing the same mark, which is owned in a third country, provided that the exercise of the said right does not manifest itself as the result of an agreement or of concerted practices which have as their object or effect the isolation or partitioning of the Common Market.

2. In so far as that condition is fulfilled the requirement that such third party must, for the purposes of his exports to the Community, obliterate

the mark on the products concerned and perhaps apply a different mark forms part of the permissible consequences of the protection which the national laws of each Member State afford to the proprietor of the mark against the importation of products from third countries bearing a similar or identical mark.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 June 1976

CNTA v Commission of the European Communities

Case 74/74

1. EEC - NON-CONTRACTUAL LIABILITY - MONETARY MEASURES - COMPENSATORY AMOUNTS - REVOCATION - COMPENSATION - DAMAGE TO PARTY CONCERNED - MAKING GOOD - CONDITIONS - RE-EXPOSURE TO AND MATERIALIZATION OF AN EXCHANGE RISK - ABSENCE (EEC Treaty, Art. 215; Regulation No. 189/72)

2. EEC - NON-CONTRACTUAL LIABILITY - COMPENSATION - DAMAGE TO PARTY CONCERNED - MAKING GOOD - BURDEN OF PROOF

1. An applicant cannot be regarded as having suffered loss if he was not re-exposed to any exchange risk or if, although it existed, such a risk did not materialize. In consequence, where the applicant has not proved that he suffered a loss which the Commission is obliged to make good, the application must be dismissed.

2. It is incumbent upon the applicant to prove that it was the waiver of interest on arrears which in fact enabled him to obtain payment in French francs.

N o t e

This judgment is concerned with a claim for damages and supplements an "interlocutory judgment" of the Court of 14 May 1975 in which it:

1. Ruled that the Commission of the European Communities must compensate the CNTA for the loss suffered by reason of Regulation No. 189/72 in the execution of export transactions for which the refunds had been fixed by the certificates of 6 January 1972.

2. Ordered the parties to produce to the Court within 6 months figures of the amount of the compensation arrived at by agreement between the parties.

3. In the absence of agreement, ordered the parties to produce to the Court their conclusions with detailed figures.

It was clear from the judgment of 14 May 1975 that the loss to be compensated was that which the unforeseeable abolition of the compensatory amounts allegedly caused the applicant due to the fact that he was re-exposed to an exchange risk, against which he might legitimately have expected to be protected by the system of those amounts, in connexion with a transaction which was irrevocably set in motion. Under the contract the purchaser had the choice between payment in dollars and payment in French francs, involving a risk that the dollar might fall in value. In the end all payments were made in Franch francs, and therefore the exchange risk did not materialize.

The applicant further claimed that payment in respect of the transactions was made in French francs merely because he had, in return, waived his right to penal interest. Since conclusive proof of a casual link between the waiver of the penal interest and the purchaser's choice of payment in French francs was not produced, the Court has rejected the application.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 June 1976

Giordano Frecassetti v Amministrazione delle Finanze dello Stato

Case 113/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - LEVY - IMPOSITION - DATE (Article 17 of Regulation No. 19 of the Council) (Article 15 of Regulation No. 120/67/EEC of the Council)

2. CUSTOMS DUTY TO BE APPLIED TO GOODS DECLARED FOR INTERNAL CONSUMPTION - RATE - DETERMINATION - DATE - RECOMMENDATION OF THE COMMISSION OF 25 MAY 1962 - APPLICATION TO LEVIES - NOT PERMISSIBLE

1. The "day of importation" referred to in Article 17 of Regulation No. 19 and in Article 15 of Regulation No. 120/67/EEC is the day on which the import declaration for the goods is accepted by the customs authorities.

2. The Recommendation of the Commission of 25 May 1962 concerning the date to be taken into account in determining the rate of customs duty to be applied to goods declared for internal consumption cannot apply to levies.

N o t e

The Tribunale di Genova has requested the Court to interpret the concept of "the day of importation" for the purpose of determining the levy applicable to cereals.

The facts are as follows:

In the period from May 1967 to March 1968 the plaintiff in the main action imported various consignments of maize. Declarations were submitted in respect of these consignments which were accepted by the customs authorities in Genoa.

Since large quantities were involved customs clearance was effected gradually over a period of time. Since, meanwhile, Community levies had

undergone extreme variations, the plaintiff in the main action, in his applications for clearance, requested and obtained the application of the rate of levy in force on the date of each request, at which time it was more favourable than that in force at the date of acceptance of the import declaration or the submission of the preceding request for clearance.

Following a check, the defendant in the main action, the Italian State Finance Administration, asked the importer to pay a further levy of some 3 million lire, which assessment was contested by Frecassetti.

The Court has been requested to interpret the terms of the Community rules which provide that "The levy to be charged shall be that applicable on the day of importation", to which it has replied with a ruling that the day of importation is that on which the import declaration concerning the goods is accepted by the customs authorities.

A second question from the national court asked whether the Recommendation of the EEC Commission addressed to Member States on 25 May 1962, which is concerned with customs duties, can also apply on the subject of Community levies. It is interesting to note that this is the first time that the Court has been requested to give a preliminary ruling on the interpretation of a recommendation. On the second point the Court has ruled that the recommendation of the Commission concerning the date to be taken into consideration for the determination of the rate of customs duty applicable to goods declared to be intended for consumption may not apply to levies.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 June 1976

John Mills v European Investment Bank

Case 110/75

1. OFFICIALS - DISPUTES WITH THE EUROPEAN INVESTMENT BANK - JURISDICTION OF THE COURT (EEC Treaty, Art. 179)

2. OFFICIALS - DISPUTES WITH THE EUROPEAN INVESTMENT BANK - NATURE OF THE RELATIONSHIP BETWEEN EMPLOYER AND EMPLOYEE

3. OFFICIALS - DISPUTES WITH THE EUROPEAN INVESTMENT BANK - CONTRACT OF EMPLOYMENT - TERMINATION - MATERIAL AND NON-MATERIAL DAMAGE

4. OFFICIALS - DISPUTES WITH THE EUROPEAN INVESTMENT BANK - CONTRACT OF EMPLOYMENT - TERMINATION - LIMITATION.

1. By its use of the words "any dispute between the Community and its servants" Article 179 is not restricted exclusively to the institutions of the Community and their staff but also includes the Bank as a Community institution established and with legal personality conferred by the Treaty. Under this article the Court thus has jurisdiction in any dispute between the Bank and its servants.

2. The system adopted for the relations between the Bank and its employees is contractual. The contract may be repudiated and terminated by either of the parties on the conditions laid down both in the Regulations and in the contract itself.

3. If the contract is terminated contrary to the provisions of the individual contract or of the Staff Regulations of the European Investment Bank which are deemed to be an integral part thereof the party having illegally terminated the contract must be ordered to compensate the other party for the material and non-material damage occasioned to the latter by such illegality.

4. Both the provisions of the contract and the general principles of the law of master and servant impose limits on the intention of the

parties. Termination of a contract which exceeds those limits may be void and it will be for the court having jurisdiction, in this case the Court of Justice, to make a declaration to that effect.

N o t e

This is a "staff" case which raises general principles of law. For this reason the case was assigned to the full Court and not to a Chamber, the latter being the usual procedure in cases arising from the application of the Staff Regulations.

Mr Mills is an official of the European Investment Bank. The Staff Regulations of the Bank, for which provision is made in a Protocol joined to the Treaty, lay down in Article 13 that "the officials and other employees of the Bank shall be under the authority of the President. They shall be engaged and discharged by him". Does the Court of Justice have jurisdiction to hear disputes between the Bank and its officials? The Court has replied in the affirmative.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 June 1976

Terrapin v Terranova

Case 119/75

1. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - RIGHTS - PROTECTION - SCOPE - EXISTENCE OF RIGHTS - EXERCISE OF RIGHTS - PROHIBITIONS IN THE TREATY - EXCEPTIONS TO THE PRINCIPLE OF FREE MOVEMENT - LIMITATIONS (EEC Treaty, Art. 36)

2. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - RIGHTS - TRADE-MARK - COMMERCIAL NAME - PROTECTION - PRODUCTS OF AN UNDERTAKING OF A MEMBER STATE BEARING, BY VIRTUE OF THE LEGISLATION OF THAT STATE, A NAME GIVING RISE TO CONFUSION WITH THE TRADE-MARK AND NAME OF AN UNDERTAKING OF ANOTHER MEMBER STATE - IMPORTATION - OPPOSITION - ADMISSIBILITY - CONDITIONS (EEC Treaty, Art. 36)

3. FREE MOVEMENT OF GOODS - INDUSTRIAL AND COMMERCIAL PROPERTY - RIGHTS - EXERCISE - SIMILARITY OF PRODUCTS ORIGINATING IN DIFFERENT MEMBER STATES - RISK OF CONFUSION - ASSESSMENT - JURISDICTION OF THE NATIONAL COURT - APPLICATION OF COMMUNITY LAW (EEC Treaty, Art. 36)

1. It is clear from Article 36 of the EEC Treaty, in particular the second sentence, as well as from the context, that whilst the Treaty does not affect the existence of rights recognized by the legislation of a Member State in matters of industrial and commercial property, yet the exercise of those rights may nevertheless, depending on the circumstances, be restricted by the prohibitions in the Treaty. Inasmuch as it provides an exception to one of the fundamental principles of the Common Market, Article 36 in fact admits exceptions to the free movement of goods only to the extent to which such exceptions are justified for the purpose of safeguarding rights which constitute the specific subject-matter of that property.

It follows from the above that the proprietor of an industrial or commercial property right protected by the law of a Member State cannot rely on that law to prevent the importation of a product which has lawfully been marketed in another Member State by the proprietor himself or with his consent. It is the same when the right relied on is the result of the subdivision, either by voluntary act or as a result of public constraint, of a trade-mark which originally belonged to one and the same proprietor.

Even where the rights in question belong to different proprietors the protection given to industrial and commercial property by national law may not be relied on when the exercise of those rights is the purpose, the means or the result of an agreement prohibited by the Treaty.

2. It is compatible with the provisions of the EEC Treaty relating to the free movement of goods for an undertaking established in a Member State, by virtue of a right to a trade-mark and a right to a commercial name which are protected by the legislation of that State, to prevent the importation of products of an undertaking established in another Member State and bearing by virtue of the legislation of that State a name giving rise to confusion with the trade-mark and commercial name of the first undertaking, provided that there are no agreements restricting competition and no legal or economic ties between the undertakings and that their respective rights have arisen independently of one another.

3. An allegation by one undertaking as to the similarity of products originating in different Member States and the risk of confusion of trade-marks or commercial names legally protected in these States may perhaps involve the application of Community law with regard in particular to the second sentence of Article 36 of the Treaty. It is for the court of first instance, after considering the similarity of the products and the risk of confusion, to enquire further in the context of this last provision whether the exercise in a particular case of industrial and commercial property rights may or may not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

N o t e

The German Terranova produces and distributes building materials under its trade-mark. In the trade-mark register the object of the industrial undertaking is given as: "Manufacture of dry plaster, construction work and trade in building materials".

The Terrapin company, which has its registered office in the United Kingdom, produces and distributes prefabricated two-storey houses under the trade-mark Terrapin.

In the Federal Republic of Germany Terrapin carries on business activities itself and through its subsidiary company Terrapin-Systembau, which has its registered office in Cologne. In 1961 Terrapin applied to have the trade-mark consisting of the word "Terrapin" registered at the German Patents Office; the application was accepted.

By an order of 3 February 1967, given on an application by Terranova, the Federal Patents Court forbade registration of the trade-mark "Terrapin" on the ground that a risk of confusion existed.

After lengthy proceedings (lasting for approximately nine years) the action came before the Bundesgerichtshof which, by order of 31 October 1975, referred the following question to the Court of Justice at Luxembourg for a preliminary ruling:

> "Is it compatible with the provisions relating to the free movement of goods (Articles 30 and 36 of the EEC Treaty) that an undertaking established in Member State A, by using its commercial name and trade-mark rights existing there, should prevent the import of similar goods of an undertaking established in Member State B if these goods have been lawfully given a distinguishing name which may be confused with the commercial name and trade-mark which are protected in State A for the undertaking established there, if there are no relations between the two undertakings, if their national trade-mark rights arose autonomously and independently

of one another (no common origin) and at the present time there exist between the undertakings in question no relationship of economic or legal dependance".

The Bundesgerichtshof considered that the court of second instance rightly found a similarity between the products of the two parties and a risk of confusion between the names in question so that the Court is not called upon to make a ruling on those points, as no question concerning them has been referred to it.

Furthermore, in the view of the Court it is for the court dealing with the substance of the case to consider, within the context of Article 36 of the Treaty, whether or not the exercise, in a particular case, of industrial and commercial property rights may constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. However, Article 36 admits derogations from the free movement of goods to the extent to which they are justified for the purpose of safeguarding rights which constitute the specific subject-matter of that property. It follows that the holder of an industrial or commercial property right which is protected by the legislation of a Member State cannot rely on that legislation in order to oppose the importation of a product which has lawfully been put on the market of another Member State by the holder himself or with his consent. The same applies where the right relied upon is the result of the splitting up, either voluntary or through a measure of constraint adopted by a public authority, of a trade-mark right which belonged originally to a single holder. A reference must be made on this point to the case-law of the Court as laid down in its judgment of 4 July 1974 in Case 192/73 (Van Zuylen Freres v Hag AG [1974] ECR 731).

This reasoning also applied where the rights in question belong to different holders: protection cannot be claimed where the exercise of those rights forms the subject, the means of performance or the consequence of an agreement prohibited by the Treaty.

On the other hand, under Community law as it stands at present, an industrial and commercial property right which is acquired lawfully in a Member State may be legitimately put forward under Article 36 in order to prevent the importation of products which are marketed under a name which

gives rise to confusion, where the rights in question have been established by spearate and independent holders under different national legislative systems; if it were otherwise the specific subject-matter of the industrial and commercial property rights would be adversely affected. Any improper exercise of such rights which would be likely to preserve or establish an artificial partitioning of the market must naturally be prevented.

In its answer to the question submitted to it the Court has ruled that it is compatible with the provisions of the EEC Treaty relating to the free movement of goods for an undertaking established in one Member State to prevent, by virtue of its rights to a trade-mark and a commercial name, protected by the legislation of that State, the importation of the goods of an undertaking established in another Member State which are produced, by virtue of the legislation of that State, under a name which may give rise to confusion with the trade-mark and commercial name of the former undertaking, provided that there exist between the undertakings in question no agreement to restrict competition and no relationship of economic or legal dependence and that their respective rights have arisen independently of one another.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 June 1976

Bobie Getränkevertrieb v Hauptzollamt Aachen-Nord

Case 127/75

1. INTERNAL TAXATION - PRODUCTS OF OTHER MEMBER STATES - TAXATION - SYSTEM - DIFFERENCE COMPARED WITH THE ONE USED FOR THE TAXATION OF SIMILAR DOMESTIC PRODUCTS - DISCRIMINATION AGAINST IMPORTED PRODUCTS - PROHIBITION (EEC Treaty, first paragraph of Article 95)

2. INTERNAL TAXATION - PRODUCTS OF OTHER MEMBER STATES - TAXATION - SYSTEM - CHOICE - COMPETENCE OF THE MEMBER STATES - RESTRICTION THEREOF BY THE PROHIBITION OF DISCRIMINATION WITHIN THE MEANING OF THE FIRST PARAGRAPH OF ARTICLE 95 - ABSENCE

3. INTERNAL TAXATION - PRODUCTS OF OTHER MEMBER STATES - TAXATION - SYSTEM - CHOICE - GRADUATED TAX - APPLICATION TO PRODUCTION - PERIOD OF REFERENCE FIXED - LIMITS OF THE FIRST PARAGRAPH OF ARTICLE 95

1. The levying by a Member State of a tax on a product imported from another Member State in accordance with a method of calculation or rules which differ from those used for the taxation of the similar domestic product, for example a flat-rate amount in one case and a graduated amount in another, would be incompatible with the first paragraph of Article 95 of the EEC Treaty if the latter product were subject, even if only in certain cases, by reason of graduated taxation, to a charge to tax lower then that on the imported product.

2. The first paragraph of Article 95 does not restrict the freedom of each Member State to establish the system of taxation which it considers the most suitable in relation to each product provided that the imported product is not subject to a charge to tax higher than that on the similar domestic product.

3. If a Member State has elected to apply to home-produced beer a graduated tax calculated on the basis of the quantity which each brewery

produces in one year, the first paragraph of Article 95 is only fully complied with if the foreign beer, also taxed on the basis of the quantities produced by each brewery in one year, is also taxed at the same or a lower rate.

N o t e

The Finanzgericht Düsseldorf has requested the Court of Justice to give a preliminary ruling on the interpretation of Article 95 of the EEC Treaty relating to the application of a tax on beer imported into the Federal Republic of Germany and coming from other Member States. In 1968 and 1969 imports of ordinary beer into Germany were subject to a flat-rate tax of 14.40 DM per hectolitre, whilst production of home-produced ordinary beer is subject to a graduated tax which rises from 12 DM per hectolitre on the first 2,000 hectolitres per year to 15 DM per hectolitre on quantities exceeding 120,000 hectolitres per year.

The first paragraph of Article 95 of the EEC Treaty provides that Member States shall not impose directly or indirectly on imported products taxation in excess of that imposed on similar domestic products.

The Court has ruled that:

1. The levying by a Member State of a tax on a product imported from another Member State in accordance with a method of calculation or rules which differ from those used for the taxation of the similar domestic product, for example a flat-rate amount in one case and a graduated amount in another, would be incompatible with the first paragraph of Article 95 of the EEC Treaty if the latter product were subject, even if only in certain cases, by reason of graduated taxation, to a charge to tax lower than that on the imported product;

2. To extend the system of graduated rates of tax laid down for home-produced beer to beer imported into a Member State by applying those rates to the quantity of beer produced during one year by each brewery is incompatible with the first paragraph of Article 95 in so far as beer coming from a brewery of another Member State during one year

bears a higher tax than that levied on an equivalent quantity of beer produced by a domestic brewery during the same period;

3. If therefore a Member State has elected to apply to home-produced beer a graduated tax calculated on the basis of the quantity which each brewery produces in one year, the first paragraph of Article 95 is only fully complied with if the foreign beer is also taxed at a rate, the same or lower, applied to the quantities of beer produced by each brewery during the period of one year.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 July 1976

Lynne Watson and Alessandro Belmann

Case 118/75

1. FREE MOVEMENT OF PERSONS AND SERVICES - COMMUNITY LAW - FUNDAMENTAL PRINCIPLE - PRECEDENCE OVER NATIONAL LAW - INDIVIDUAL RIGHTS - PROTECTION BY THE NATIONAL COURTS (EEC Treaty, Arts. 48 to 66)

2. FREE MOVEMENT OF PERSONS - NATIONAL OF A MEMBER STATE - MOVEMENT INTO ANOTHER MEMBER STATE AND STAY IN THAT STATE - ADMINISTRATIVE FORMALITIES - ACCEPTABILITY - CONDITIONS - FAILURE TO OBSERVE SUCH FORMALITIES - PENALTIES - LIMITS (EEC Treaty, Art. 7, Art. 48)

1. Articles 48 to 66 of the Treaty and the measures adopted by the Community in application thereof implement a fundamental principle of the Treaty, confer on persons whom they concern individual rights which the national courts must protect and take precedence over any national rule which might conflict with them.

2. National regulations which require nationals of other Member States who benefit from the provisions of Article 48 to 66 of the EEC Treaty to report to the authorities of that State and prescribe that residents who provide accommodation for foreign nationals must inform the said authorities of the identity of such foreign nationals are in principle compatible with the provisions in question provided, first, that the period fixed fro the discharge of the said obligations is reasonable and, secondly, that the penalties attaching to a failure to discharge them are not disproportionate to the gravity of the offence and do not include deportation.

   In so far as such rules do not entail restrictions on freedom of movement for persons they do not constitute discrimination prohibited under Article 7 of the Treaty.

N o t e

The Court of Justice was asked by the Pretura di Milano to give a preliminary ruling on the Community rules concerning freedom of movement for workers and their effect on the internal legislation of the Member States.

The question in this instance concerned certain provisions of Italian legislation on public security which require a foreign national to report to the authorities within three days of his entry into the territory of the State and to make a declaration of residence. Further, any person who provides board and lodging for a foreign national, even his own kith and kin, is required to inform the public security authority of that fact within 24 hours. Failure to discharge these obligations on the part of the foreign national may result in a maximum of three months' imprisonment or a maximum fine of 80,000 lire and, in addition, possible deportation from Italian territory.

Any person who provides board and lodging for a foreign national or a stateless person and fails to observe the above-mentioned provisions is liable to a maximum fine of 240,000 lire and a maximum of six months' imprisonment.

In the context of criminal proceedings against a British subject who had gone to Italy for a stay of several months and an Italian national who gave her accommodation, the Pretura di Milano asked the Court of Justice whether the Italian regulations were contrary to the provisions of Article 7 and Articles 48 to 66 of the Treaty on the ground that they constitute discrimination based on nationality and a restriction on freedom of movement for persons within the Community. The Pretura also asks whether the above-mentioned Community rules constitute fundamental principles which create individual rights and take precedence over national rules to the contrary.

The Court gave the following ruling on these questions:

1. Articles 48 to 66 of the Treaty (free movement of workers and services) and the measures adopted by the Community in

application thereof implement a fundamental principle of the Treaty, confer on persons whom they concern individual rights which the national courts must protect and take precedence over any national rule which might conflict with them.

2. National regulations which:

   require nationals of other Member States who benefit from the provisions of Articles 48 to 66 of the EEC Treaty to report to the authorities of that State, and prescribe that residents who provide accommodation for such foreign nationals must inform the said authorities of the identity of such foreign nationals

   are in principle compatible with the provisions in question provided, first, that the period fixed for the discharge of the said obligations is reasonable and, secondly, that the penalties attaching to a failure to discharge them are not disproportionate to the gravity of the offence and do not include deportation.

3. In so far as such rules do not entail restrictions on freedom of movement for persons, they do not constitute discrimination prohibited under Article 7 of the Treaty (prohibition of any discrimination on grounds of nationality).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 July 1976

I.R.C.A. v Amministrazione delle Finanze dello Stato

Case 7/76

1. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - BASIC PRINCIPLES - PURPOSE

2. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - EEFECTS - POSITION OF IMPORTERS AND EXPORTERS IN THE MEMBER STATES - DIFFERENCES - COMPLETE COMPENSATION - NON-EXISTENCE

3. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - CALCULATION - FACTORS - FIXING - DATE SUBSEQUENT TO THE PERIOD OF APPLICABILITY OF THE COMPENSATORY AMOUNTS - RETROACTIVE EFFECT - ABSENCE

4. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - REGULATIONS OF THE COMMISSION OF 1 MARCH 1973 and 23 MARCH 1973 - VALIDITY

1. The whole system of monetary compensatory amounts is founded on the principle that these amounts are not based on the prices in fact paid for the goods, but on basic amounts fixed by the Commission from week to week.

   Although this principle may bring about disadvantages in individual cases in all the sectors of agricultural products concerned, it is nevertheless unavoidable because of the necessity of obtaining uniformity in its application and of ensuring that it is administered with the utmost possible despatch.

   The purpose of the system of compensatory amounts is not to indemnify the parties concerned against the consequences of disturbances on the world currency markets, but to render the functioning of the common organizations of agricultural markets possible notwithstanding the fluctuations in the currencies of the Member States.

2. It would be expecting too much to require the system of compensatory amounts to eliminate completely the differences in situation of importers or exporters in the Member States and to shelter them from all the consequences of the variations in the rate of exchange of the national currencies.

3. As regards monetary compensatory amounts the fact that the factors necessary for their calculation are only determined after the period during which the said amounts have become applicable is inherent in the system itself and cannot be considered, on such grounds, as giving the rules a retroactive effect.

4. Regulation No. 648/73 of the Commission of 1 March 1973 laying down detailed rules for the application of 'monetary' compensatory amounts and Regulation No. 905/73 of the Commission of 23 March 1973 fixing the amount by which the 'monetary' compensatory amounts are to be adjusted are valid.

N o t e

The I.R.C.A. company declares that on 22 March 1973 it imported consignments of frozen meat and offals of bovine animals having a value of 15,635,670 lire. The customs authorities applied the prescribed customs duty, 10% of the value (1,563,570 lire), and accorded the company a credit of 1,506,780 lire by way of compensatory amounts.

The I.R.C.A. company took the view that it had wrongly paid the sum of 56,790 lire, representing the difference between the customs duties and the compensatory amounts, and commenced proceedings before the Ufficio di Conciliazione, Rome, claiming that it should order the revenue authorities to repay the sum levied, reduced to 50,000 lire. The questions referred to the Court of Justice asked, first, whether the Community regulations on which the revenue authorities based their calculations are valid and, secondly, whether the retroactive application given by the authorities in this instance to such regulations is compatible with the principles and rules of the Community legal system. Irrespective of the details of the Community rules it is appropriate to emphasize the statements made by the Court in its analysis

of the system of compensatory amounts. The whole system of monetary compensatory amounts is based on the principle that these amounts are not based on the prices actually paid for goods but on basic amounts fixed by the Commission on a weekly basis. Although this principle may be disadvantageous in individual cases, it is nevertheless necessary in order to maintain the uniform application of the system and to ensure that the administrative steps are taken as rapidly as possible.

This principle better satisfies the objectives of the system, which are not to compensate the parties concerned for the consequences of a disturbance in world exchange rates, but to make it possible for the common organizations of the agricultural markets to function despite variations in the currencies of the Member States. The aims and organization of the system of monetary compensatory amounts render it inevitable that the amounts applicable in respect of a certain period will often be fixed only after the relevant period has passed, since in the nature of things it is generally only possible for the decisive factors to be established towards the end of such period. Thus, to fix compensatory amounts in respect of a period which has already passed when fixing takes place cannot constitute retroactive application.

The Court has ruled that the questions referred to it have disclosed no factor of such a kind as to affect the validity of the regulations in question.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 July 1976

Pietro Triches v

Caisse de Compensation pour Allocations Familiales de la Région Liégeoise

Case 19/76

1. SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY INSURANCE - PENSIONS PAYABLE UNDER THE LEGISLATION OF SEVERAL MEMBER STATES - FAMILY ALLOWANCES - DETERMINATION - PAYMENT - SYSTEM (Regulation No. 3, Art. 42 (2) as amended by Art. 1 of Regulation No. 1/64 of the Council)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - RIGHTS ACQUIRED UNDER THE LEGISLATION OF ONLY ONE MEMBER STATE - GUARANTEE - MEASURES OF THE COUNCIL PURSUANT TO ARTICLE 51 OF THE EEC TREATY - CHOICE - MEANS JUSTIFIED - INEQUALITIES BETWEEN WORKERS DUE TO DISPARITIES BETWEEN THE NATIONAL SCHEMES IN QUESTION - POSSIBILITY - ACCEPTABILITY

1. Article 42 (2) of Regulation No. 3 as amended by Article 1 of Regulation No. 1/64 of the Council concerning the right of beneficiaries of a pension due in pursuance of the legislation of several Member States to family allowances is valid.

2. Although the measures taken by the Council pursuant to Article 51 must not have the effect of depriving a migrant worker of a right acquired by virtue only of the legislation of the Member State in which he has worked, no provision of the Treaty restricts the freedom conferred on the Council by Article 51 to choose any means which, viewed objectively, are justified, even if the provisions adopted do not result in the elimination of all possibility of inequality between workers arising by reason of disparities between the national schemes in question.

N o t e

Mr Triches, an Italian national, worked in Italy in the building industry from 1938 to 1945 and then was a mineworker in Belgium from 1946 to 1960.

He became disabled and from 1960 onwards was entitled to two invalidity pensions: one under Belgian legislation and the other under Italian law. He is resident in Italy. So as to avoid the double payment of family allowances the relevant Community regulation (EEC Regulation No. 3, Art. 42 (2)) provides that "Beneficiaries of pensions in pursuance of the legislation of several Member States are entitled to family allowances in accordance with the legislation (a) of the country of their permanent residence, if they reside in the territory of a Member State there is one of the institutions liable for the payment of their pensions".

The Belgian Caisse de Compensation asked Mr Triches, who was not a permanent resident, to repay the family allowances overpaid to him. Mr Triches refused to do so and the case came before the Cour de Travail, Liege, which upheld the order for repayment.

On appeal to the Cour de Cassation Mr Triches claimed that Article 42 (2) of Regulation No. 3 was invalid. The Cour de Cassation of Belgium referred this question to the European Court of Justice for a preliminary ruling.

This Court has just ruled that a consideration of the question raised has disclosed no factor of such a kind as to affect the validity of the above-mentioned provision. Article 42 (2) of Regulation No. 3 thus remains applicable for the solution of this dispute.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 July 1976

Gaetano Donà v Mario Mantero

Case 13/76

1. DISCRIMINATION BASED UPON NATIONALITY - PROHIBITION - MATCHES BETWEEN PROFESSIONAL SPORTSMEN - EXCLUSION - INFRINGEMENT OF ARTICLES 48 TO 51 OR 59 TO 66 OF THE EEC TREATY - RESTRICTIONS IN THE CASE OF MATCHES FOR REASONS WHICH ARE NOT OF AN ECONOMIC NATURE - PERMISSIBILITY - JURISDICTION OF THE NATIONAL COURT (EEC Treaty, Arts. 7, 48 to 51, 59 to 66)

2. WORKERS - FREEDOM OF MOVEMENT - SERVICES - FREEDOM TO PROVIDE - DISCRIMINATION - ABOLITION - DIRECT EFFECT - INDIVIDUAL RIGHTS - PROTECTION BY NATIONAL COURTS (EEC Treaty, Art. 48, first paragraph of Art. 59, third paragraph of Art. 60)

1. Rules or a national practice, even adopted by a sporting organization, which limit the right to take part in football matches as professional or semi-professional players solely to the nationals of the State in question, are incompatible with Article 7 and, as the case may be, with Articles 48 to 51 or 59 to 66 of the Treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not of an economic nature, which relate to the particular nature and context of such matches and are thus of sporting interest only. It is for the national court to determine the nature of the activities submitted to its judgment and to take into account Articles 7, 48 and 59 of the Treaty, which are mandatory in nature, in order to judge the validity or the effects of a provision inserted into the rules of a sporting organization.

2. Article 48 on the one hand and the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty on the other - the last two provisions at least in so far as they seek to abolish any discrimination against a person providing a service by reason

of his nationality or the fact that he resides in a Member State other than that in which the service is to be provided - have a direct effect in the legal orders of the Member States and confer on individuals rights which national courts must protect.

N o t e

Mr Mantero, former Chairman of the Rovigo Football Club and the defendant in the main action had entrusted Mr Donà, the plaintiff in the main action, with undertaking inquiries in football circles abroad in order to discover players willing to play in the Rovigo team. Mr Donà therefore arranged for the publication of an advertisement in a Belgian sporting newspaper intended to attract players. Mr Mantero subsequently refused to consider the offers submitted as a result of the advertisement and to reimburse to Mr Donà the costs of the advertisement. In his action before the Giudice Conciliatore, Rovigo, Mr Dona asked that Mr Mantero be ordered to pay the said costs.

Mr Mantero replied that Mr Donà acted prematurely. In order to support this statement he referred to the combined provisions of Articles 16 and 28 (g) of the"Rules of the Italian Football Association", according to which only players who are members of this association may take part in matches, whilst membership is in principle only open to players of Italian nationality. Only when this "blocking of the frontiers" has been abandoned will it be possible to consider the engagement of foreign football players. Mr Donà replied that the provisions referred to are invalid on the ground that they are contrary to Articles 7, 48 and 59 (prohibition of any discrimination on ground of nationality, freedom of movement for workers, freedom to provide services) of the EEC Treaty.

The Giudice Conciliatore, Rovigo, then asked the Court of Justice of the European Communities to give a preliminary ruling on this point.

The Court has just ruled that:

(1) In a Member State national rules or a national practice, even adopted by a sporting association, which limit the right to take part in football

matches as professional or semi-professional players to the nationals of that State alone, are incompatible with Articles 7 and, as the case may be, 48 to 51 or 59 to 66 of the Treaty, unless such rules or practice exclude foreign players from participation in certain matches for reasons which are not economic in nature, which relate to the particular nature and context of such matches and are thus of sporting interest only.

(2) Article 48, the first paragraph of Article 59 and the third paragraph of Article 60 of the Treaty - the last two at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided - have a direct effect in the legal orders of the Member States and confer on individuals rights which the national courts must protect.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 July 1976

Cornelis Kramer and others

Joined Cases 3/76, 4/76 and 6/76

1. EEC - EXTERNAL RELATIONS - INTERNATIONAL COMMITMENTS - AUTHORITY OF THE COMMUNITY (EEC Treaty, Art. 210)

2. SEA - RESOURCES - CONSERVATION - FISHING - MEASURES - AUTHORITY OF THE EEC

3. SEA-FISHING - INTERNATIONAL AGREEMENTS - PARTICIPATION AND TASKS OF THE EEC - OBLIGATIONS OF THE MEMBER STATES (Act of Accession, Art. 102)

4. SEA-FISHING - FISHING ACTIVITIES - LIMITATION BY A MEMBER STATE - CONSERVATION OF RESOURCES - INFRINGEMENT OF ARTICLES 30 et seq. OF THE TREATY AND OF REGULATIONS Nos. 2141/70 AND 2142/70 - NONE

1. Article 210 of the EEC Treaty means that in its external relations the Community enjoys the capacity to enter into international commitments over the whole field of objectives defined in Part One of the Treaty. Such authority arises not only from an express conferment by the Treaty, but may equally flow implicitly from other provisions of the Treaty, from the Act of Accession and from measures adopted, within the framework of those provisions, by the Community institutions.

2. It follows from the very duties and powers which Community law has established and assigned to the institutions of the Community on the internal level that the Community has authority to take any measures for the conservation of the different Member States. The rule-making authority of the Community ratione materiae also extends - in so far as the Member States have similar authority under public international law - to fishing on the high seas.

3. Member States participating in the North-East Atlantic Fisheries Convention and in other similar agreements are now not only under a

duty not to enter into any commitment within the framework of those conventions which could hinder the Community in carrying out the tasks entrusted to it by Article 102 of the Act of Accession, but also under a duty to proceed by common action within the Fisheries Commission.

Further, as soon as the Community institutions have initiated the procedure for implementing the provisions of the said Article 102, and at the latest within the period laid down by that Article, those institutions and the Member States will be under a duty to use all the political and legal means at their disposal in order to ensure the participation of the Community in the Convention and in other similar agreements.

4. A Member State does not jeopardize the objectives or the proper functioning of the system established by Regulations Nos. 2141/70 and 2142/70, respectively laying down a common structural policy for the fishing industry and on the common organization of the market in fishery products, if it adopts measures involving a limitation of fishing activities with a view to conserving the resources of the sea. Neither do such measures constitute measures having an effect equivalent to a quantitative restriction on intra-Community trade which are prohibited under Articles 30 et seq. of the Treaty.

N o t e

Criminal proceedings have been brought before the Arrondissementsrechtsbanken of Zwolle and Alkmaar against Netherlands fishermen charged with violation of Netherlands regulations limiting catches of sole and plaice. These regulations had been adopted on the basis of the provisions of the North-East Atlantic Fisheries Convention (NEAFC). The above-mentioned Netherlands courts referred to the Court of Justice of the Euorpean Communities several questions concerning the interpretation of Community law. Basically, these questions ask whether the Member States have the power to adopt such measures as those involved in this instance, whether such measures are basically compatible with Community law and whether the institutions alone have power to conclude international agreements in this matter.

In reply to these questions the Court of Justice has just ruled that:

(1) At the time when the events under consideration by the national courts occurred the Member States had the power, under the North-East Atlantic Fisheries Convention (concluded on 24 January 1959) to enter into undertakings concerning the conservation of the biological resources of the sea and had therefore the right to ensure their application in the area of their jurisdiction.

(2) By adopting measures limiting fishing activities in order to conserve the resources of the sea a Member State does not jeopardize the aims or operation of the system introduced by Regulations Nos. 2141/70 and 2142/70.

(3) Such measures do not constitute measures having an effect equivalent to a quantitative restriction on intra-Community trade, prohibited under Article 30 et seq. of the EEC Treaty.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 September 1976

Commission of the European Communities v Italian Republic

Case 10/76

DIRECTIVES - MANDATORY NATURE - TIME-LIMITS - COMPLIANCE THEREWITH (EEC Treaty, Art. 189)

The mandatory nature of directives entails the obligation for all Member States to comply with the time-limits contained therein in order that their implementation shall be achieved uniformly within the whole Community.

N o t e

On 26 July 1971 the Council issued two directives for the abolition of restrictions on freedom to provide services in respect of public works contracts and the co-ordination of national procedures for the award of such contracts. The Member States were given a period of 12 months as from the time of notification for the implementation of the necessary measures, which period expired on 29 July 1972.

On 2 February 1973 the Italian Republic passed a law concerning restricted procedures for the award of public works contracts, the text of which was notified to the Commission on 16 August 1973. On 10 June 1974 the Commission informed the Italian Republic by letter, giving reasons, that that law did not discharge the duties deriving from the directive. Italy did not contest the failures held against it and, in July 1974, transmitted a preliminary draft of a law "embodying the Community rules in their entirety".

This law has still not been passed by the Italian Parliament and therefore the measures for the implementation of the directives have still not come into force at the date of this judgment.

The Commission therefore felt bound, in February 1976, to bring an action before the Court pursuant to Article 169 of the EEC Treaty which

has led to a ruling that the Italian Republic has failed to fulfil its obligations under the Council Directive of 26 July 1971; the Italian Republic was ordered to pay the costs.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 September 1976

Import Gadgets, S.a.r.l. v L.A.M.P., S.p.a.

Case 22/76

1. COMMON CUSTOMS TARIFF - INTERPRETATION - ABSENCE OF COMMUNITY PROVISIONS - CONVENTIONS ON THE BRUSSELS NOMENCLATURE - EXPLANATORY NOTES - AUTHORITY

2. COMMON CUSTOMS TARIFF - HEADING 97.02 B - CONCEPT

1. In the absence of specific provisions of Community law, the Explanatory Notes to the Brussels Nomenclature are an authoritative and valid aid to the interpretation of Common Customs Tariff headings.

2. Laughing devices suitable for use principally in dolls that are representations of human beings come within heading 97.02 B of the Common Customs Tariff.

N o t e

Sometimes interpretation of the tariff headings of the Common Customs Tariff involves the Court of Justice in the examination of the nature of somewhat unusual objects.

This case is concerned with "laughing devices".

These devices were imported from Italy into France in two consignments. The first was declared under tariff subheading 97.02 - B (Dolls: parts and accessories) and the second was declared under tariff subheading 97.03 - B (Other toys). The Tribunale di Pavia, before which an application for the dissolution of a contract of sale was brought, requested the European Court to rule whether laughing devices constitute mechanisms capable of being used by themselves as toys (97.03) or whether they merely constitute parts of dolls (97.02 - B). The Court closely examined the Explanatory Notes to the Brussels Nomenclature which, in the absence of specific provisions of Community law, are authoritative

as a valid means of interpretation of common headings, in the search for an explanation of heading 97.02 and found that "The term "dolls" is to be taken to apply only to such articles as are representations of human beings (including those of a caricature type) ... Parts and accessories of dolls falling within this heading include: heads, bodies, limbs; wigs; voice and other mechanisms; dolls' clothings, shoes and hats; dolls' eyes, whether or not mounted in moving mechanisms ..."

The Court decided that "voice and other mechanisms" are intended at least principally for use in dolls representing human beings and therefore ruled that devices imitating laughter are covered by tariff subheading 97.02 - B of the Common Customs Tariff.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 September 1976

De Dapper and Others v European Parliament

Case 54/75

COMMUNITY INSTITUTIONS - OFFICIALS - REPRESENTATION - STAFF COMMITTEES - ELECTION - LEGALITY - DUTIES OF THE INSTITUTIONS - REVIEW BY THE COURT - LEGAL REMEDIES - JURISDICTION OF THE COURT OF JUSTICE

(Staff Regulations of Officials, Arts. 9 (2), 90, 91 and annex II)

It follows from Article 9 (2) of the Staff Regulations of Officials and, in general, from the power of organization which each institution exercises within its own sphere of jurisdiction and from its duty to ensure that officials have complete freedom to choose their representatives in accordance with democratic rules that institutions are not only entitled to intervene of their own volition when they have doubts as to the legality of elections to the Staff Committee but must in addition settle complaints which may be submitted to them in this connexion under the procedure laid down by Articles 90 and 91 of the Staff Regulations.

Thus the Court has jurisdiction in electoral disputes concerning the appointment of Staff Committees on the basis of the provisions relating to applications by officials which are laid down by the Staff Regulations in pursuance of Article 179 of the EEC Treaty. Within this framework the Court is required to examine, in accordance with its general task under Article 164 of the EEC Treaty and the parallel provisions of the ECSC and EAEC Treaties,all objections raised against elections having regard to the rules relating to freedom and democracy common to all the Member States in matters of electoral law.

N o t e

Is an action for annulment of elections for the setting up of the Staff Committee admissible and does the Court of Justice have jurisdiction

in a case of this type?

The Court of Justice has been called upon to resolve these questions in the context of an action brought by an official of the European Parliament for the annulment of elections held for the purpose of setting up the Staff Committee on the ground of irregularities in the procedures for those elections.

So-called "staff" cases fall, in general, within the jurisdiction of a Chamber of the Court, but in view of the questions of principle raised concerning the admissibility of the action in the absence of any express provision of the Staff Regulations concerning disputes arising out of the election of staff committees, this case was referred to the Full Court.

The Court has ruled that the action is admissible, basing this view on the general provisions concerning actions by officials, taking account of the position of the Staff Committee under the Staff Regulations.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 October 1976

Saieva v Caisse de compensation des allocations familiales de l'industrie charbonnière

Case 32/76

1. QUESTIONS REFERRED TO THE COURT FOR A PRELIMINARY RULING - JURISDICTION OF THE COURT - LIMITS
(EEC Treaty, Art. 177)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - DEATH OF A WORKER - ACCIDENT AT WORK - PENSION - FAMILY ALLOWANCES - LEGISLATION APPLICABLE - RIGHT NOT LINKED TO AN ORPHAN's PENSION (Regulation No. 3 of the Council, Art. 42 (5))

3. SOCIAL SECURITY FOR MIGRANT WORKERS - RIGHTS ACQUIRED BY THE INSURED PERSON BEFORE THE ENTRY INTO FORCE OF REGULATION 1408/71 - REVIEW - COMPETENT INSTITUTION OF A MEMBER STATE - SUBSTITUTION FOR THE PERSON ENTITLED - PROHIBITION (Regulation No. 1408/71 of the Council, Art. 94(5))

1. The Court is not required to rule, within the context of a request for a preliminary ruling under Article 177 of the Treaty, on the meaning and scope of national legislative provisions but must restrict itself to the interpretation of the provisions of Community law in question.

2. Article 42 (5) of Regulation No. 3 must be interpreted as determining the legislation applicable to the payment of family allowances to the children of a worker who has died as a result of an accident at work and as meaning that the right of the children of the deceased to family allowances is not linked to the award of an orphan's pension.

3. Since the aim of Article 94 (5) of Regulation No. 1408/71 is to give to a person to whom benefits were awarded under the old regulation the right to request the review, in his favour, of such benefits, it must be interpreted as meaning that the competent institution of a Member State is not entitled to substitute itself for an insured person with regard to the review of the rights which that person acquired before

the regulation came into force.

N o t e

Mrs Saieva is the widow of an Italian worker who worked successively in Italy and in Belgium, where he died in 1956 as the result of a mining accident.

Having returned to Italy with her three children, born in 1948, 1954 and 1956, Mrs Asieva received, pursuant to Belgian legislation, a pension for accidents at work for herself and her three children as well as the family allowances for her children.

Belgian social security legislation lays down that orphans shall receive a pension for accidents at work for so long as they are entitled to family allowances (up to the age of 16 in all cases, up to 21 in the case of vocational training and up to 25 in the case of study). The law concerning accidents at work grants this entitlement to orphans up to the age of 18.

The Caisse de Compensation, Charleroi, ceased payment of the family allowances to Mrs Saieva in respect of her two older children from the age of 18 and for the third on 30 September 1972, when the latter had not yet reached the age of 18.

In justification of its refusal to pay the family allowances to the two older children beyond the age of 18 the Caisse relied on Article 42 (5) of Regulation No. 3 which, in its view, requires the Belgian institution to pay family allowances in respect of orphans only for so long as the latter are entitled to a pension for accidents at work, in this case up to the age of 18.

As regards the third child, the Caisse claimed that from 1 October 1972, the date on which Regulation No. 1408/71 entered into force, the Italian institution was required to pay the family allowances since the worker had completed an insurance period of some five years in Italy. Mrs Saieva contested these interpretations of the Community provisions by the Caisse, which has led the Tribunal du Travail, Charleroi,

before which the dispute in the main action was brought, to request an interpretation from the European Court by way of a preliminary ruling.

Article 42 (5) of Regulation No. 3 reads as follows: "Where the death of an employed person or assimilated worker opens entitlement to a pension in respect of accidents at work or occupational disease pursuant to the legislation of a Member State, family allowances in right of his children who permanently reside or were brought up in the territory of another Member State shall be granted in accordance with the legislation of the country from which the pension is due as though the children were permanently resident or were brought up in the territory of that State". The objective of this provision is to indicate that the legislation of the country from which the pension for accidents at work is due is the only legislation applicable. The fact that the children are resident in another Member State does not exclude the applicability of that legislation.

The Court has ruled that Article 42 is to be interpreted as meaning that it indicates that legislation applicable to the payment of family allowances to the children of a worker whose death has occurred as the result of an accident at work and that the right to family allowances of the children of the deceased worker is not conditional upon the grant of an orphan's pension.

The second question asked whether Article 94 (5) of Regulation No. 1408/71 permits the competent institution to substitute itself for an insured person in seeking the review of the rights which that person acquired before that regulation came into force.

That provision lays down that the rights of a person to whom a pension was awarded prior to the entry into force of the regulation may be reviewed on the application of the person concerned.

The Court has noted that the objective of that provision is to give the person concerned the right to request that benefits awarded to him under the system of the former regulation should be reviewed and accordingly it has ruled that that provision must be interpreted as meaning that the competent institution of a Member State may not substitute itself for an insured person in seeking the review of the rights which that person acquired before the regulation came into force.

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Just published:

L'Europe des Juges, by Robert Lecourt.
Ets. Emile Bruylant, Rue de la Régence 67,
1000 Brussels.
1976 - 321 pp.

National case-law:

To be continued in Bulletin No. XXII

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
Boîte postale 1003 – Luxembourg

7161/3