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Contents

Page

A short guide to the rights of individuals .. ..

Analytical table of the decisions of the Court of Justice of the European Communities .. ..

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (signed on 27 September 1968) .. ..

Case 12/76 - Industria Tessili Italiana Como v Dunlop AG .. ..
Case 14/76 - Ets A. De Bloos S.P.R.L. v Société en commandite par actions Bouyer .. ..
Case 29/76 - LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol .. ..
Case 42/76 - Jozef De Wolf v Harry Box B.V. .. ..
Case 21/76 - S.A. Bier and Stichting Reinwater v Mines de Potasse d'Alsace .. ..
Case 24/76 - Estasis Salotti di Colzani v RUWA
Case 25/76 - Galéries Segoura v Bonakdarian .. ..
Case 17/76 - Mrs M. L. E. Brack v Insurance Officer .. ..
Case 130/75 - Mrs V. Prais v Council of the European Communities ..
Case 28/76 - Firma Milac GmbH Gross- und Aussenhandel v Hauptzollamt Freiburg .. ..
Case 40/76 - Slavica Kermaschek v Bundesanstalt für Arbeit .. ..
Case 23/76 - Luigi Pellegrini & C.S.a.s. v Commission of the European Communities .. ..
Case 35/76 - Simmenthal S.p.A. v Italian Minister of Finance ..
Case 39/76 - Bestuur der Bedrijfsvereniging voor de Metaalnijverheid v L. J. Mouthaan .. ..
Case 41/76 - Criel (née Donckerwolcke) v Procureur de la République .. ..
Joined Cases 36 & 37/76 - Italian Finance Administration v S.r.l. Foral and D. & C. S.p.A. .. ..
Case 45/76 - Comet B.V. v Produktschap voor Siergewassen .. ..
Case 33/76 - Rewe- Zentralfinanz AG v Landwirtschaftskammer für das Saarland .. ..

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A Short Guide to the Rights of the Individual

The twentieth century has witnessed the most terrible crimes against humanity and against human rights and fundamental freedoms but it is also a century of great positive achievements in this field such as, for example, the establishment of a body of treaties and international agreements with the objects of making political, economic and social personal rights an international reality. Often these agreements and treaties provide if not for judicial sanction then at least for the condemnation by public opinion of the breaches committed.

Amongst these achievements the treaties establishing the European Communities, in particular the Treaty establishing the European Economic Community ("Common Market"), take a prominent place.

At first this might appear surprising in view of the fact that the treaties in question nowhere mention terms such as "human rights" or "fundamental freedoms".

However what is not expressly stated may be implied. In fact without exception all the Member States of the Community practise representative democracy either in the form of a parliamentary democracy or in the form of a presidential democracy. The Member States' constitutions and constitutional conventions which are often many hundreds of years old guarantee to all without exception a certain number of human rights and fundamental personal freedoms. Consequently, according to a well accepted principle of juridical interpretation (specific rules, such as the Community treaties, cannot derogate from the general rule save as expressly otherwise provided), it may be stated that if the authors of the Community treaties intended to give future Community nationals fewer rights and fewer freedoms than they possess under the national law of their own State they should have expressly stipulated this. In the absence of an express stipulation they clearly did not intend to do so.

On the basis of this reasoning the Court of Justice of the European Communities adopted the view that the constitutional guarantees provided by Member States in respect of human rights and fundamental personal freedoms must be taken into account in examining and interpreting Community treaties in order to see whether and to what extent they protect fundamental rights.

The following may be cited as examples:

Judgment of 12 November 1969, Case 29/69 (Erich Stauder v City of Ulm /1969/ ECR 419

"The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court".

Judgment of 17 December 1970, Case 11/70 (Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel /1970/ ECR 1125

"Respect for fundamental rights forms an integral part of the general principles of law protected by the Court of Justice. The protection of such rights, whilst inspired by the constitutional traditions common to the Member States, must be ensured within the framework of the structure and objectives of the Community".

Similarly, the Court of Justice considers that in safeguarding these fundamental rights it is bound to draw inspiration from the international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories.

See also:

Judgment of 14 May 1974, Case 4/73 (J. Nold, Kohlen- und Baustoffgrosshandlung v Commission /1974/ ECR 491

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

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

Thus there emerge both from the clear and unequivocal provisions of the treaties themselves and from the jurisprudence of the Court of Justice interpreting them certain rights which the "Community national" may invoke directly before the national courts of the Member States which will protect and safeguard these rights.

: : :

(1) On whom are these rights conferred?

(2) What are these rights?

(3) How may these rights be enforced and safeguarded?

(4) Where can useful information on such matters be obtained if necessary?

We shall endeavour to answer these four questions here.

: : :

(1) On whom are these rights conferred?

Natural persons who may enforce the rights set out below are nationals of the Member States of the European Communities (in alphabetical order):

Belgium
Denmark
France
(Federal Republic of) Germany
Ireland
Italy
Luxembourg
The Netherlands
The United Kingdom of Great Britain and Northern Ireland.

It should be stated that the rights set out below may be relied on, where necessary, before the courts of all the Member States including those of the State of which the plaintiff is a national.

(2) What are these rights?

The Treaty establishing the European Economic Community ("Common Market") was concluded in order to lay the foundations of an ever closer union among the peoples of Europe, in order to ensure the economic and social progress of their countries by common action to eliminate the

barriers which divide Europe, and with the essential objective of the constant improvement of the living and working conditions of the peoples of the Member States (Preamble to the Treaty). The Community has as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it. (Article 2 of the Treaty).

In order to achieve these objectives the Treaty lays down a number of individual rights:

Article 7 - Any discrimination on grounds of nationality shall be prohibited

"Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.

The Council may, on a proposal from the Commission and after consulting the Assembly, adopt, by a qualified majority, rules designed to prohibit such discrimination".

Reference may be made to the following decided cases:

Judgment of 21 June 1974, Case 2/74 (Jean Reyners v Belgian State) [1974] ECR 631

"The rule on equal treatment with nationals is one of the fundamental legal provisions of the Community. As a reference to a set of legislative provisions effectively applied by the country of establishment to its own nationals, this rule is, by its essence, capable of being directly invoked by nationals of all the other Member States".

Judgment of 12 December 1974, Case 36/74 (Walrave v Union Cycliste Internationale) [1974] ECR 1405

"The prohibition of discrimination based on nationality in the sphere of economic activities which have the character of gainful employment or remunerated service covers all work or services without regard to the exact nature of the legal relationship under which such activities are performed".

Judgment of 28 October 1975, Case 36/75 (Rutili v Minister for the Interior) [1975] ECR 1219

"The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community".

Judgment of 8 April 1976, Case 48/75 (Royer) [1976] ECR 497

"The right of nationals of a Member State to enter the territory of another Member State and reside there is a right conferred directly, on any person falling within the scope of Community law, by the Treaty, especially Articles 48, 52 and 59 or where appropriate, by the provisions adopted for its implementation, independently of any residence permit issued by the host State. The exception concerning the safeguard of public policy, public security and public health contained in Articles 48 (3) and 56 (1) of the Treaty must be regarded not as a condition precedent to the acquisition of the right of entry and residence but as providing the possibility, in individual cases where there is sufficient justification, of imposing restrictions on the exercise of a right derived directly from the Treaty".

Article 48 - Freedom of movement for workers

"1. Freedom of movement for workers shall be secured within the Community by the end of the transitional period at the latest.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

(a) to accept offers of employment actually made;

(b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission.

4. The provisions of this Article shall not apply to employment in the public service".

Reference may be made to the following decided cases:

Judgment of 12 February 1974, Case 152/73 (Sotgiu v Deutsche Bundespost /1974/ ECR 153

"The interests which the exception in Article 48 (4) of the Treaty allows Member States to protect are satisfied by the opportunity of restricting admission of foreign nationals to certain activities in the

public service; this provision cannot justify discriminatory measures with regard to remuneration or other conditions of employment against workers once they have been admitted to the public service. The nature of the legal relationship between the employee and the employing administration is of no consequence in this respect".

Judgment of 4 April 1974, Case 167/73 (Commission v French Republic) [1974] ECR 359

"The absolute nature of the prohibition on discrimination under Article 48 (2) of the EEC Treaty has the effect of not only allowing in each State equal access to employment to the nationals of other Member States, but also of guaranteeing to the State's own nationals that they shall not suffer the unfavourable consequences which could result from the offer or acceptance by nationals of other Member States of conditions of employment or remuneration less advantageous than those obtaining under the national law. It thus follows from the general character of the prohibition on discrimination in Article 48 and the objective pursued by the abolition of discrimination that discrimination is prohibited even if it constitutes only an obstacle of secondary importance as regards the equality of access to employment and other conditions of work and employment".

Judgment of 4 December 1974, Case 41/74 (Van Duyn v Home Office) [1974] ECR 1337

"The concept of public policy in the context of the Community and where, in particular, it is used as a justification for derogating from a fundamental principle of Community law, must be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.

.....

Article 48 of the EEC Treaty and Article 3 (1) of Directive No. 64/221 must be interpreted as meaning that a Member State, imposing restrictions justified on grounds of public policy, is entitled to take into account, as a matter of personal conduct of the individual concerned,

the fact that the individual is associated with some body or organization the activities of which the Member State considers socially harmful but which are not unlawful in that State, despite the fact that no restriction is placed upon the nationals of the said Member State who wish to take similar employment with the same bodies or organizations".

Judgment of 26 February 1975, Case 67/74 (Bonsignore v Oberstadtdirektor der Stadt Köln) [1975] ECR 297

"As departures from the rules concerning the free movement of persons constitute exceptions which must be strictly construed, the concept of 'personal conduct' expresses the requirement that a deportation order may only be made for breaches of the peace which might be committed by the individual affected".

Judgment of 28 October 1975, Case 36/75 (Rutili v Minister for the Interior) [1975] ECR 1220

(see reference to the same judgment above at page 6)

"Restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy".

Judgment of 8 April 1976, Case 48/75 (Royer) [1976] ECR 497

(see the reference to the same judgment above at page 6)

Articles 52 and 57 - Right of establishment

Article 52

"Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be abolished by progressive stages in the course of the transitional period. Such progressive

abolition shall also apply to restrictions on the setting up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 58, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital".

Article 57

"1. In order to make it easier for persons to take up and pursue activities as self-employed persons, the Council shall, on a proposal from the Commission and after consulting the Assembly, acting unanimously during the first stage and by a qualified majority thereafter, issue directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications.

2. For the same purpose, the Council shall, before the end of the transitional period, acting on a proposal from the Commission and after consulting the Assembly, issue directives for the co-ordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons. Unanimity shall be required on matters which are the subject of legislation in at least one Member State and measures concerned with the protection of savings, in particular the granting of credit and the exercise of the banking profession, and with the conditions governing the exercise of the medical and allied, and pharmaceutical professions in the various Member States. In other cases, the Council shall act unanimously during the first stage and by a qualified majority thereafter.

3. In the case of the medical and allied and pharmaceutical professions, the progressive abolition of restrictions shall be dependent upon co-ordination of the conditions for their exercise in the various Member States".

Reference may be made to the following decided cases:

Judgment of 7 July 1976, Case 118/75 (Watson and Belmann) [1976] ECR 1185

"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 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. 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".

Reference may also be made to the judgments in Cases

2/74 (Jean Reyners v Belgian State), 21 June 1974
41/74 (Van Duyn v Home Office), 4 December 1974
67/74 (Bonsignore v Oberstadtdirektor der Stadt Köln), 26 February 1975
36/75 (Rutili v Minister for the Interior), 28 October 1975
48/75 (Royer), 8 April 1976

referred to above.

Articles 59 to 62 - Freedom to provide services

Article 59

"Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

The Council may, acting unanimously on a proposal from the Commission, extend the provisions of this Chapter to nationals of a third country who provide services and who are established within the Community".

Article 60

"Services shall be considered to be 'services' within the meaning of this treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement for goods, capital and persons.

'Services' shall in particular include:

(a) activities of an industrial nature;

(b) activities of a commercial character;

(c) activities of craftsmen;

(d) activities of the professions.

Without prejudice to the provisions of the Chapter relating to the right of establishment, the person providing a service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals".

Article 61

"1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport.

2. The liberalization of banking and insurance services connected with movements of capital shall be effected in step with the progressive liberalization of movement of capital".

Article 62

"Save as otherwise provided in this Treaty, Member States shall not introduce any new restrictions on the freedom to provide services which has in fact been attained at the date of entry into force of this Treaty".

Reference may be made to the following decided cases:

Judgment of 26 November 1975, Case 39/75 (Coenen and Others v Sociaal-Economische Raad) [1975] ECR 1547

"The provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services, when less restrictive measures enable the professional rules to which the provision of the service is subject in that territory to be complied with".

Judgment of 12 December 1974, Case 36/74 (Walrave v Union Cycliste Internationale) [1974] ECR 1405

(see reference to the same case at page 6)

Judgment of 14 July 1976, Case 13/76 (Donà v Mantero) [1976] ECR 1333

"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".

Article 119 - Equal pay without discrimination based on sex

"Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

For the purpose of this Article, 'pay' means the ordinary basic or minimum wage or salary and any other consideration, whether in cash or in kind, which the worker receives, directly or indirectly, in respect of his employment from his employer.

Equal pay without discrimination based on sex means:

(a) that pay for the same work at piece rates shall be calculated on the basis of the same unit of measurement;

(b) that pay for work at time rates shall be the same for the same job".

Judgment of 8 April 1976, Case 43/75 (Defrenne v Sabena) [1976] ECR 455

"The principle that men and women should receive equal pay, which is laid down by Article 119, is one of the foundations of the Community. It may be relied on before the national courts. These courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination which have their origin directly in legislative provisions or collective labour agreements, as well as where men and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.

.....

Important considerations of legal certainty affecting all the interests involved, both public and private, make it impossible in principle to reopen the question of pay as regards the past. The direct effect of Article 119 cannot be relied on in order to support claims concerning pay periods prior to the date of this judgment, except as regards those workers who have already brought legal proceedings or made an equivalent claim".

Social security for workers

Community law relating to the social security of workers deserves special mention because it is on account of this law that aggregation of insurance periods under various national legislation concerning social security for the purpose of acquiring and retaining the right to benefits

and of calculating the amount of benefits has been achieved at a Community level. Thus for example a worker who has completed a certain number of insurance periods in various Member States may request that these periods should be aggregated, that his retirement pension should be calculated accordingly and paid on the basis of this aggregation.

Article 51 of the Treaty establishing the European Economic Community lays down the basis for these Community rules:

"The Council shall, acting unanimously on a proposal from the Commission, adopt such measures in the field of social security as are necessary to provide freedom of movement for workers; to this end, it shall make arrangements to secure for migrant workers and their dependants:

(a) aggregation, for the purpose of acquiring and retaining the right to benefit and of calculating the amount of benefit, of all periods taken into account under the laws of the several countries;

(b) payment of benefits to persons resident in the territories of Member States".

The original framework of this "European social security" was provided by Regulations Nos. 3 and 4 of the Council of the Communities. For their part, by means of their numersous references to the Court of Justice of the Communities for preliminary rulings (over 70 judgments), the national courts of the Member States were to contribute greatly to the development and elaboration of the legislative provisions by case-law. The judicial co-operation between the national court and the Community Court has given rise to a body of rules which in its turn the Council, acting on a proposal of the Commission, has embodied in Regulations Nos. 1408/71 (14 June 1971) and 574/72 (21 March 1972).

At present the Community law relating to social security for workers covers problems of sickness and invalidity and of maternity, old-age pensions, accidents at work and occupational diseases, survivors' insurance, the rights of minors, unemployment benefits and many others.

A single relatively recent example illustrates the case-law:

The widow of an Italian worker was refused a reduction card for large families for herself and for her four young children by the Société Nationale des Chemins de Fer Français (S.N.C.F.) because of the death of her husband (who had worked for many years in France, where his family continued to reside after his death).

The question was therefore whether the dependants of a migrant worker could continue to receive certain social benefits after the death of the worker.

The S.N.C.F. and the Tribunal de Grande Instance, Paris, answered this question in the negative. The S.N.C.F. stated its decision in the following terms:

> "Except where reciprocal arrangements have been made ..., the reductions on rail fares for the benefit of large families shall only apply to French citizens ...".

An appeal was lodged against this judgment to the Cour d'Appel, Paris, which referred the matter for a preliminary ruling to the Court of Justice of the European Communities which, by judgment of 30 September 1975 (/1975/ ECR 1085), ruled that:

> Article 7 (2) of Regulation (EEC) No. 1612/68 of the Council on freedom of movement for workers within the Community must be interpreted as meaning that it refers to all social and tax advantages, whether or not attached to the contract of employment. These advantages therefore also include fares reduction cards issued by the national railway authority to large families and this applies, even if the said advantage is only sought after the worker's death, to the benefit of his family remaining in the same Member State.

Following that judgment the various national railway companies in the Member States took the steps necessary to harmonize their practices.

The Commission of the European Communities in Brussels has recently started publication of five detailed guides concerning the national procedures whereby the nine Member States apply and enforce the Community rules on social security for workers. These booklets may be obtained free of charge on application to the Information Offices of the Community (see the addresses under (4) infra):

Guide No. 1: Social Security for Migrant Workers (General Guide)

Guide No. 2: Temporary Stay

Guide No. 3: Workers posted abroad or employed in more than one Member State

Guide No. 4: Pensioners

Guide No. 5: Members of the Family

Each guide will be published in the six official languages of the Community (Danish, Dutch English, French, German and Italian) and taking account of the national legislation of each Member State. (For example: an Italian worker wishing to work in the Federal Republic of Germany would consult, for example, the Italian language texts of Guide No. 1 to the Federal Republic of Germany and Guide No. 5 and so on).

(3) How are these rights to be protected?

The reply to this question depends on the problem of what public authority or administration is alleged to have failed to recognize or to have infringed individual rights.

If that authority, institution or administration belongs to the Community order (such as, for example, the Commission of the Communities) a direct action to the Court of Justice of the European Communities is available to natural persons. However the precise conditions in which such a direct action may be lodged are set out in the second paragraph of Article 173 of the Treaty establishing the European Economic Community:

"The Court of Justice shall review the legality of acts of the Council and the Commission other than recommendations or opinions. It shall for this purpose have jurisdiction in actions brought by a Member State, the Council or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers.

Any natural or legal person may, under the same conditions, institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

The proceedings provided for in this Article shall be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be".

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

The application is notified to the defendants by the Registry of the Court of Justice. It calls for a statement of defence to be put in by them; 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.

If on the other hand the administration which is alleged to have violated an individual right is a national administration of a Member State the action should be brought before the competent national court. In any event in such a case it is recommended that the party should comply with the provisions of national law applicable in respect of representation and assistance before the courts of the State in question.

If the national court deems it necessary to request the Court of Justice of the European Communities for a preliminary ruling it may make an order referring the case.

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.

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

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

Between 1961 and 1976 more than 400 cases have been referred in this way to the Court of Justice of the European Communities in Luxembourg.

(4) Additional information

Additional information in this respect may be obtained from the addresses set out below. However this information in no way constitutes legal advice which can only be given by members of the legal professions (for example lawyers who are entitled to practise before courts of the Member States etc.).

Information Office of the Court of Justice of the European Communities, B.P. 1406, Luxembourg. Telephone: 47.621. Telex: 2771 CJINFO LU. Telegrams: Curia Luxembourg (specify: Information Service).

Information Offices of the European Communities:

1000 BERLIN 31, Kurfürstendamm 102, Federal Republic of Germany. Tel. 8864028.

5300 BONN, Zitelmannstrasse 22, Federal Republic of Germany. Tel. 238041.

1049 BRUSSELS, Rue Archimède 73, Belgium. Tel. 7350040/7358040.

THE HAGUE, Lange Voorhout 29, The Netherlands. Tel. 469326.

DUBLIN 2, Merrion Square, Republic of Ireland. Tel. 760353.

1202 GENEVA, 37-39, Rue de Vermont, Switzerland. Tel. 349750.

1004 COPENHAGEN K, Gammel Torv 4, Denmark. Tel 144140/145512.

LONDON, 20 Kensington Palace Gardens W8 4QQ, United Kingdom. Tel. 7278090.

75782 PARIS Cedex 16, 71 Rue des Belles Feuilles, France. Tel. 5535326.

00187 ROME, Via Poli 29, Italy. Tel. 689722.

MONTEVIDEO, Calle Bartolome Mitre 1337, Casilla 641, Uruguay. Tel.

SANTIAGO DE CHILE 9, Avda Ricardo Lyon 1177, Casilla 10093, Chile. Tel. 250555.

NEW YORK, N.Y. 10017, 277 Park Avenue, United States. Tel. (212) 3713804.

WASHINGTON D.C. 20037, 2100 M Street, N.W., Suite 707, United States. Tel. (202) 8728350.

TOKYO 102, Kowa 25 Building, 8-7 Sanbancho, Chiyoda-Ku, Japan. Tel. 2390441.

ANKARA, 13 Bogaz Sokak, Kavaklidere, Turkey. Tel. 276145/276146.

ATHENS 134, Vassilissis Sofias 2, Greece. Tel. 743982/743983/743984.

With particular regard to social security matters:

Administrative Commission on Social Security,
Commission of the European Communities,
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D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Analytical Table

Agriculture - Monetary compensatory amounts

Case 28/76 - Milac v Hauptzollamt Freiburg (23 November 1976)
Cases 36 & 37/76 - Italian Finance Administration v Foral and D. & C. (16 December 1976)

Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention of 27 September 1968)

Case 12/76 - Industria Tessili v Dunlop (6 October 1976)
Case 14/76 - De Bloos v Bouyer (6 October 1976)
Case 29/76 - LTU v Eurocontrol (14 October 1976)
Case 42/76 - De Wolf v Cox (30 November 1976)
Case 21/76 - Bier v Mines de Potasse d'Alsace (30 November 1976)
Case 24/76 - Estasis Salotti v RUWA (14 December 1976)
Case 25/76 - Galéries Segoura v Bonakdarian (14 December 1976)

Customs duties - Charges having an equivalent effect

Case 45/76 - Comet v Produktschap voor Siergewassen (16 December 1976)
Case 33/76 - Rewe v Landwirtschaftskammer für das Saarland (16 December 1976)

Officials of the European Communities - Recruitment

Case 130/75 - Vivien Prais v Council (27 October 1976)

Procedure

Case 23/76 - Pellegrini v Commission of the European Communities (7 December 1976)

Quantitative restrictions

Case 41/76 - Criel (née Donckerwolcke) v Procureur de la République (15 December 1976)
Case 35/76 - Simmenthal v Italian Ministry of Finance (15 December 1976)

Social security for migrant workers

Case 17/76 - Brack v Insurance Officer (29 September 1976)
Case 40/76 - Kermaschek v Bundesanstalt für Arbeit (23 October 1976)
Case 39/76 - Bestuur der Bedrijfsvereniging voor de Metaalnijverheid v Mouthaan (15 December 1976)

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Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (signed on 27 September 1968)

In Brussels on 27 September 1968 the six original Member States who were signatories of the Treaty establishing the European Economic Community signed a Convention in implementation of the provisions of Article 220 of the Treaty of Rome whereby they undertook to secure the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals.

According to the Preamble to the Convention the High Contracting Parties were anxious to strengthen in the Community the legal protection of persons therein established and considered that it was necessary for this purpose to determine the international jurisdiction of their courts, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements.

The Protocol on the Interpretation by the Court of Justice of the Convention was signed in Luxembourg on 3 June 1971 by the six original Member States of the Communities and, as regards these States, entered into force on 1 September 1975 (Official Journal of the European Communities, No. L 204 of 2 August 1975).

The Court of Justice started the 1976-1977 judicial year with a series of judgments concerning the interpretation of the Brussels Convention.

Departing from the chronological order of the judgments, all cases relating to this Convention are grouped together from page 25 to page) in order to facilitate uninterrupted reading of these judgments and to reveal clearly the line of decided cases of the Court of Justice.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 October 1976

Case 12/76

(Industria Tessili Italiana Como v Dunlop AG)

1. PROCEDURE - CONVENTIONS FOR WHICH PROVISION IS MADE IN ARTICLE 220 OF THE EEC TREATY - INTERPRETATION - NEW MEMBER STATES - OBSERVATIONS - PERMISSIBILITY (Act of Accession, Art. 3 (2))

2. CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS - INTERPRETATION - GENERAL RULES

3. CONVENTION OF 27 SEPTEMBER 1968 - SPECIAL JURISDICTION - DISPUTE HAVING AN INTERNATIONAL CHARACTER - MATTER RELATING TO A CONTRACT - COURT HAVING JURISDICTION (Convention of 27 September 1968, Art. 5 (1))

1. The new Member States are entitled to submit observations in the context of proceedings relating to the interpretation of one of the Conventions, for which provision is made in Article 220 of the Treaty, to which they are required by Article 3 (2) of the Act of Accession to become parties.

2. The Convention of 27 September 1968 must be interpreted having regard both to its principles and objectives and to its relationship with the Treaty. As regards the question whether the words and concepts used in the Convention must be regarded as having their own independent meaning and as being thus common to all the Member States or as referring to substantive rules of the law applicable in each case under the rules of conflict of laws of the court before which the matter is first brought, the appropriate choice can only be made in respect of each of the provisions of the Convention to ensure that it is fully effective having regard to the objectives of Article 220 of the Treaty.

3. The "place of performance of the obligation in question" within the meaning of Article 5 (1) of the Convention of 27 September 1968 is to be determined in accordance with the law which governs the obligation in question according to the rules of conflict of laws of the court before which the matter is brought.

N o t e

The two judgments given on 6 October 1976 in Cases 12/76 and 14/76 constitute the first applications of the Convention of 27 December 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention). In its judgment in the case of Industria Tessili Italiana Como v Dunlop AG the Court of Justice defined the spirit and aims of the Brussels Convention and established its own method of interpretation in this matter. Under the terms of Article 220 of the EEC Treaty the Member States are bound to enter into negotiations with each other with a view to drawing up rules intended to facilitate the achievement of a common market. The Brussels Convention was established to implement Article 220, in particular those of its provisions which deal with the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts and tribunals, and to strengthen in the Community the legal protection of persons therein established. In order to remove obstacles to legal relations within the Community the Convention contains rules enabling the jurisdiction of the courts of the Member States in these matters to be determined and facilitating the recognition and execution of judgments of such courts.

The Convention must be interpreted in the light of both the system and its objectives and of its relationship with the Treaty. The Convention frequently uses words and legal concepts drawn from civil, commercial and procedural law which are capable of having a different meaning from one Member State to another. The question therefore arises before the Court whether these words must be regarded as independent and thus common to all the Member States

or as referring to substantive rules of law applicable to each case under the rules governing the conflict of laws appropriate to the court before which the matter was brought. The Court concludes that neither of these two options rules out the other but that in any event the interpretation of the said words and concepts for the purpose of the Convention does not prejudge the question of the substantive rule applicable to the particular case.

Another question considered in these proceedings was whether the new Member States who are not yet parties to the Convention are entitled to participate in the procedure for its interpretation. The reply given to this question was in the affirmative and the principle was laid down that the new Member States have an interest in expressing their views when the Court is called upon to interpret a convention to which they are required to become parties.

The facts of this case, the first to give rise to the establishment of principles concerning the Convention, are quite simple: Dunlop AG, whose registered office is at Hanau, ordered a certain number of women's ski suits from the company Industria Italiana Tessili Como, whose registered office is at Como. Printed on the letter from Dunlop AG was the following clause: "Jurisdiction: the courts in Hanau am Main shall have jurisdiction to deal with disputes arising from this contract". Industria Tessili's general conditions of sale include the following clause: "The courts in Como shall have jurisdiction in any dispute which may arise and the purchaser waives his right to have the dispute decided by any other court".

As Dunlop AG considered that the ski suits suffered from defects of manufacture it refused to accept those which had been delivered and brought an action for rescission of the contract before the Landgericht Hanau. Industria Tessili immediately argued that the German courts had no jurisdiction. As Dunlop AG

referred to Article 5 (1) of the Brussels Convention, which provides that in matters relating to a contract, a person domiciled in a Contracting State may, in another Contracting State, be sued in the courts for the place of performance of the obligation, the Court of Justice was asked to interpret that provision.

The Court of Justice ruled that "the place of performance of the obligation in question", within the meaning of Article 5 (1) of the Convention of 27 September 1968, is to be determined by reference to the law which, according to the rules on the conflict of laws of the court before which the matter is brought, governs the obligation in question.

It is thus for the court to which the case is referred to establish, by reference to the terms of the Convention, whether the place of performance of the obligation in question is situated within the area of its territorial jurisdiction.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 October 1976

(Ets A. De Bloos, S.P.R.L.

v Société en commandite par actions Bouyer

Case 14/76

1. CONVENTION OF 27 SEPTEMBER 1968 - SPECIAL POWERS - MATTERS RELATING TO A CONTRACT - OBLIGATION - CONCEPT
(Convention of 27 September 1968, Art. 5 (1))

2. CONVENTION OF 27 SEPTEMBER 1968 - SPECIAL POWERS - MATTERS RELATING TO A CONTRACT - EXCLUSIVE CONCESSION - ACTION BROUGHT BY THE GRANTEE AGAINST THE GRANTOR - CONTRACTUAL OBLIGATION - CONCEPT - COMPENSATION BY WAY OF DAMAGES - ACTION FOR PAYMENT - POWERS OF THE NATIONAL COURT
(Convention of 27 September 1968, Art. 5 (1))

3. CONVENTION OF 27 SEPTEMBER 1968 - SPECIAL POWERS - GRANTEE OF AN EXCLUSIVE SALES CONCESSION - CONTROL OF BRANCH, AGENCY OR OTHER ESTABLISHMENT - CRITERIA FOR DISTINCTION
(Convention of 27 September 1968, Art. 5 (5))

1. For the purpose of determining the place of performance within the meaning of Article 5 of the Convention of 27 September 1968 the obligation to be taken into account is that which corresponds to the contractual right on which the plaintiff's action is based. In a case where the plaintiff asserts the right to be paid damages or seeks the dissolution of the contract by reason of the wrongful conduct of the other party, the obligation referred to in Article 5 (1) is still that which arises under the contract and the non-performance of which is relied upon to support such claims.

2. In disputes in which the grantee of an exclusive sales concession charges the grantor with having infringed the exclusive concession, the word "obligation" contained in Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters refers to the obligation forming the basis of the legal proceedings, namely the contractual obligation of the grantor which corresponds to the contractual right relied upon by the grantee in support of the application.

In disputes concerning the consequences of the infringement by the grantor of a contract conferring an exclusive concession, such as the payment of damages or the dissolution of the contract, the obligation to which reference must be made for the purposes of applying Article 5 (1) of the Convention is that which the contract imposes on the grantor and the non-performance of which is relied upon by the grantee in support of the application for damages or for the dissolution of the contract.

In the case of actions for the payment of compensation by way of damages, it is for the national court to ascertain whether, under the law applicable to the contract, an independent contractual obligation or an obligation replacing the unperformed contractual obligation is involved.

3. When the grantee of an exclusive sales concession is not subject either to the control or to the direction of the grantor, he cannot be regarded as being at the head of a branch, agency or other establishment of the grantor within the meaning of Article 5 (5) of the Convention of 27 September 1968.

N o t e

In this case the Cour d'Appel, Mons, (Belgium), referred to the Court of Justice certain questions on the interpretation of the

concept of the "obligation" referred to in Article 5 of the Convention.

The main action concerns proceedings brought by the grantee of an exclusive distributorship contract, whose registered office is in Belgium, against the grantor, who is established in France. The grantee of the right complained of a unilateral breach of the contract without notice and brought proceedings against the grantor before the Belgian court in which he sought, in accordance with Belgian law, the dissolution of the contract by the court, the grantor being made responsible, and the payment of damages.

The Cour d'Appel, Mons, before which the matter was brought, requested the Court of Justice of the European Communities to rule whether, in an action brought by the grantee of an exclusive sales concession against the grantor in which he claims that the latter has infringed the exclusive concession, the term "obligation" in Article 5 (1) of the Convention is to be interpreted as applying without distinction to any obligation arising out of the outline contract granting an exclusive sales concession or even arising out of the successive sales concluded in performance of the said contract or as referring solely to the obligation forming the basis of the legal proceedings. The Court was also asked to rule whether the term "obligation" refers to the original obligation, the obligation to pay damages, or the obligation to pay "fair compensation" or even supplementary compensation.

The Court points out that the Preamble to the Convention is intended to determine the international jurisdiction of the courts of the Contracting States, to facilitate recognition and to introduce an expeditious procedure for securing the enforcement of judgments. These objectives imply the need to avoid a situation in which a number of courts have jurisdiction in respect of one and the same contract. The result is that the term "obligation" must be interpreted as referring to the contractual obligation forming the

basis of the legal proceedings, that is, in this case, to the obligation on the grantor which corresponds to the contractual right on which the grantee's action is based.

In an action concerning the consequences of a breach by the grantor of a contract conferring an exclusive concession, such as the payment of damages or dissolution of the contract, the obligation to which reference must be made is that which the contract imposes on the grantor and which it is claimed has not been performed.

In the case of actions for the payment of compensation by way of damages it is for the national court to establish whether, under the law applicable to the contract, the obligation in question replaces the contractual obligation which has not been performed.

The Cour d'Appel, Mons, also submitted a second question in which it asked whether, in circumstances where, on the one hand, the grantee of an exclusive sales concession is not empowered either to negotiate in the name of the grantor or to bind him and, on the other hand, is not subject either to the control or direction of the grantor, such a person is at the head of a branch, agency or other establishment of the grantor?

The Court of Justice replied to this question in the negative on the ground that one of the essential characteristics of the concepts of branch or agency is the fact of being subject to the direction and control of the parent organization.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 October 1976

(LTU Lufttransportunternehmen GmbH & Co. KG v Eurocontrol)

Case 29/76

1. CONVENTION OF 27 SEPTEMBER 1968 - AREA OF APPLICATION - CIVIL AND COMMERCIAL MATTERS - INTERPRETATION
(Convention of 27 September 1968, Art. 1)

2. CONVENTION OF 27 SEPTEMBER 1968 - AREA OF APPLICATION - ACTION BETWEEN A PUBLIC AUTHORITY AND A PERSON GOVERNED BY PRIVATE LAW - EXERCISE OF THE POWERS OF THE PUBLIC AUTHORITY - JUDGMENT - EXCLUSION
(Convention of 27 September 1968, Art. 1)

1. In the interpretation of the concept "civil and commercial matters" for the purposes of the application of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters, in particular Title III thereof, reference must be made not to the law of one of the States concerned but, first, to the objectives and scheme of the Convention and, secondly, to the general principles which stem from the corpus of the national legal systems.

2. Although certain judgments given in actions between a public authority and a person governed by private law may fall within the area of application of the Convention, this is not so where the public authority acts in the exercise of its powers. Such is the case in a dispute which concerns the recovery of charges payable by a person governed by private law to a national or international body governed by public law for the use of equipment and services provided by such body, in particular where such use is obligatory and exclusive. This applies in particular where the rate of charges, the methods of calculation and the procedures for collection are fixed unilaterally in relation to the users.

N o t e

The proceedings in the main action are concerned with route charges collected by Eurocontrol from owners of aircraft for the use of services provided for the safety of air navigation.

In September 1972 Eurocontrol brought an action against LTU (a German air transport undertaking) before the Tribunal de Commerce, Brussels, in respect of charges amounting to nearly 43,000 US dollars, referring to a clause assigning jurisdiction to the Belgian courts.

LTU contested the jurisdiction of the court seised of the matter but the Tribunal de Commerce, Brussels, dismissed this argument and ordered LTU to pay the sum claimed, together with interest.

This judgment was notified to LTU in Germany but, in 1974, Eurocontrol commenced proceedings before the Landgericht Düsseldorf seeking authorization for enforcement and the issue of an order for enforcement pursuant to the Brussels Convention.

The Oberlandesgericht Düsseldorf has requested the European Court to interpret the concept of "civil and commercial matters" within the meaning of the first paragraph of Article 1 of the Convention. The Convention is to "apply in civil and commercial matters whatever the nature of the court or tribunal". The Court has ruled that that indicates that the concept of civil and commercial matters cannot be interpreted solely on the basis of the division of jurisdiction between the various judicial orders existing in certain States. The Court has replied to the question referred to it by ruling that in order to interpret the concept of "civil and commercial matters" for the purposes of the application of the Convention of 27 September 1963, in particular of Title III, reference should be made not to the law of any single State concerned but, also, to the general principles which are discernible in the totality of the national legal systems.

Furthermore, although certain decisions given in disputes between a public authority and a person governed by private law may fall within the scope of the Convention, the position is different where the public authority acts in the exercise of its public powers.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 November 1976

(Jozef de Wolf v Harry Cox B.V.)

Case 42/76

CONVENTION OF 27 SEPTEMBER 1968 - JUDGMENT OBTAINED IN A MEMBER STATE - ENFORCEMENT IN ANOTHER CONTRACTING STATE POSSIBLE BY VIRTUE OF ARTICLE 31 OF THE CONVENTION - APPLICATION CONCERNING THE SAME SUBJECT-MATTER AND BETWEEN THE SAME PARTIES BROUGHT BEFORE A COURT OF THAT STATE - PROHIBITION - COSTS OF PROCEDURE

(Convention of 27 September 1968, Art. 31)

The provisions of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 prevent a party who has obtained a judgment in his favour in a Contracting State, being a judgment for which an order for enforcement under Article 31 of the Convention may issue in another Contracting State, from making an application to a court in that other State for a judgment against the other party in the same terms as the judgment delivered in the first State. The fact that there may be occasions on which, according to the national law applicable, the procedure set out in Articles 31 et seq. of the Convention may be found to be more expensive than bringing fresh proceedings on the substance of the case does not invalidate these considerations.

N o t e

The facts are as follows: By a judgment in default the judge de paix, Turnhout (Belgium), ordered the undertaking Harry Cox B.V. (Netherlands) to pay to De Wolf (Belgium) the sum of 23.30 guilders, plus the costs of service, legal interest and the costs of the action.

Cox failed to comply with this judgment and De Wolf lodged an application before the Kantonrechter of Boxmeer (Netherlands) for an order that Cox pay the above-mentioned amounts.

Under Articles 26 and 31 of the Brussels Convention a judgment given in a Contracting State shall be recognized in the other Contracting States without any special procedure being required and it shall be enforced in another Contracting State when an order for its enforcement has been issued there. Nevertheless, the Netherlands Kantonrechter gave judgment in favour of the application and held, first, that within the meaning of Article 26, the Belgian judgment had to be recognized in the Netherlands without any special procedure being required but, secondly, that by virtue of the relevant Netherlands legislation, an application for the issue of an order for enforcement would in this instance cost more than lodging a second application concerning the same subject-matter.

The Procureur Generaal brought an appeal before the Hoge Raad against the judgment of the Kantonrechter of Boxmeer on the ground that the Kantonrechter ought to have declared the application inadmissible, since the procedure provided for under Article 31 of the Convention (order for enforcement) was the only means open to the applicant of enforcing the judgment of the Belgian court. The Hoge Raad asked the Court of Justice to rule whether the Convention prevents a plaintiff who has obtained a judgment in his favour in a Contracting State, being a judgment for which an order for enforcement may issue in another Contracting State, from making an application to a court in that other State for a judgment against the other party on the same terms as the judgment delivered in the first State. In its analysis of the Convention, the Court emphasizes that Article 29 provides that "under no circumstances may a foreign judgment be reviewed as to its substance" and that by referring to cases in which proceedings "involving the same cause of action and between the same parties are brought in the courts of different Contracting States" Article 21 requires that a court other than the first seised shall decline jurisdiction in favour of the court in which proceedings were first brought.

That provision is evidence of the concern to prevent the courts of two Contracting States from giving judgment in the same

case. The fact that there may be occasions on which, according to the national law applicable, the issue of an order for enforcement may be found to be more expensive than bringing fresh proceedings on the substance of the case does not invalidate these considerations.

The Court suggests that the Convention ought to induce the Contracting States to ensure that the costs of the procedure described in the Convention are fixed so as to accord with that concern for simplification.

The Court has, therefore, replied in the affirmative to the question raised by the Hoge Raad and has ruled that the provisions of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 prevent a party who has obtained a judgment in his favour in a Contracting State, being a judgment for which an order for enforcement under Article 31 of the Convention may issue in another Contracting State, from making an application to a court in that other State for a judgment against the other party in the same terms as the judgment delivered in the first State.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 November 1976

(S.A. Bier and Stichting Reinwater

v Mines de Potasse d'Alsace)

Case 21/76

CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS - POLLUTION OF THE ATMOSPHERE OR OF WATER - DISPUTE OF AN INTERNATIONAL CHARACTER - MATTERS RELATING TO TORT, DELICT OR QUASI-DELICT - COURTS HAVING JURISDICTION - SPECIAL JURISDICTION - PLACE WHERE THE HARMFUL EVENT OCCURRED - PLACE OF THE EVENT GIVING RISE TO THE DAMAGE AND PLACE WHERE THE DAMAGE OCCURRED - CONNECTING FACTORS OF SIGNIFICANCE AS REGARDS JURISDICTION - RIGHT OF PLAINTIFF TO ELECT

(Convention of 27 September 1968, Art. 5 (3))

Where the place of the happening of the event which may give rise to liability in tort, delict or quasi-delict and the place where that event results in damage are not identical, the expression "place where the harmful event occurred", in Article 5 (3) of the Convention of 27 September 1968 on jurisdiction and the enforcement of Judgments in Civil and Commercial Matters must be understood as being intended to cover both the place where the damage occurred and the place of the event giving rise to it. The result is that the defendant may be sued, at the option of the plaintiff, either in the courts for the place where the damage occurred or in the courts for the place of the event which gives rise to and is at the origin of that damage.

N o t e

This case, which lays down principles governing possible conflicts of jurisdiction arising in cases in which polluted air and water spreads into the different Member States of the Community, is of particular interest and considerable future developments in the case-law which it lays down are unfortunately to be expected.

The facts are as follows: Bier B.V., which is engaged in the business of nursery gardening in the Netherlands, uses for the irrigation of its seed beds a water catchment area which is fed principally by the Rhine. The high salinity of those waters causes damage to the seed beds and Bier is obliged to take expensive measures to limit it. The Reinwater Foundation, whose registered office is at Amsterdam, exists in order to promote every possible improvement in the quality of the water in the Rhine basin. One of the means whereby it seeks to achieve this purpose consists in bringing legal actions so as to ensure the protection of the rights of riparian owners or consumers of the water of the Rhine. Bier and Reinwater brought an action before the Arrondissementsrechtbank (District Court), Rotterdam, against the company Mines de Potasse d'Alsace, whose registered office is at Mulhouse and which discharges into the Rhine more than 10,000 tons of chloride every 24 hours, thereby seriously increasing the salt content of the Rhine.

Mines de Potasse d'Alsace, reserving its defence in the main action, objected that the courts of the Netherlands had no jurisdiction by virtue of Articles 2 and 3 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters ("persons domiciled in a Contracting State shall, whatever their nationality, be sued in the courts of that State" and "persons who are not nationals of the State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State").

As the Arrondissementsrechtbank, Rotterdam, held that it had no jurisdiction, Bier and Reinwater lodged an appeal against that judgment on the basis of Article 5 (3) of the Brussels Convention, which provides that a defendant domiciled in a Contracting State may, in another Contracting State, be sued in matters relating to tort, delict or quasi-delict, in the courts for the place "<u>where the harmful event occurred</u>".

The Gerechtshof, The Hague, which heard the appeal, requested the Court of Justice of the European Communities to give a preliminary ruling on the question whether the concept in question referred to the place where the damage occurred (the Netherlands) or rather the place where the action having the damage as its sequel was undertaken (France).

The judgment of the Court emphasizes the following points: Article 5 makes provision for a number of cases of special jurisdiction, the choice of which is open to the plaintiff. This freedom of choice was introduced with a view to the efficacious conduct of the proceedings having regard to the existence of a particularly strong connecting factor between the dispute and the court which may be called upon to hear it. In the context of the Convention, the meaning of the phrase "the place where the harmful event occurred" is unclear where the place of occurrence of the event which is at the origin of the damage is situated in a State other than that in which the damage occurred, as is in particular the case as regards atmospheric or water pollution beyond the frontiers of a State.

Liability in tort, delict or quasi-delict can only arise provided that a chain of causation can be established between the damage and the event which constitutes the cause of the damage. In the light of the close connexion between the constituent factors of any type of liability it does not appear appropriate to opt exclusively for one of the two aforementioned criteria since each one may, depending on the circumstances, be extremely useful for the purposes of evidence and the conduct of the proceedings. An exclusive choice appears all the more undesirable in that, by its comprehensive form of words, Article 5 (3) of the Convention covers a large number of different types of liability. The Court has ruled that where the place of the occurrence of the event which may give rise to liability in tort, delict or quasi-delict and the place of the occurrence of the damage caused by that event are not identical, the expression "the place where the harmful event occurred" in Article 5 (3) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in

Civil and Commercial Matters must be understood as meaning that it covers both the place where the damage occurred and the place of the event giving rise to the damage. The result is that the defendant may be sued at the option of the plaintiff either in the court of the place where the damage occurred or in the place of the event which gives rise to the damage and is at the origin of such damage.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 December 1976

(Estasis Salotti di Colzani)

Case 24/76

1. CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS - JURISDICTION BY CONSENT - EFFECT - VALIDITY - MANNER IN WHICH APPLIED - STRICT INTERPRETATION - CONSENSUS BETWEEN THE PARTIES
(Convention of 27 September 1968, Article 17)

2. CONVENTION OF 27 SEPTEMBER 1968 - COURTS HAVING JURISDICTION - JURISDICTION BY CONSENT - IN WRITING - CONTRACT SIGNED BY THE PARTIES - GENERAL CONDITIONS OF SALE PRINTED ON THE BACK - CLAUSE CONFERRING JURISDICTION - NECESSITY FOR AN EXPRESS REFERENCE TO THOSE CONDITIONS IN THE CONTRACT
(Convention of 27 September 1968, Article 17)

3. CONVENTION OF 27 SEPTEMBER 1968 - COURTS HAVING JURISDICTION - JURISDICTION BY CONSENT - IN WRITING - CONTRACT - ENTERED INTO BY REFERENCE TO PRIOR OFFERS - REFERENCE TO GENERAL CONDITIONS OF SALE - CLAUSE CONFERRING JURISDICTION - NECESSITY FOR AN EXPRESS REFERENCE
(Convention of 27 September 1968, Article 17)

1. The way in which Article 17 of the Convention of 27 September 1968 is to be applied must be interpreted in the light of the effect of the conferment of jurisdiction by consent, which is to exclude both the jurisdiction determined by the general principle laid down in Article 2 and the special jurisdictions provided for in Articles 5 and 6 of that Convention. In view of the consequences that such an option may have on the position of the parties to the action, the requirements set out in Article 17 governing the validity of clauses conferring jurisdiction must be strictly construed.

By making the validity of clauses conferring jurisdiction subject to the existence of an "agreement" between the parties, Article 17 imposes on the court before which the matter is brought the duty of examining, first, whether the clause conferring jurisdiction upon it was in fact the subject of a consensus between the parties, which must be clearly and precisely demonstrated, for the purpose of the formal requirements imposed by Article 17 is to ensure that the consensus between the parties is in fact established.

2. In the case of a clause conferring jurisdiction, which is included among the general conditions of sale of one of the parties, printed on the back of the contract, the requirement of a writing under the first paragraph of Article 17 of the Convention of 27 September 1968 is only fulfilled if the contract signed by the two parties includes an express reference to those general conditions.

3. In the case of a contract concluded by reference to earlier offers, which were themselves made with reference to the general conditions of one of the parties including a clause conferring jurisdiction, the requirement of a writing under the first paragraph of Article 17 of the Convention of 27 September 1968 is satisfied only if the reference is express and can therefore be checked by a party exercising reasonable care.

N o t e

The Bundesgerichtshof (Federal Court of Justice) referred to the Court of Justice of the European Communities in Luxembourg two cases (24/76 - Colzani and 25/76 - Segoura) concerning the interpretation of the first paragraph of Article 17 of the Convention on Jurisdiction and the Enforcement of judgments in Civil and Commercial Matters (Brussels Convention).

The first paragraph of Article 17 of the Convention provides that "If the parties, one or more of whom is domiciled in a Contracting State, have, by agreement in writing or by an oral agreement confirmed in writing, agreed that a court or the courts of a Contracting State are to have jurisdiction to settle any disputes which have arisen or which may arise in connexion with a particular relationship, that court or those courts shall have exclusive jurisdiction".

The first question put to the Court of Justice by the Bundesgerichtshof was as follows: does a clause conferring jurisdiction, which is included among general conditions of sale printed on the back of a contract signed by both parties, fulfil the requirement of a writing under the first paragraph of Article 17 of the Convention? In its general interpretation of Article 17 the Court of Justice has stated that the validity of clauses conferring jurisdiction is subject, pursuant to Article 17, to conditions which must be strictly interpreted. The formal requirements of Article 17 are designed to ensure that consent between the parties has indeed been reached. The court which is seised of the matter is under a duty to examine, first of all, whether the clause conferring jurisdiction upon it is indeed the outcome of consent between the parties, which must be clearly and precisely apparent.

In the light of these general considerations the Court has replied to the first question with a ruling that the requirement of a writing under the first paragraph of Article 17 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is fulfilled in the case where a clause conferring jurisdiction is included among the general conditions of sale of one of the parties, printed on the back of the contract signed by both parties, only where the contract signed by both parties includes an express reference to those general conditions.

A second question asked whether the requirement of a writing under the first paragraph of Article 17 of the Brussels Convention is fulfilled if the parties expressly refer in the contract to a prior offer in writing which, in its turn, referred to general conditions of sale including a clause conferring jurisdiction.

In that hypothesis, the Court of Justice has ruled that the reference must be express and therefore capable of control by the party concerned by the exercise of normal care.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

14 December 1976

(Galéries Segoura v Bonakdarian)

Case 25/76

1. CONVENTION OF 27 SEPTEMBER 1968 ON JURISDICTION AND THE ENFORCEMENT OF JUDGMENTS - CONFERMENT OF JURISDICTION BY CONSENT - EFFECT - VALIDITY - REQUIREMENTS - STRICT CONSTRUCTION - CONSENSUS BETWEEN PARTIES
(Convention of 27 September 1968, Article 17)

2. CONVENTION OF 27 SEPTEMBER 1968 - JURISDICTION - CONFERMENT OF JURISDICTION BY CONSENT - FORM - ORALLY CONCLUDED CONTRACT - VENDOR'S CONFIRMATION IN WRITING - NOTIFICATION OF GENERAL CONDITIONS OF SALE - CLAUSE CONFERRING JURISDICTION - NEED FOR ACCEPTANCE IN WRITING BY THE PURCHASER - ORAL AGREEMENT WITHIN THE FRAMEWORK OF A CONTINUING TRADING RELATIONSHIP - IMPLIED ACCEPTANCE OF THE CLAUSE CONFERRING JURISDICTION
(Convention of 27 September 1968, Article 17)

1. The way in which Article 17 of the Convention of 27 September 1968 is to be applied must be interpreted in the light of the effect of the conferment of jurisdiction by consent, which is to exclude both the jurisdiction determined by the general principle laid down in Article 2 and the special jurisdictions provided for in Articles 5 and 6 of the Convention. In view of the consequences that such an option may have on the position of the parties to the action, the requirements set out in Article 17 governing jurisdiction must be strictly construed. By making such validity subject to the existence of an "agreement" between the parties, Article 17 imposes upon the court before which the matter is brought the duty of examining, first, whether the clause conferring jurisdiction upon it was in fact the subject of a consensus between the parties, which must be

clearly and precisely demonstrated, the purpose of the formal requirements imposed by Article 17 being to ensure that the consensus between the parties is in fact established.

2. In the case of an orally concluded contract, the requirements of the first paragraph of Article 17 of the Convention of 27 September 1968 as to form are satisfied only if the vendor's confirmation in writing accompanied by notification of the general conditions of sale has been accepted in writing by the purchaser. The fact that the purchaser does not raise any objections against a confirmation issued unilaterally by the other party does not amount to acceptance on his part of the clause conferring jurisdiction, unless the oral agreement comes within the framework of a continuing trading relationship between the parties which is based on the general conditions of one of them, and those conditions contain a clause conferring jurisdiction.

Note

This again is a question of interpretation of the first paragraph of Article 17 of the Brussels Convention, in a slightly different context. The first question asked the Court of Justice whether the requirements of the first paragraph of Article 17 of the Convention are satisfied if, at the oral conclusion of a contract of sale, a vendor has stated that he wishes to rely on his general conditions of sale and if he subsequently confirms the contract in writing to the purchaser and annexes to that confirmation his general conditions of sale which contain a clause conferring jurisdiction. The Court has ruled that in the case of the oral conclusion of a contract the formal requirements of the first paragraph of Article 17 of the Convention of 27 September 1968 are fulfilled only if the written confirmation from the vendor accompanied by the general business conditions has provoked a written acceptance by the purchaser.

A second question asked whether Article 17 of the Convention is to be applied where, in dealings between merchants, the vendor, after the

oral conclusion of a contract of sale, confirms in writing to the purchaser the conclusion of the contract subject to his general conditions of sale and annexes to that document his conditions of sale which include a clause conferring jurisdiction and if the purchaser does not challenge this confirmatory letter.

The Court has ruled that the fact that the purchaser raised no objection does not signify acceptance of the clause conferring jurisdiction unless the verbal agreement is to be viewed in a context of current commercial relations between the parties on the basis of the general conditions of one of them including a clause conferring jurisdiction.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 September 1976

(Mrs M.L.E. Brack v Insurance Officer)

Case 17/76

1. SOCIAL SECURITY FOR MIGRANT WORKERS - WORKER - CONCEPT - DEFINITION VIS-A-VIS BRITISH LEGISLATION - EFFECT - OBJECT

(Regulation No. 1408/71 of the Council, Annex V, Point I, paragraph 1)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - WORKER - CONCEPT - DEFINITION VIS-À-VIS BRITISH LEGISLATION - SICKNESS - BENEFITS IN CASH - STAY ON THE TERRITORY OF ANOTHER MEMBER STATE - RECIPIENTS.

(Regulation No. 1408/71 of the Council, Article 1 (a) (ii); First sentence of Article 22 (1) (ii))

1. The provision in paragraph 1 of Point I (United Kingdom) of Annex V to Regulation No. 1408/71, far from restricting the definition of the term "worker" as it emerges from Article 1 (a) of the regulation, is solely concerned to clarify the scope of subparagraph (ii) of this paragraph vis-à-vis British legislation.

2. A person who:

was compulsorily insured against the contingency of "sickness" successively as an employed person and as a self-employed person under a social security scheme for the whole working population;

was a self-employed person when this contingency occurred;

at the said time and under the provisions of the said scheme, nevertheless could have claimed sickness

benefits in cash at the full rate only if there were taken into account both the contributions paid by him or on his behalf when he was an employed person and those which he made as a self-employed person;

constitutes, as regards British legislation, a "worker" within the meaning of Article 1 (a) (ii) of Regulation No. 1408/71 for the purposes of the application of the first sentence of Article 22 (1) (ii) of that regulation.

N o t e

This case, regarding the application of social security schemes to employed persons and their families moving within the Community was brought before the Court of Justice by a British authority having jurisdiction in social security matters, the National Insurance Commissioner.

In broad terms, the problem lies in the definition of the concept of a "worker" within the meaning of Regulation No. 1408/71 of the Council and of Annex V thereto regarding the implementation of that regulation in the United Kingdom.

The facts are as follows: Mr Brack, a British subject, born in 1906, who had always resided in Great Britain, was insured under the British national insurance scheme as from 1948. Until 1957 he paid contributions as an employed person; he subsequently became self-employed and paid contributions in that capacity.

In 1974, for health reasons, he went to France where he fell seriously ill and had to receive immediate medical attention. One month later he returned home to England where his national insurance authority rejected his claim for cash sickness benefit for the period during which he was in France, on the basis of a national rule enshrining the principle that "a person shall be disqualified from receiving any benefit ... for any period during which that person ... is absent from Great Britain". Mr Brack died in 1975 and his widow

pursued the matter. As a result the National Insurance Commissioner has asked the Court of Justice to interpret the Community provisions.

Annex V, which contains special procedures for applying the legislation of certain Member States, regards as a "worker" any person required to pay contributions as an employed worker. Does this definition constitute a limitation of the scope of Regulation No. 1408/71? The Court has replied that, far from restricting the definition of the expression "worker", Annex V is solely intended to clarify the scope of the regulation in view of the fact that the British system, which distinguishes between contributions from employed persons, self-employed persons and non-employed persons, requires certain categories of persons who do not have this status under the law of employment to "pay contributions as employed persons". The Court also ruled that a person who:

> was compulsorily insured against the contingency of "sickness" successively as an employed person and as a self-employed person under a social security scheme for the whole working population;
>
> was a self-employed person when this contingency occurred;
>
> at the said time and under the provisions of the said scheme, nevertheless could obtain sickness benefit in cash at the full rate only if there were taken into account both the contributions paid by him or on his behalf when he was an employed person and those which he made as a self-employed person,

constitutes, as regards British legislation, a "worker" within the meaning of Articles 1 and 22 of Regulation No. 1408/71 of the Council.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

27 October 1976

(Vivien Prais v

Council of the European Communities)

Case 130/75

1. OFFICIALS - RECRUITMENT - COMPETITIONS ON THE BASIS OF TESTS - ORGANIZATION - PRINCIPLE OF EQUALITY - APPLICATION - CRITERIA (Staff Regulations of Officials, Art. 29 (1), Annex III, Arts. 1 and 5)

2. OFFICIALS - RECRUITMENT - COMPETITIONS ON THE BASIS OF TESTS - ORGANIZATION - DATE - CERTAIN DATES IMPOSSIBLE FOR A CANDIDATE - RELIGIOUS REASONS - OBLIGATIONS ON THE PART OF THE ADMINISTRATION (Staff Regulations of Officials, Art. 29 (1), Annex III, Arts. 1 and 5).

1. When a competition is on the basis of tests, the principle of equality necessitates that the tests shall be on the same conditions for all candidates, and in the case of written tests the practical difficulties of comparison require that the written tests for all candidates should be the same. It is therefore of great importance that the date of the written tests should be the same for all candidates. The interest of participants not to have a date fixed for a test which is unsuitable must be balanced against this necessity.

2. If a candidate informs the appointing authority that religious reasons make certain dates impossible for him the appointing authority should take this into account in fixing the date for written tests, and endeavour to avoid such dates. On the other hand, if the candidate does not inform the appointing authority in good time of his difficulties the appointing authority would be justified in refusing to afford an alternative date, particularly if there are other candidates who have been convoked for the test.

N o t e

A competition to recruit a lawyer-linguist for the Council has led the Court of Justice to consider the important question of the fundamental rights of the individual.

Mrs V. Prais was informed by letter of 23 April 1975 that her application to be considered for a post of lawyer/linguist of English mother tongue vacant at the Council had been accepted and that she had been admitted to the written tests to be held in London on Friday, 16 May 1975. By return of post she informed the Council that as she was of the Jewish faith and as the date in question was the day of the Jewish feast of Chavouoth (Pentecost), when it is forbidden to travel or write, she would not be able to take part in the examination. She therefore asked to be allowed to take the tests on another date. By letter of 5 May the Council replied that it was not possible to offer her an alternative date, since it was essential that all candidates should undergo the examination using the same papers on the same day and that for that reason arrangements had been made for the examination to take place on 16 May in Brussels and in London.

Mrs Prais lodged an application with the Court of Justice in which she sought, inter alia, the annulment of the decision of the Council rejecting her request to take the written tests on another day.

The general interest in this case lies in the arguments put forward by the applicant to support her request. She claims that there was an infringement of the second paragraph of Article 27 of the Staff Regulations of Officials which provides that officials shall be selected without reference to race, creed or sex. She maintains, furthermore, that Community law prohibits any discrimination on grounds of religion and that such discrimination is contrary to the fundamental rights of the individual, respect for which the Court is required to ensure. Finally, she relies on the European Convention on Human Rights and Fundamental Freedoms which

provides for "Freedom to manifest one's religion or beliefs". As that Convention has been ratified by all the nine Member States, the rights enshrined therein may be regarded as being among the fundamental rights to be protected by Community law.

The Court of Justice dismissed the application, accepting the arguments put forward by the Council. The Council does not, of course, contest any of the fundamental rights but maintains that neither the Staff Regulations of Officials nor the Convention are to be understood as according to the plaintiff the rights she claims.

The Council maintains that the principle of equality necessitates that the tests shall be on the same conditions for all candidates, which is why the choice of the same date for all candidates is so important.

Moreover, if a candidate does not inform the appointing authority in good time of his difficulties, the appointing authority may be justified in refusing to afford an alternative date, particularly if there are other candidates who have already been invited.

Although it is desirable that an appointing authority should be aware in a general way of dates which might be unsuitable for religious reasons and seek to avoid fixing such dates for tests, nevertheless, for the reasons indicated above, neither the Staff Regulations nor the fundamental rights already referred to can be considered as imposing on the appointing authority a duty to avoid conflict with a religious requirement of which the authority has not been informed.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 November 1976

(Firma Milac GmbH Gross- und Aussenhandel v Hauptzollamt Freiburg)

Case 28/76

1. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - AMENDMENTS - POWERS OF THE COMMISSION - LIMITS
(Regulation (EEC) No. 974/71; Regulation (EEC) No. 725/74)

2. AGRICULTURE - MILK POWDER - FAT CONTENT IN EXCESS OF 3% - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - REDUCTION - PROHIBITION
(Regulation (EEC) No. 974/71, Art. 1; Regulation (EEC) No. 218/74, Art. 1; Regulation (EEC) No. 725/74, Annex I, Part 5)

3. AGRICULTURE - AGRICULTURAL PRODUCTS - TRADE - MEMBER STATES - THIRD COUNTRIES - MONETARY COMPENSATORY AMOUNTS - AMENDMENTS - REGULATION (EEC) NO. 725/74 - VALIDITY

1. In adopting the amendments to the monetary compensatory amounts the Commission did not have the power to fix - with the object of avoiding any possibility of placing these products in a less favourable position as compared to those products for which the corrective amount was laid down by the Council - the rates of the monetary compensatory amounts for the products in question at a level lower than that which would have been applicable otherwise. Furthermore the fact that the Council deemed it necessary in exceptional circumstances to fix a reduced intervention price for skimmed-milk powder for certain countries does not necessarily imply that the system of monetary compensatory amounts applicable to other products derived from milk also has to be amended in order to avoid any possibility of placing such products in a less favourable position.

2. The combined provisions of Article 1 of Regulation (EEC) No. 974/71,

Article 1 of Regulation (EEC) No. 218/74 and Part 5 of Annex I to that Regulation in the version contained in Regulation (EEC) No. 725/74 and applicable to powdered milk under tariff subheading 04.02 A II b 2 of the Common Customs Tariff must be interpreted as meaning that they do not allow the reduction of the monetary compensatory amounts by 2 units of account or less where the fat content by weight is in excess of 3%.

3. Regulation No. 725/74 amending the monetary compensatory amounts is valid.

N o t e

Within the context of an action concerning the calculation of monetary compensatory amounts and the corrective amount applicable to imports from France into Germany of unsweetened full cream milk powder, the Finanzgericht Baden-Württemberg asked the Court to give a preliminary ruling on two questions concerning the interpretation of the combined provisions of regulations of the Council and the Commission relating to certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States and fixing the monetary compensatory amounts.

It is not necessary to go into the extremely technical reasoning on which this judgment is based, but it is sufficient to say that the Court has ruled that the provisions of Article 1 of Regulation (EEC) No. 974/71 in conjunction with Part 5 of Annex I to Article 7 of Regulation (EEC) No. 218/74, as amended by Regulation (EEC) No. 725/74, must be interpreted as not allowing the monetary compensatory amounts for milk powder under tariff heading 04.02 A 11 b 2 of the Common Customs Tariff to be reduced by an amount not exceeding two units of account where the fat content is in excess of three per cent by weight. In reply to the second question, the Court upheld the validity of Regulation No. 725/74.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 November 1976

(Slavica Kermaschek

v Bundesanstalt für Arbeit)

Case 40/76

SOCIAL SECURITY FOR MIGRANT WORKERS - UNEMPLOYMENT - BENEFITS - PERSONS ENTITLED - WORKERS - MEMBERS OF THEIR FAMILIES - NATIONALITY
(Regulation (EEC) No. 1408/71, Arts. 67 to 70)

Articles 67 to 70 of Regulation No. 1408/71 have only one main purpose, namely the co-ordination of the rights to unemployment benefits provided by virtue of the national legislation of the Member States for employed persons who are nationals of a Member State. The members of the family of such workers are entitled only to the benefits provided by such legislation for the members of the family of unemployed workers and it is to be understood that the nationality of those members of the family does not matter for this purpose.

N o t e

Mrs Kermaschek is a national of the Socialist Federal Republic of Yugoslavia. She worked in her country of origin before taking posts as an attendant on sick persons or an assistant nurse in the Netherlands and Switzerland. She resigned from her last post by reason of her marriage in 1975 to Mr Kermaschek, a German national, and left her residence in the Netherlands to go and live with her husband in the Federal Republic of Germany. Mrs Kermaschek registered as unemployed in Germany and applied for unemployment benefit, which was refused on the ground that the periods of employment completed in the Netherlands and in Switzerland could not be taken into account as a condition for the acquisition of the right to unemployment benefit, either under the Convention between Germany and Yugoslavia on insurance against unemployment or on the basis of EEC law.

Mrs Kermaschek commenced judicial proceedings, arguing that she should be assimilated to German employed persons particularly since she had given up her former employment for a valid reason, namely, in order to live with her husband after her marriage. The proceedings were brought before the Sozialgericht Gelsenkirchen, which requested the Court of Justice of the European Communities to give a preliminary ruling on the interpretation to be given to certain provisions of Regulation No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community and, inter alia, to Article 69, which provides that: "A worker who is wholly unemployed and who satisfies the conditions of the legislation of a Member State for entitlement to benefit and who goes to one or more other Member States in order to seek employment there shall retain his entitlement to such benefits under the conditions ... hereinafter indicated".

The question therefore arises whether and to what extent the members of a family of a national of a Member State are to be assimilated to the nationals themselves. The Court emphasizes that the text of the regulation draws a clear distinction between workers (listed as nationals of a Member State, stateless persons, or refugees), who may claim the rights to benefit referred to by the regulation as their own rights, and the members of their family and their survivors who can claim only derived rights, acquired through their status as the members of the family or survivors of a worker, that is, of a person belonging to the first category.

The Court has ruled that Articles 67 to 70 of Regulation No. 1408/71 have only one main purpose, namely the co-ordination of the rights to unemployment benefits paid by the national laws of the Member States to employed workers who are nationals of one of those States. The members of the family of such workers are only entitled to the benefits provided by those laws for the members of the family of unemployed workers and for that purpose the nationality of such members is irrelevant.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 December 1976

(Luigi Pellegrini & C.S.a.s. v Commission of the European Communities)

Case 23/76

1. PROCEDURE - APPLICATION - JURISDICTION OF THE COURT - ARBITRATION CLAUSE CONTAINED IN A CONTRACT - SUBMISSION OF THE APPLICATION - FORM
(EAEC Treaty, Art. 153)

2. REQUEST FOR TENDERS - EVALUATION - FACTORS - DISCRETION OF THE ADMINISTRATIVE AUTHORITY - PRICE - HIGHER THAN THE OTHER OFFERS - THAT OFFER CHOSEN - MISUSE OF POWERS - ABSENCE THEREOF
(Financial Regulation of 1973, Art. 59(2))

3. PROCEDURE - APPLICATION - GROUNDS - MISUSE OF POWERS - EVIDENCE

4. PROCEDURE - COSTS - ORDER THAT THE PARTIES BEAR THEIR OWN COSTS - EXCEPTIONAL CIRCUMSTANCE
(Rules of Procedure, Art. 69(3))

1. The submission of an application under Article 153 of the EAEC Treaty is valid if that application is accompanied by the contractual documents and the correspondence referring thereto.

2. There is no provision which stipulates that price must constitute the only decisive factor in the evaluation of the financial and technical aspects of the offers. Therefore if, in a procedure for request for tenders, the administrative authority chooses an undertaking whose offer is higher in price than the others, the fact does not of itself constitute a misuse of powers.

3. In order to find that there has been a misuse of powers, it must be shown that the reasons for the administrative authority's choice were extraneous to the interests of the service.

4. If, in the course of a procedure for request for tenders, a party had good reason to consider itself justified in asking the administrative authority to explain before the Court the grounds for its choice, this constitutes an exceptional circumstance giving grounds for an order that the parties bear their own costs.

N o t e

The Court of Justice was called upon to deal with a dispute which arose between Pellegrini, an Italian company providing cleaning services, and the Commission as a result of a decision by the Commission to award to the company Flexon-Italia a contract to provide cleaning services in the establishment at Ispra.

Since 1960 Pellegrini has provided cleaning services with which it had apparently been entrusted originally by "direct negotiation".

The Court of Justice at Luxembourg was required to deal with these domestic problems under a clause awarding it jurisdiction which was contained in a "draft agreement" concluded between the parties in 1971.

The applicant claimed the annulment of the measure by which the Commission decided to conclude a new contract for cleaning services with the company Flexon-Italia on the ground of misuse of powers or, at the least, of grave negligence.

Following an invitation to tender to which both Pellegrini and Flexon had replied, the contract had been awarded to Flexon

although its charges were higher than those of Pellegrini and although Pellegrini had been performing the services in question satisfactorily over a long period.

The Court dismissed the application. It is interesting to note that in the grounds of judgment the Court stated that within the context of an invitation to tender, the fact that the Commission accepted a tender from a company whose charges were higher than those tendered by the other companies did not, in itself constitute a misuse of powers. For a misuse of powers to exist, it must be shown that the Commission made its choice for reasons which were outside the interests of the service.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 December 1976

(Simmenthal S.p.A. v

Italian Minister for Finance)

Case 35/76

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

2. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - IMPORTATION OF GOODS -VETERINARY AND PUBLIC HEALTH INSPECTIONS - PROHIBITION
(EEC Treaty, Art. 30)

3. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - IMPORTATION OF ANIMALS AND MEAT INTENDED FOR HUMAN CONSUMPTION -VETERINARY AND PUBLIC HEALTH INSPECTION - PROHIBITION - ENTRY INTO FORCE
(Regulation No. 14/64, Art. 12, Regulation No. 805/68, Art.22)

4. FREE MOVEMENT OF GOODS - RESTRICTIONS - PROHIBITION - DEROGATION - OBJECT
(EEC Treaty, Art. 36)

5. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - IMPORTATION OF ANIMALS AND MEAT INTENDED FOR HUMAN CONSUMPTION - VETERINARY AND PUBLIC HEALTH INSPECTIONS - PROHIBITION - DEROGATION - DURATION - CONDITIONS WITH REGARD TO HEALTH - FULFILMENT - VERIFICATION - OCCASIONAL VETERINARY AND PUBLIC HEALTH INSPECTIONS - PERMISSIBILITY - JURISDICTION OF NATIONAL COURTS
(EEC Treaty, Arts. 30 and 36)
(Council Directives Nos. 64/432 and 64/433)

6. CUSTOMS DUTIES - ELIMINATION - CHARGES HAVING EQUIVALENT EFFECT - CONCEPT - PRODUCTS - CROSSING THE FRONTIER - VETERINARY AND PUBLIC HEALTH INSPECTION - FEE
(EEC Treaty, Art. 9)

7. INTERNAL TAXATION - DOMESTIC AND IMPORTED PRODUCTS - VETERINARY AND PUBLIC HEALTH INSPECTIONS CARRIED OUT WITHIN MEMBER STATES - FEES - DISCRIMINATION - PROHIBITION
(EEC Treaty, Art. 95)

1. Article 177 of the EEC Treaty is based on a distinct separation of functions between national courts and tribunals on the one hand and the Court of Justice on the other hand and it does not give the Court jurisdiction to take cognizance of the facts of the case or to criticize the reasons for the reference. The Court is entitled to pronounce on the interpretation of the Treaty and of acts of the institutions but cannot apply them to the case in question since such application falls within the jurisdiction of the national court.

2. Veterinary and public health inspections at the frontier, whether carried out systematically or not, on the occasion of the importation of goods constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, which are prohibited by that provision, subject to the exceptions laid down by Community law and in particular by Article 36 of the Treaty.

3. As far as concerns the products referred to in Regulations Nos. 14/64 and 805/68 on the common organization of the market in beef and veal the prohibition of veterinary and public health inspections, subject to the exceptions laid down by Community law, took effect on the date when the said regulations entered into force.

4. Article 36 of the EEC Treaty is not designed to reserve certain matters for the exclusive jurisdiction of Member States but permits national laws to derogate from the principle of the free movement of goods to the extent to which such derogation is and continues to be justified for the attainment of the objectives referred to in that article.

5. Although systematic veterinary and public health inspections at the frontier of the products mentioned in Directives Nos. 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 as from the latest dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with the said directives and although, in principle, a mere examination of the documents (health certificates) which are required to accompany the products should disclose whether the conditions with regard to health have been fulfilled, occasional veterinary or public health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States. It is for the national courts, before which such cases may be brought, to determine, in the event of a dispute, whether the procedures adopted for the inspections, on which they are asked to give a ruling, are incompatible with the requirements of Article 36.

6. Pecuniary charges imposed by reason of veterinary or public health inspections of products on the occasion of their crossing the frontier are to be regarded as charges having an effect equivalent to customs duties.

7. Charges imposed by the various public authorities on the occasion of veterinary and public health inspections carried out within Member States on both domestic and imported products constitute internal taxation to which the prohibition of discrimination in Article 95 of the Treaty applies.

N o t e

The Pretura di Susa (Italy, Court of First Instance) referred a number of preliminary questions to the Court of Justice on the interpretation of Community provisions concerning the abolition of customs duties and quantitative restrictions between the Member States and the provisions concerning the common organization of the market in beef and veal in relation to problems of veterinary and public health inspection in intra-Community trade in cattle and pigs and fresh meat.

These questions were raised during a dispute between the plaintiff in the main action and the Italian finance administration concerning the repayment of fees charged on the occasion of a veterinary inspection undertaken pursuant to national legislation in respect of a consignment of beef and veal imported from France into Italy. According to the plaintiff in the main action the fees were charged improperly because, on the one hand, the organization of mandatory and systematic health inspections constitutes, since the implementation of the health directives of 26 June 1964, a measure having an effect equivalent to a quantitative restriction as prohibited by the Treaty and, on the other hand, because the levying of fees in connexion with such inspections amounts to an infringement of Articles 9 and 13 of the Treaty prohibiting the levying of any charge have an effect equivalent to a customs duty on imports.

In its judgment on the numerous questions referred to it, the Court has ruled that:

1. (a) Health inspections at the frontier, whether they are carried out systematically or not, of imported animals or meat intended for human consumption constitute measures having an effect equivalent to quantitative restrictions within the meaning of Article 30 of the Treaty, which are prohibited

by that provision, subject to the exceptions laid down by Community law and in particular by Article 36 of the Treaty;
(b) As far as the products referred to by Regulations Nos. 14/64 and 805/68 on the common organization of the market in beef and veal are concerned, the date fixed for the prohibition of such measures, apart from the beforementioned exceptions, was the date when the said regulations entered into force.

2. Although systematic health inspections at the frontier of the products mentioned in Directives Nos. 64/432 and 64/433 are no longer necessary or, consequently, justified under Article 36 as from the last dates specified in the directives for the entry into force of the national provisions which are necessary in order to comply with those provisions and although, in principle, an examination of the documents (health certificate, certificate of hygiene) which must accompany the products discloses whether health conditions have been fulfilled, occasional veterinary or health inspections are not ruled out, provided that they are not increased to such an extent as to constitute a disguised restriction on trade between Member States.

3. (a) Pecuniary charges levied in respect of the health inspection of goods when they cross the frontier are to be regarded as having an effect equivalent to customs duties;
(b) The position would be different only if the pecuniary charges related to a general system of internal dues applied systematically in accordance with the same criteria to domestic products and imported products alike.

4. Fees charged by the various public authorities for health inspections within Member States of domestic and imported products constitute internal taxation covered by the

prohibition on discrimination contained in Article 85 of the Treaty.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 December 1976

(Bestuur der Bedrijfsvereniging voor de Metaalnijverheid v L.J. Mouthaan)

Case 39/76

1. SOCIAL SECURITY FOR MIGRANT WORKERS - WORKER - CONCEPT
(Regulation No. 1408/71, Art. 1)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - TOTAL UNEMPLOYMENT - LAST EMPLOYMENT - MEMBER STATE OTHER THAN THAT OF RESIDENCE - UNEMPLOYMENT BENEFITS - CLAIM - STATE OF RESIDENCE - LEGISLATION - APPLICATION
(Regulation No. 1408/71, Art. 71 (1) (b) (ii))

3. SOCIAL SECURITY FOR MIGRANT WORKERS - UNEMPLOYMENT - BENEFITS - PURPOSE - NETHERLANDS LAW ON UNEMPLOYMENT, TITLE IIIA - PAYMENTS - NATURE - ABSENCE OF UNEMPLOYMENT BENEFITS WITHIN THE MEANING OF REGULATION NO. 1408/71, ART. 4 (1)

1. It must be accepted that the status of worker within the meaning of Regulation No. 1408/71 is acquired when the worker complies with the substantive conditions laid down objectively by the social security scheme applicable to him even if the steps necessary for affiliation to that scheme have not been completed.

2. A wholly unemployed worker who, in the course of his last employment, was employed in a Member State other than that of his residence by an undertaking established in the latter State and who, in respect of that activity, was subject to the legislation of the State of employment may, by virtue of Article 71 (1) (b) (ii) of Regulation No. 1408/71, claim unemployment benefits under the provisions of the national legislation of the State where he resides and to whose employment services he makes himself available for work.

3. The unemployment benefits referred to in Article 4 (1) (g) of Regulation No. 1408/71 are essentially intended to guarantee to an unemployed worker the payment of sums which do not correspond to contributions made by that worker in the course of his employment. Benefits such as those under Title III A of the Netherlands Law on Unemployment the aim of which is to enable a worker who is owed wages following the insolvency of his employer to recover the amounts due to him within the limits laid down by that Law do not constitute "unemployment benefits" within the meaning of Article 4 (1) (g) of Regulation No. 1408/71.

N o t e

Mr Mouthaan, a Netherlands national, was an employed worker in the Netherlands until 30 September 1972. As from 1 October 1972 he worked in the Federal Republic of Germany for a Netherlands firm established in the Netherlands. However, he maintained his domicile in the Netherlands. At the end of 1972 he became unemployed; having registered as such on 21 December 1972 with an employment exchange on Netherlands territory, he claimed:

(a) the unemployment benefit provided under Netherlands law;

(b) payment of arrears of salary owed by his insolvent employer.

The competent social security institution, having acceded to Mr Mouthaan's request, subsequently required repayment of the sum paid, on the ground that although, in principle, he was entitled to benefit on the basis of Netherlands law on unemployment pursuant to Regulation No. 1408/71 of the Council, he could not in fact rely on that right, since he had not acquired the status of insured person pursuant to German legislation.

Since his last employer operated solely on the territory of the Federal Republic of Germany, Netherlands law did not entitle him to benefits unless he had been insured pursuant to German legislation. The Centrale Raad van Beroep, before which the proceedings were brought, considered that the solution to the dispute depended on an interpretation of Community law.

The first question raises the problem whether an employed worker, on whose behalf no steps have been taken to enable him to be considered as an insured person pursuant to the legislative provisions to which he is or remains subject pursuant to Regulation No. 1408/71, may be considered as a "worker" within the meaning of that regulation.

Article 1 (a) of Regulation No. 1408/71 defines the term "worker" by reference to persons who are affiliated to a social security scheme for employed persons or organized for the benefit of those workers. That provision is intended to define as a worker within the meaning of that regulation all persons to whom those systems are applicable. The Court has ruled that the status of worker within the meaning of Regulation No. 1408/71 should be considered to have been acquired if the worker satisfies the material conditions objectively fixed by the social security system applicable to him, even if the steps necessary for his affiliation to that system have not been undertaken.

The Centrale Raad van Beroep next asked the Court to rule whether a worker who is in the situation referred to by the national court may claim unemployment benefit on the basis of Article 71 of Regulation No. 1408/71, even if he may not be considered as an insured person pursuant to German legislation.

The Court has replied that a wholly unemployed worker who, during his last period of employment, was occupied in a Member State other than that in which he resides on behalf of an undertaking established in that State and who, for the purposes of that employment

was subject to the legislation of the State in which he was employed may, pursuant to Article 71 of Regulation No. 1408/71, claim unemployment benefits pursuant to the provisions of the national legislation of the State where he resides and where the employment exchange to which he has made himself available is situated.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 December 1976

(Criel née Donckerwolcke v Procureur de la République)

Case 41/76

1. QUANTITATIVE RESTRICTIONS - ELIMINATION - SCOPE OF APPLICATION - PRODUCTS PUT INTO FREE CIRCULATION IN THE COMMUNITY
(EEC Treaty, Articles 9 and 30)

2. QUANTITATIVE RESTRICTIONS - ELIMINATION - INTRA-COMMUNITY RELATIONS - MEASURES HAVING AN EFFECT EQUIVALENT TO QUANTITATIVE RESTRICTIONS - CONCEPT
(EEC Treaty, Articles 9 and 30)

3. COMMON COMMERCIAL POLICY - DEROGATIONS - STRICT INTERPRETATION
(EEC Treaty, Article 115)

4. QUANTITATIVE RESTRICTIONS - ELIMINATION - MEASURES HAVING EQUIVALENT EFFECT - PRODUCTS IN FREE CIRCULATION - CUSTOMS DECLARATION - COUNTRY OF ORIGIN - INDICATION - REQUIREMENTS BY THE IMPORTING MEMBER STATE - PERMISSIBILITY - CONDITIONS
(EEC Treaty, Articles 30 and 115)

5. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - ELIMINATION - PRODUCTS ORIGINATING IN THIRD STATES - FREE CIRCULATION IN A MEMBER STATE - IMPORTATION INTO ANOTHER MEMBER STATE - LICENCE - REQUIREMENT FOR POSSIBLE APPLICATION OF ARTICLE 115 OF THE EEC TREATY - TRANSITIONAL PERIOD - LEGALITY - CONDITIONS - "STANDSTILL" RULE - NATIONAL COURTS - OBLIGATIONS
(EEC Treaty, Articles 8, 30, 31, 32 and 115)

1. The provisions of Article 30 concerning the elimination of quantitative restrictions and all measures having equivalent effect are applicable without distinction to products originating in the Community and to those which were put into free circulation in any one of the Member States, irrespective of the actual origin of these products.

2. Measures having an effect equivalent to quantitative restrictions prohibited by the Treaty include all trading rules enacted by Member States which are capable of hindering, directly or indirectly, actually or potentially, intra-Community trade. This provision precludes the application to intra-Community trade of a national provision which requires, even purely as a formality, import licences or any other similar procedure. In addition, Article 9 (2) excludes any administrative procedure intended to establish between products different rules with regard to movement depending on whether they originated in the Community or, having originated in third countries, they were put into free circulation in one of the Member States.

3. Because they constitute not only an exception to the provisions of Articles 9 and 30 of the Treaty which are fundamental to the operation of the Common Market but also an obstacle to the implementation of the common commercial policy provided for by Article 113, the derogations allowed under Article 115 must be strictly interpreted and applied.

4. The requirement by the importing Member State of the indication of the country of origin on the customs declaration document for products in free circulation whose Community status is attested by the Community movement certificate does not in itself constitute a measure equivalent to a quantitative restriction if the goods in question are covered by measures of commercial policy adopted by that State in conformity with the Treaty. Such a requirement would, however, fall under the prohibition contained in Article 30 of the Treaty if the importer were required to declare, with regard to origin, something other than what he knows or may reasonably be expected to know or if the omission or inaccuracy of that declaration were to attract penalties disproportionate to the nature of a contravention of a purely administrative character. Any administrative or penal measure which goes beyond what is strictly necessary for the purposes of enabling the importing Member State to obtain reasonably complete and accurate information on the movement of goods falling within specific measures of commercial policy must be regarded as a measure having an effect equivalent to a quantitative restriction prohibited by the Treaty.

5. During the transitional period national rules making the importation of products coming from and in free circulation in a Member State and originating in a third country subject to an application for authorization for the purposes of a possible application of Article 115 of the Treaty did not constitute a quantitative restriction prohibited by the Treaty in so far as that requirement did not render more onerous the rules applicable on the entry into force of the Treaty. It is for the national court to examine whether this is so in the individual cases before them.

N o t e

The Cour d'Appel, Douai, referred the following preliminary questions to the Court of Justice:

1. Does the fact that the importing Member State requires the country of origin to be indicated in the customs declaration form for products in free circulation whose Community status is attested by the Community movement certificate constitute a measure equivalent to a quantitative restriction?

2. Do the national rules subjecting the importation of textile products from a Member State where they are in free circulation, which originated in a third country, to an application for authorization for the purposes of a possible application of Article 115 of the Treaty establishing the European Economic Community constitute a measure equivalent to a quantitative restriction

(a) during the transitional period,

(b) since the end of the transitional period, more particularly between 1 January and 2 June 1970?

In answer to these questions the Court has ruled that:

The fact that the importing Member State requires the country of origin to be indicated in the customs declaration form for products in free circulation whose Community status is attested by the Community movement certificate does not, of itself, constitute a measure equivalent to a quantitative restriction, provided that the goods are covered by measures of commercial policy adopted by that State in conformity with the Treaty.

However, such a requirement would be prohibited by Article 30 of the EEC Treaty if the importer were required to declare, in relation to the origin of the goods, anything other than that which he knows or may reasonably know, or if the omission or inexactitude of such declaration rendered him liable to penalties disproportionate to the nature of a purely administrative offence.

National rules subjecting the importation of products from a Member State where they are in free circulation which originated in a third country to the issue of a licence for the purposes of a possible future application of Article 115 of the EEC Treaty constitute, in all cases, a quantitative restriction prohibited by Article 30 of the Treaty.

During the transitional period national rules subjecting the importation of products from a Member State where they are in free circulation which originated in a third country to an application for authorization for the purposes of a possible application of Article 115 of the EEC Treaty did not constitute a quantitative restriction prohibited by the latter in so far as that requirement did not represent a tightening of the system applicable upon the entry into force of the Treaty.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 December 1976

(Italian Finance Administration v S.r.l. Foral and D. & C. S.p.A.)

Joined Cases 36 and 37/76

1. AGRICULTURE - PIG-MEAT - SAUSAGES - PACKING - PRESERVING LIQUID - LEVY - CHARGING ON NET WEIGHT
(Regulation No. 85/63)

2. AGRICULTURE - PIG-MEAT - REGULATION NO. 84/66/EEC - AMENDMENT OF REGULATION NO. 85/63/EEC - NON-EXISTENT - DECLARATORY EFFECT

1. Under the system provided for by Regulation No. 85/63/EEC, the levy on sausages put up in containers with preserving liquid had to be charged on the net weight after deducting the weight of such liquid.

2. The effect of Regulation No. 84/66/EEC was not to alter the scope of Regulation No. 85/63/EEC and consequently its effect was merely declaratory of the pre-existing situation.

N o t e

Between October 1963 and June 1966 the undertakings Foral and D. & C. effected numerous importations into Italy of sausages in containers also holding a preservative liquid, covered by tariff heading 16.01 B.

In calculating the levy with reference to the weight of the goods, the Italian customs administration also took account in each case of the weight of the preservative liquid.

Believing that that liquid should not form part of the calculation of the weight of the goods the two undertakings brought an action which led the Italian Corte Suprema di Cassazione to refer the two following technical questions to the European Court for a preliminary ruling:

1. Whether Regulation No. 84/66/EEC, where it provides in Article 2, with regard to the products under heading 16.01 B referred to in Annex II B to Regulation No. 85/63/EEC, that "the levy on sausages put up in containers with preserving liquid shall be charged on the net weight after deducting the weight of such liquid", constitutes an interpretation of the said Regulation No. 85/66/EEC and consequently has retroactive effect or whether it creates a new situation.

2. If the latter is the case, whether the absence of any indication in Regulation No. 85/63/EEC must be understood as meaning that prior to Regulation No. 84/66/EEC it was indeed necessary also to take account of the weight of the said preservative liquid or whether each State might act in this sphere in accordance with its own customs legislation.

The Court has ruled as follows in answer to these questions:

1. Under the system provided for by Regulation No. 85/63/EEC, the levy on sausages put up in containers with preserving liquid had to be charged on the net weight after deducting the weight of such liquid.

2. The effect of Regulation No. 84/66/EEC was not to alter the effect of Regulation No. 85/63/EEC, and consequently its effect was only declaratory of the pre-existing situation.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 December 1976

(Comet B.V. v Produktschap voor Siergewassen)

Case 45/76

1. CUSTOMS DUTIES ON EXPORTS - CHARGES HAVING EQUIVALENT EFFECT - ABOLITION - DIRECT EFFECT - INDIVIDUAL RIGHTS - PROTECTION BY THE NATIONAL COURTS

   (EEC Treaty, Art. 16; Regulation No. 234/68, Art. 10)

2. COMMUNITY LAW - DIRECT EFFECT - INDIVIDUAL RIGHTS - PROTECTION BY THE NATIONAL COURTS - LEGAL PROCEEDINGS - NATIONAL PROCEDURAL RULES - APPLICATION

1. The prohibition laid down in Article 16 of the Treaty and that contained in Article 10 of Regulation No. 234/68 have direct effect and confer on individuals rights which the national courts must protect.

2. In the absence of any relevant Community rules, it is for the national legal order of each Member State to designate the competent courts and to lay down the procedural rules for proceedings designed to ensure the protection of the rights which individuals acquire through the direct effect of Community law, provided that such rules are not less favourable than those governing the same right of action on an internal matter. The position would be different only if those rules made it impossible in practice to exercise rights which the national courts have a duty to protect.

N o t e

The Comet undertaking, which exports flower bulbs, brought an action against the Produktschap voor Siergewassen for a declaration that it was not liable to pay contributions constituting charges having an effect equivalent to customs duties on export, as prohibited by the Treaty. The said charges, designed to finance publicity in Germany for flower bulbs, were levied by the Produktschap in respect of exports effected during the final months of 1968 and the beginning of 1969.

The plaintiff in the main action, Comet, has requested the national court to recognize that it is entitled to set off the sums paid in error against sums claimed from it by the Produktschap in a different connexion.

The Produktschap maintains that since it did not institute proceedings within the period laid down by the national legislation concerning such proceedings against the assessments and the reminder notice sent to it, the plaintiff in the main action can no longer contest the contributions at issue nor claim repayment of them.

For its part, Comet maintains that the supremacy of Community law implies that any measure infringing that law is void and that therefore it has a cause of action before the national courts, independently of restrictions laid down by the national legislation which might lessen the impact of the direct affect of that law in the legal systems of the Member States.

The question put to the Court of Justice asks whether the procedure - at least in so far as periods of limitation are concerned - in respect of judicial actions intended to ensure protection for rights which individuals hold by reason of the direct effect of a Community provision are governed by the national law of the Member State where those rights of action are exercised or whether, on the contrary, they are independent and can only be governed by Community law itself.

After analysing the principle of co-operation with national courts laid down in Article 5 of the Treaty, the Court of Justice has ruled that in the case of a litigant who is challenging before the national courts a decision of a national body for incompatibility with Community law, that law, in its present state, does not prevent the expiry of the period within which proceedings must be brought under national law from being objected against him, provided that the procedural rules applicable in his case are not less favourable than those governing the same right of action on an internal matter.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 December 1976

(Rewe- Zentralfinanz AG v Landwirtschaftskammer für das Saarland)

Case 33/76

1. CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - ABOLITION - DIRECT EFFECT - RIGHTS OF INDIVIDUALS - PROTECTION BY NATIONAL COURTS (EEC Treaty, Art. 13, Regulation No. 159/66/EEC, Art. 13)

2. COMMUNITY LAW - DIRECT EFFECT - RIGHTS OF INDIVIDUALS - PROTECTION BY NATIONAL COURTS - RECOURSE TO THE COURTS - NATIONAL PROCEDURAL RULES - APPLICATION

1. The prohibition laid down in Article 13 of the Treaty and that laid down in Article 13 of Regulation No. 159/66/EEC have a direct effect and confer on citizens rights which the national courts are required to protect.

2. In the absence of Community rules on this subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of Community law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature. The position would be different only if the conditions and time-limits made it impossible in practice to exercise the rights which the national courts are obliged to protect.

N o t e

This case is similar to Case 45/76 (Comet), summarized above. This time the Bundesverwaltungsgericht turned to the Court in Luxembourg to obtain its interpretation of Article 5 of the EEC Treaty concerning procedural aspects of actions at law.

These questions were raised in the context of proceedings concerning the payment in 1968, in respect of imports by Rewe, of charges in respect of phytosanitary inspection, which were considered to be equivalent to customs duties by the judgment of the Court of 11 October 1973 in Case 39/73 (/1973/ ECR 1039). The respondent, the Agricultural Chamber for the Saarland, rejected the complaints of the appellant, Rewe, requesting the annulment of the decisions imposing the charges and the reimbursement of the sums paid (including interest), on the ground that they were inadmissible in that the time-limit laid down by Article 58 of the German Rules of Procedure of the Verwaltungsgericht was not observed.

The first question asked whether, where an administrative body in one State has infringed the prohibition on charges having equivalent effect, the Community citizen concerned has a right under Community law to the annulment or revocation of the administrative measure and/or to a refund of the amount paid, even if under the rules of procedure of the national law the time-limit for contesting the validity of the administrative measure has passed.

The Court has replied with a ruling that in the case of a litigant who is challenging before the national courts a decision of a national body for incompatibility with Community law, that law, in its present state, does not prevent the expiry of the period within which proceedings must be brought under national law from being objected against him, provided that the procedural rules applicable in his case are not less favourable than those governing the same right of action on an internal matter.

The second question asked whether the fact that the Court has already ruled on the question of infringement of the Treaty has an effect on the reply given to the first question. The Court answered in the negative.

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