INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

No. XVII

Publications Department, Directorate General for Information, Commission of the European Communities, 200, Rue de la Loi, 1040-Brussels.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

P.O. Box No. 1406, Luxembourg. Telephone 47621.
Telex (Registry): 2510 CURIA LU
Telex (Press and Information Branch): 2771 CJ INFO LU
Telegrams: CURIA Luxembourg.

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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I. Information on current cases (for general use)

1. Hearings of the Court

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

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

Weekly summary of the proceedings of the Court published in the six official languages of the Community. Free of charge. Available from the Press and Information Branch; please indicate language required. (Orders for the United States may be addressed to the Communities' Information Office in Washington or in New York, at the addresses given above).

3. Judgments and opinions of Advocates-General; photocopies of these documents are sent to the parties and may be obtained on request by other interested persons, after they have been read and distributed at the public hearing. Free of charge. Requests for judgments should be made to the Registry.

Opinions of the Advocates-General may be obtained from the Press and Information Branch. As from 1972 the London Times carries articles under the heading 'European Law Reports' covering the more important cases in which the Court has given judgment.

II. Technical information and documentation

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

Quarterly Bulletin published by the Publications Department, Directorate General for Information, Commission of the European Communities, Brussels. It contains the title and a short summary of the more important cases brought before the Court of Justice and before national courts. Free of charge. May be obtained from the Communities' Information Offices at the addresses given above.

2. Annual synopsis of the activities of the Court

In the six official languages. Free of charge. May be ordered from the Communities' Information Offices at the addresses given above.

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

The 1967 edition is now out of print. A new edition has gone to press and will be available during 1975. Its price has not yet been decided. Orders should be addressed, indicating language required, to the Publications Office of the European Communities or to the booksellers whose addresses are listed below.

4. Legal publications on European integration (Bibliography)

	Bfrs.	Dkr.	DM	FF	Lire	Fl	£
1966 (new edition)	300.00	46.00	24.00	29.00	3,750	22.00	3.20
1967 supplement	150.00	23.00	12.00	15.00	1,870	11.00	1.60

	Bfrs.	Dkr.	DM	FF	Lire	Fl	£
1968 supplement	150.00	23.00	12.00	15.00	1,870	11.00	1.60
1969 supplement	150.00	23.00	12.00	15.00	1,870	11.00	1.60
1970 supplement	150.00	23.00	11.00	17.00	1,900	11.00	1.60
1971 supplement	shortly available						

On sale at the addresses set out below.

5. Bibliography of European case-law (1965)

(comprising judicial decisions concerning the Treaties establishing the European Communities)

	Bfrs.	Dkr.	DM	FF	Lire	Fl	£
1965 edition	100.00	16.00	8.00	10.00	1,250	7.25	1.10
1967 supplement	100.00	16.00	8.00	10.00	1,250	7.25	1.10
1968 supplement	100.00	16.00	8.00	10.00	1,250	7.25	1.10
1969 supplement	100.00	16.00	8.00	10.00	1,250	7.25	1.10
1970 supplement	100.00	16.00	7.50	11.50	1,250	7.25	1.10
1973 supplement	100.00	16.00	7.50	11.50	1,250	7.25	1.10
1975 supplement	shortly available						

On sale at the following addresses:

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

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

France: Editions A. Pedone, 13, Rue Soufflot, 75005 PARIS

Germany: Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 COLOGNE I

Ireland:	Messrs. Greene & Co., Booksellers, 16, Clare Street, DUBLIN 2
Italy:	Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 PADUA M. 64194
Luxembourg:	Office des publications officielles des Communautés européennes, Case postale 1003, LUXEMBOURG
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, THE HAGUE
United Kingdom:	Sweet & Maxwell, Spon (Booksellers) Limited, North Way, ANDOVER, HANTS - SP 10 5BE
Other Countries:	Office des Publications officielles des Communautés européennes, Case postale 1003, LUXEMBOURG

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

("Europäische Rechtsprechung")

Extracts from cases relating to the Treaties establishing the European Communities decided between 1953 and 1972 (published in German and French, extracts from national judgments also being published in the original language), Carl Heymann's Verlag, Gereonstrasse 18-32, 5000-COLOGNE 1, Federal Republic of Germany.

III. OFFICIAL PUBLICATIONS

The Reports of Cases before the Court (or "Recueil de la jurisprudence de la Cour") are of course the only authentic source for citations of judgments of

the Court of Justice. These reports are on sale at the same addresses as the publications listed under II above.

	Bfrs.	Dkr.	DM	FF	Lire	Fl	£
Vols. 1954 to 1969 & tables	4,800.00	-	352.00	534.00	60,000	347.50	-
Vol. 1962	-	-	-	-	-	-	15.00
Vol. 1963	-	-	-	-	-	-	15.00
Vol. 1964	-	-	-	-	-	-	15.00
Vol. 1965	400.00	-	32.00	39.00	5,000	29.00	15.00
Vol. 1966	500.00	-	40.00	50.00	6,250	36.50	15.00
Vol. 1967	500.00	-	40.00	50.00	6,250	36.50	15.00
Vol. 1968	500.00	-	44.00	55.00	6,900	40.00	15.00
Vol. 1969	600.00	-	48.00	60.00	7,500	44.00	-
Vol. 1970	750.00	-	60.00	83.00	9,375	54.50	-
Vol. 1971	850.00	-	62.50	94.00	10,625	61.50	-
Vol. 1972	1,000.00	-	74.00	112.00	12,500	73.00	-
Vol. 1973	1,200.00	180.00	88.00	134.00	15,000	87.00	10.00
Vol. 1974	1,350.00	209.00	88.00	161.00	21,250	96.00	14.20
Vol. 1975 (when available)	1,350.00	211.50	91.00	167.00	22,800	93.50	15.00

The volumes for 1954 to 1961 and 1970 to 1972 are published in Dutch, French, German and Italian only; the remainder are also published in English and those from 1973 additionally in Danish. Translations of all the remaining volumes into English are in course of preparation. There is a special price of £150 to cover the English volumes for all the years from 1954 to 1972 inclusive.

IV. VISITS

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

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

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

* * *

PUBLIC HOLIDAYS IN LUXEMBOURG

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

New Year's Day	1 January
Carnival Monday	
Easter Monday	
Ascension Day	
Whit Monday	
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	
'Schobermesse' Monday	First Monday of September
All Hallows' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

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Composition of the Court of Justice of the European Communities

for the Judicial Year 1974/75

President:	R. LECOURT
Presidents of Chambers:	J. MERTENS DE WILMARS - First Chamber
	LORD MACKENZIE STUART - Second Chamber
Judges:	R. MONACO
	A. O'KEEFFE
	P. PESCATORE
	H. KUTSCHER
	A. DONNER
	M. SØRENSEN
Advocates-General:	A. TRABUCCHI
	H. MAYRAS
	J.-P. WARNER
	G. REISCHL
Registrar:	A. VAN HOUTTE

SUMMARY OF TYPES OF PROCEDURE BEFORE THE COURT OF JUSTICE

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

A. References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

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

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

B. Direct actions

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

Any lawyer who is entitled to practise before a court of a Member State or

a professor occupying a chair of law in a university of a Member State, where the law of such State authorizes him to plead before its own courts, is qualified to appear before the Court of Justice.

The application must contain:

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

The application should also be accompanied by the following documents:

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

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

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

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

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

* * *

ADDRESS

by Mr Rober Lecourt

President of the Court of Justice of the European Communities

former Minister

at the Ministry for Foreign Affairs on the occasion

of the 25th anniversary of the Declaration of Robert Schuman

in the presence of the President of the French Republic, the President of the Federal Republic of Germany, and of the Heads of Government or Ministers of the Nine Member States of the European Community.

When France decides to reminisce, the Community feels fired with fresh strength.

Thus it is that, as proof, the most reticent of its institutions has been asked to break through its reserve. But it cannot really do so merely by noting as it looks back over the passage of time how the great plan which started everything has been carried out from day to day within the legal framework with which it has been entrusted.

It was here that the first impetus was given during the troubled post-war period; an impetus towards reconciliation and unity, towards an aim; and by means of institutions and rules, by means of law.

This was indeed a new system of law. Without it nothing could be done. And the lawyer concealed in the French statement on 9 May 1950 was well aware of that.

The budding Community was therefore to be entrusted to institutions. These were to be capable of taking decisions. Their decisions were to be binding upon the Member States. They were to be enforceable in all of them. Thus the stone which was laid here 25 years ago was not laid upon sand but upon positive rules which courts and tribunals in all our Member States would apply directly.

That was quite a new idea but the question was whether it was viable.

It is necessary to go back to 1950 to realize what a new departure the venture was. But it is necessary to look at the plan from a 1975 standpoint to appreciate how it bore the future concealed within it - a future still concealed within it if only the impetus continues.

Few generations will have witnessed the birth of a system of law. In fact, it was a bold step to conceive that Member States would agree to relinquish their unrestricted sovereign prerogatives and replace their own legislation by legislation which was drafted in common, directly applicable everywhere and

subject to review by the courts in each State and to the uniform interpretation of a common court.

We must admit that it was a striking innovation. But there was no alternative. Once it was proposed to create not an area of free trade between States but the reality of a single market and a genuine Community of the peoples of these States it was impossible to avoid establishing both a Common source of legislation and enforceable measures which were subject to judicial review. Once the aim was agreed, the means to achieve it must necessarily be found.

If there were fears that Member States would show resistance to the authority of a common body of legislation, the history of the last quarter of a century would be sufficient to allay them. This law is applied today in nine countries and to 250 million citizens. Common institutions legislate for them all. It makes no difference that on some subjects their work seems too prolific rather than too limited.

The binding nature of the measures adopted by these institutions has become so well established that a finding that a Member State has failed to comply with its obligations is a rarity. The 23 such judgments - all except the most recent - have been complied with.

In 25 years, the European legal system has taken shape before our eyes. The Commission, the Council, Member States and individuals now supply it with more than 100 cases each year. The reason why this fact may escape attention is that, because it takes no account of political feeling, the system will still have to wait a long time before, on the basis of the every day reality in which it can be seen at work, it begins to influence the main stream of public opinion.

Thus a new legal system is developing. It did not spring up all at once in a completed form. As foreseen on 9 May 1950, it has been fashioned gradually by means of factual achievements. If the aim is to work towards a Community which is not merely a facade, it must necessarily be built on this basis.

The message which we have just heard once more alluded to an office which is unobtrusive but which has shown itself in operation to be crucial: that of the national court. Since the idea was to achieve free movement of persons and goods within the Community, it was not enough to subject them to the same common system of law. In addition courts had to be entrusted with the task of applying this system of law, with a uniform interpretation, to individuals directly.

With very few exceptions, courts and tribunals everywhere have played their part, as more than 300 of them have already shown by their judgments. In fact they sensed that the size of their mark on the new legal system would depend upon the strength of their co-operation rather than their reservations.

French courts, which for several months have been in the process of overcoming the delays which have distinguished them from the courts in other Member States are coming to realize this more and more.

A few unobtrusive touches in the message of 9 May 1950 and a few lines in the Treaties were sufficient therefore to establish in a few years a body of law and a legal system. The confidence of national courts has done the rest because the introduction of the new law is largely their achievement. Finally, the reason why it is fairly rare for Member States to fail to fulfil their obligations is that their courts, which are responsible for applying Treaties and regulations to individuals, make Member States themselves observe their provisions. It is true that the impact of these changes has sometimes produced shock waves; however, the courts have usually absorbed them. None of them has been horror-struck by the changes as if by a legal earthquake.

These achievements, amongst others, pay as a whole the finest tribute both to the memory of the statesman who took it upon himself to act and who set everything in motion and to the ability of those who prepared, supported and accomplished this venture.

Thus the ground has been prepared for new seeds to be sown because the

present-day Community is not a finishing-line but a starting point.

Of course, it cannot be reduced to the mere action of legal rules, however appropriate, nor can it be brought down to a lifeless balance-sheet of material benefits however substantial.

A Community is a united whole. The common will is its driving force. Without it the legal system would be powerless even to maintain the achievements of this quarter of a century. On the other hand, with it the legal system may be an accelerating factor.

Let us shed the ancient bark from the tree of our legal customs since, as Bergson says, "An old tree sprouts when the sap rises anew"!

Thus it may be with the task of construction which has been undertaken if, true to the inspiration which can be seen in the watermark of the declaration in memory of which we have met together again, a fresh impulse succeeds in drawing together more closely men and peoples who are ultimately linked by the same fate.

* * *

ADDRESS

by Mr Bonifacio, President of the Constitutional Court of the Italian Republic on the occasion of the visit to the Court of Justice of the European Communities, on 14 April 1975

Mr President,

I am happy to convey to you and to the distinguished Members of the Court of Justice the warm greetings of the Constitutional Court of the Italian Republic.

Perhaps we above all are in a position to appreciate the important rôle entrusted to you within the sphere of the Community legal system, protecting its principles and at the same time ensuring their regular development in the direction of a basic renascence.

I have long been deeply convinced - above all owing to my experience as a legal historian - that jurisprudence does not merely comprise a passive application of the rules to actual facts, but itself contributes with an impetus varying in accordance with the circumstances of the times to the creative task of the law, into the interpretation of which there enter, sometimes unconsciously, criteria of evaluation which, fusing principles and concrete factors, transcend the limits of an intellectual exercise in pure logic. The entire trend of contemporary legal thinking is indeed becoming increasingly receptive to the basic view that law is also to be defined as such, I should rather say above all, in terms of its efficacity and that its strength is closely linked with the extent of this efficacity.

If this holds good for every court, every legal system and every period of history it is all the more valid for courts operating in a completely new legal system which, by its very nature must of necessity allow scope for the development, by the courts as well, of its innovatory function.

This, Mr President, is a factor which our courts have in common in the performance of their duties, at once arduous and immensely fascinating.

The Italian Constitutional Court has also been - and still is - confronted with the task of ensuring the existence, and hence the efficacity, of a body of new principles, which I should like to characterize, as one of our great

legal authorities has expressed it, as critical of the past and receptive to the future. In the context of its duties thus defined, it is scarcely surprising that as the Court has increased its experience it should gradually adopt over this period the rôle of a profound innovator in all spheres of life: a rôle which has within itself an undeniably creative force, precisely because it was conferred in defence of entirely new principles.

I do not think my judgment is at fault if I express the view that under those aspects there is a profound analogy between the duties of our two courts. The corpus of Community law constitutes a legal entity which cannot be expressed in terms of any past experience and far from wishing to retain anything from the past its basic principles are directed to the creation of an entirely new legal and political structure. Your case-law, like ours within our domestic legal system, constitutes a delicate and valuable device for the performance of a basically innovatory task.

Mr President,

Those are not the sole reasons why our meeting today is both interesting and beneficial:

A little over a year ago the Italian Constitutional Court, as you and your colleagues are well aware, was faced with the difficult and complex problem of the relationship between the Community legal system and the domestic legal system. Banishing doubts and difficulties, our decision recognized not only the full legality under the constitution of the Treaty of Rome in its entirety, it also gave particular recognition to the legality and direct effect of Community regulations and their exemption from review by the domestic courts. In resolving this problem of the new reality of the existence of the Community, with whose basic elements it is closely connected, our court gave fundamental and decisive weight to the judicial guarantee afforded by the Court of Justice of the Community which possesses powers capable of assuring to everyone, Member States and individual citizens, that full cognizance will be taken of legal situations in which they may from time to time find themselves. In composing

this page of our judgment we took into consideration not only the rules of law but, as is always the case in our daily work, actual experience drawn from the life of the institutions. Our deep-rooted and considered view of the independence and impartiality which have always guided you in your duties and your decisions led us to affirm with an easy conscience that the Community legal system has available to it a Court providing a guarantee fully adequate to uphold that rule of law which is the basic right of every subject in any civilized society.

Mr President,

It is on the basis of those sincere convictions that in conveying to you and your colleagues the greetings of the Italian Court I offer our sincere wishes for the success of the Court of Justice in its work and hope that it will contribute to strengthening the unity of our Europe.

* * *

DECISIONS

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Analytical table

- Freedom of movement - Freedom to provide services - Restrictions

  Case 33/74 (Van Binsbergen); Case 41/74 (Van Duyn); Case 36/74 (Walrave); Case 67/74 (Bonsignore).

- Social security for migrant workers - Social security law

  Case 40/74 (Costers and Vounckx); Case 68/74 (Alaimo); Case 69/74 (Cagnon-Taquet); Case 66/74 (Ferrante).

- Agriculture - Common Agricultural Policy

  Case 48/74 (Charmasson); Case 55/74 (Unkel); Case 31/74 (Galli); Case 51/74 (Van der Hulst); Case 64/74 (Reich).

- Non-contractual liability - Wrongful act

  Case 169/73 (Continentale France).

- Industrial and commercial property rights - Quantitative restrictions

  Case 12/74 (Commission v Federal Republic of Germany).

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 December 1974

(Van Binsbergen)

Case 33/74

1. SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - ABOLITION - DIRECT EFFECT (EEC Treaty, first para. of Art. 59 and third para. of Art. 60)

2. SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - CONDITION OF RESIDENCE - PROHIBITION - PARTICULAR SERVICES - PERSONS ASSISTING ADMINISTRATION OF JUSTICE - PROFESSIONAL RULES - OBSERVANCE OF SUCH RULES - REQUIREMENT OF PROFESSIONAL ESTABLISHMENT - OBJECTIVE NECESSITY - LAWFUL REQUIREMENT (EEC Treaty, first para. of Art. 59 and third para. of Art. 60)

1. The first paragraph of Article 59 and the third paragraph of Article 60 have direct effect and may therefore be relied on before national courts, at least in so far as they seek to abolish any discrimination against a person providing a service by reason of his nationality or of the fact that he resides in a Member State other than that in which the service is to be provided.

2. The first paragraph of Article 59 and the third paragraph of Article 60 of the EEC Treaty must be interpreted as meaning that the national law of a Member State cannot, by imposing a requirement as to habitual residence within that State, deny persons established in another Member State the right to provide services, where the provision of services is not subject to any special condition under the national law applicable.

However, taking into account the particular nature of the services to be provided, specific requirements imposed on the person providing the service

cannot be considered incompatible with the Treaty where they have as their purpose the application of professional rules justified by the general good - in particular rules relating to organization, qualifications, professional ethics, supervision and liability - which are binding upon any person established in the State in which the service is provided, where the person providing the service would escape from the ambit of those rules by being established in another Member State.

Likewise, a Member State cannot be denied the right to take measures to prevent the exercise by a person providing services whose activity is entirely or principally directed towards its territory of the freedom guaranteed by Article 59 for the purpose of avoiding the professional rules of conduct which would be applicable to him if he were established within that State.

Accordingly the requirement that persons whose functions are to assist the administration of justice must be permanently established for professional purposes within the jurisdiction of certain courts or tribunals cannot be considered incompatible with the provisions of Articles 59 and 60, where such requirement is objectively justified by the need to ensure observance of professional rules of conduct connected, in particular, with the administration of justice and with respect for professional ethics.

Note

In the Netherlands, the profession of legal adviser is not subject to any rules or regulations and is not dependent on any sort of qualification or professional discipline.

The appellant in the main action had authorized Mr X, who exercises this profession of legal agent, to represent him before the Centrale Raad van Beroep.

During the course of the proceedings, Mr X, who is a Dutch national, transferred his habitual residence from the Netherlands to Belgium. The

Registry of the Centrale Raad van Beroep then informed him that he was no longer entitled to act as an authorized legal representative or adviser, since the rules of procedure of Dutch social tribunals prescribe that only persons established in the Netherlands are entitled to exercise those functions. These facts led the Centrale Raad van Beroep to refer two preliminary questions to the Court of Justice of the European Communities on the interpretation of the provisions of the Treaty of Rome relating to freedom to provide services within the Community. In its reply the Court ruled that the provisions of the Treaty must be interpreted as meaning that the national law of a Member State cannot, by requiring habitual residence within that State, make impossible the provision of services by persons established in another Member State, when the provision of services is not subject to any special condition by the national law applicable. The Court also confirmed the direct effect of Articles 59 and 60 of the Treaty, at least in so far as they seek to abolish any discrimination on grounds of nationality or residence within any State of the Community.

It is worth noting that the Court of Justice has recently had occasion to resolve a number of cases concerning the direct applicability of provisions relating to the free movement of persons - right of establishment (Case 2/74 - Reyners) - freedom of movement for workers (Case 41/74 - van Duyn) - freedom to provide services (Case 33/74 - van Binsbergen).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 December 1974

(Kingdom of Belgium, Henri Costers, Marie Vounckx v Berufsgenossenschaft der Feinmechanik und Elektrotechnik)

Case 40/74

1. SOCIAL SECURITY FOR MIGRANT WORKERS - CLAIMS, DECLARATIONS OR APPEALS - ADMISSIBILITY - SUBMISSION WITHIN A SPECIFIED PERIOD TO THE CORRESPONDING AGENCY OF ANOTHER MEMBER STATE - LIAISON DEPARTMENT - VALIDITY OF SUBMISSION OF AN APPEAL (Regulation No. 3 of the Council, Art. 47)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - CLAIMS, DECLARATIONS OR APPEALS - ADMISSIBILITY - SUBMISSION WITHIN A SPECIFIED PERIOD TO THE CORRESPONDING AGENCY OF ANOTHER MEMBER STATE - CONDITIONS - RESIDENCE OF THE PARTY CONCERNED OR OF HIS REPRESENTATIVE IN THAT STATE (Regulation No. 3 of the Council, Art. 47)

1. In using the adjective "corresponding", Article 47 requires that the claims, declarations or appeals in question be submitted to an authority, institution or other agency forming part of the social security system of the Member State in question without the need to observe distinctions between the competences of administrative or judicial authorities.

It is not impossible for a liaison department such as is referred to in Article 3 of Regulation No. 4 to be considered another corresponding agency, even where one is dealing with the submission of an appeal.

2. Article 47 only refers to the case where the worker lives in a Member State other than that whose law has to be applied. The worker who for the purposes of his claim, declaration or appeal is represented by a

representative, established in the Member State whose law must be applied, cannot rely on this provision.

Note

A Belgian national was killed in 1943 during the bombing of a factory where he was compelled to work. His parents, the plaintiffs in the main action are attempting to obtain a parents' pension under a General Agreement on social security concluded between the Federal Republic of Germany and the Kingdom of Belgium. The competent Trade Association having refused to grant this pension, Belgium and the plaintiffs brought the matter before the Sozialgericht of Cologne, which dismissed the action as unfounded. Appeal against this judgment was brought through the Ministry for Social Welfare in Brussels, acting as the Belgian organization in liaison with the Landessozialgericht Nordrhein-Westfalen. The latter declared the appeal inadmissible since it was lodged after the expiry of the time limit.

The plaintiffs appealed on a point of law to the Bundessozialgericht, arguing that Belgium and Germany had established liaison organizations in order to avoid difficulties in the implementation of Conventions on social security. The Bundessozialgericht asked the Court of Justice to give a preliminary ruling on the question whether, on the true interpretation of Article 47 of Regulation No. 3 of the Council concerning social security for migrant workers, which provides that claims, declarations or appeals which should have been submitted in a Member State are admissible if submitted within the same period of time to an authority, an institution or other corresponding agency of another Member State, a liaison organization can be considered to be a corresponding agency within the meaning of Article 47 of Regulation No. 3.

The Court replied in the affirmative, ruling that a liaison organization can be regarded as another corresponding agency even where it is a question of submitting an appeal, but that this exception can be relied upon only where the person concerned resides habitually in a Member State other than the one the legislation of which should be applied.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 December 1974

(Van Duyn and "Home Office")

Case 41/74

1. WORKERS - FREEDOM OF MOVEMENT - DIRECT EFFECT (EEC Treaty, Art. 48)

2. ACTS OF AN INSTITUTION - DIRECT EFFECT - DIRECTIVE (EEC Treaty, Art. 177, Art. 189)

3. WORKERS - FREEDOM OF MOVEMENT - RESTRICTIONS - ARTICLE 3 OF DIRECTIVE NO. 64/221 OF THE COUNCIL - DIRECT EFFECT

4. COMMUNITY LAW - FUNDAMENTAL PRINCIPLE - DEROGATION - NATIONAL PUBLIC POLICY - STRICT INTERPRETATION - DISCRETIONARY POWER OF NATIONAL AUTHORITIES

5. WORKERS - FREEDOM OF MOVEMENT - DEROGATION - THREAT TO NATIONAL PUBLIC POLICY - NATIONAL OF ANOTHER MEMBER STATE - PERSONAL CONDUCT - ASSOCIATION WITH A BODY WHICH IS NOT ILLEGAL - ACTIVITIES OF THAT BODY CONSIDERED TO BE SOCIALLY HARMFUL (EEC Treaty, Art. 48; Council Directive No. 64/221, Art. 3(1))

1. As the limitations to the principle of freedom of movement for workers which Member States may invoke on grounds of public policy, public security or public health are subject to the control of the courts, the proviso in paragraph (3) does not prevent the provisions of Article 48 from conferring on individuals rights which they may enforce in the national courts and which the latter must protect.

2. It would be incompatible with the binding effect attributed to a directive by Article 189 to exclude, in principle, the possibility that the obligation which it imposes may be invoked by those concerned. In particular, where the Community authorities have, by directives, imposed on Member States the obligation to pursue a particular course of conduct, the useful effect of such an act would be weakened if individuals were prevented from relying on it before the national courts and if the latter were prevented from taking it into consideration as an element of Community law. Article 177, which empowers national courts to refer to the Court questions concerning the validity and interpretation of all acts of the Community institutions, without distinction, implies furthermore that these acts may be invoked by individuals in the national courts.

It is necessary to examine in every case whether the nature, general scheme and wording of the provision in question are capable of having direct effects on the relations between Member States and individuals.

3. Article 3(1) of Council Directive No. 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health confers on individuals rights which are enforceable by them in the national courts of a Member State and which the latter must protect.

4. 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. Nevertheless, the particular circumstances justifying recourse to the concept of public policy may vary from one country to another and from one period to another, and it is therefore necessary in this matter to allow the competent national authorities an area of discretion within

the limits imposed by the Treaty.

5. 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 nationals of the said Member State who wish to take similar employment with the same bodies or organizations.

Note

This is a "first" for the Court of Justice of the European Communities, being the first time that the Court has had to reply to a preliminary question referred by a British court, in this case the Chancery Division of the High Court, and the first time in its case-law that the problem concerning the proviso of public policy in relation to freedom of movement for workers has arisen. The facts are straightforward. A woman of Dutch nationality arrived in Great Britain to take up employment as a secretary with the Church of Scientology, of which she is a practising member. She was refused leave to enter the United Kingdom on the grounds that the Government considers the activities of the said organization to be harmful and to constitute a social danger.

The plaintiff, who was sent back to the Netherlands, brought an action against the Home Office in which she invokes Article 48 of the EEC Treaty, which guarantees freedom of movement for workers, and, in particular, a Council Directive providing that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the individual concerned (which tends to limit the discretionary power attributed to the authorities responsible in matters of entry and deportation of foreign nationals).

The High Court, before which the case was brought, requested the Court of Justice to give a preliminary ruling on the following three questions:

- Is the provision of the EEC Treaty relating to freedom of movement for workers, entailing the abolition of any discrimination based on nationality but including a proviso in respect of limitations justified on grounds of public policy, public security or public health, directly applicable?

- Is the Council Directive prescribing that measures taken on grounds of public policy shall be based exclusively on the personal conduct of the person concerned, directly applicable?

- Does association with a group or organization in itself constitute personal conduct?

It is appropriate to observe at this point that the right to freedom of establishment under the Treaty has been somewhat restricted by a Council Directive authorizing Member States to continue to exercise their power to exclude foreign nationals on grounds of public policy, public security or public health. This Directive subjects the decision of the Member State to the criterion of the personal conduct of the person concerned.

Can it be said that a person's association with a particular organization allows a judgment to be made of that individual's personal conduct? The Court confirmed in its judgment the direct applicability of the Community rules on the free movement of persons. The Court also said that although past association cannot be considered a criterion of conduct, active and avowed association may constitute such a criterion. Moreover, Member States may declare that activities which they consider to be socially harmful or undesirable are contrary to public policy, even if they have not gone so far as to make them unlawful. Finally, recalling the principle of international law according to which a State cannot refuse entry to its own nationals, the Court emphasized that non-nationals cannot rely on this same principle.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 December 1974

(Charmasson and the Minister for Economic Affairs and Finance)

Case 48/74

1. AGRICULTURE - COMMON AGRICULTURAL POLICY - NATIONAL MARKET ORGANIZATION - GENERAL RULES OF THE TREATY - ARTICLE 33 - DEROGATION - PROVISIONAL ADMISSIBILITY - CONDITIONS (EEC Treaty, Article 40 (2))

2. AGRICULTURE - COMMON AGRICULTURAL POLICY - NATIONAL MARKET ORGANIZATION - CONCEPT (EEC Treaty, Article 40 (2))

1. Derogations which a national organization may effect from the general rules of the Treaty are only permissible provisionally until the end of the transitional period to the extent necessary to ensure its functioning, without however impeding the adaptations which are involved in the establishment of the common agricultural policy. They cease at the expiry of this period, when the provisions of Article 33 must be fully effective.

2. The national organization amounts to a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority, with a view to ensuring, by means of an increase in productivity and of optimum utilization of manpower, a fair standard of living for producers, the stabilization of the market, the assurance of supplies and reasonable prices to the consumers. To continue permanently beyond the transitional period a simple quota system cannot respond to these conditions.

Note

The French banana market is by virtue of State measures reserved to the national production and to that of third countries which "maintain special relationships" with France. The quantities resulting from such limited production are normally sufficient to satisfy the needs of French consumers. Any deficit is made up by opening a quota.

The plaintiff in the main action principally imported bananas from Zaïre and Somalia, countries associated with the Community under the Yaoundé Convention, as well as from Surinam, a country coming within the scope of the decision of the Council relating to the association of overseas countries and territories within the Community. None of these countries maintains "special relationships" with France so that the importation of their banana produce is subject to quotas being opened by the French Government. The importer considered that there had been a violation of the fundamental principle of free movement of goods and the application of the rules relating to the progressive abolition of quotas as laid down in Article 33 of the Treaty.

The Conseil d'Etat of France, before whom the case came, has requested the European Court for a preliminary ruling on the interpretation of Community law on the question whether the existence in a Member State of a national market organization for a particular agricultural product is such as to preclude the application to this product of the rules relating to the abolition of quantitative restrictions between Member States and further whether the banana market in France could be regarded as governed by a national organization of markets.

The Court ruled that:

(1) Whilst the national organization of the market which existed at the date of the coming into force of the Treaty could, during the transitional period, preclude the application of Article 33 thereof so that this application could have affected the functioning of the

national organization of the markets, this is nevertheless not the case after the expiry of this period when the provisions of Article 33 must be fully effective.

(2) The national organization can be defined as a totality of legal procedures which subjects the regulation of the market in the products in question to the control of the public authority so as to ensure, by means of increase in productivity and by optimum employment factors, a fair standard of living to producers, the stabilization of markets, availability of supplies and reasonable prices for consumers. To continue permanently beyond the transitional period a simple system of quotas would not meet these conditions.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

12 December 1974

(Bruno Nils Olaf Walrave, Longinus Johannes Norbert Koch and Association Union Cycliste Internationale, Koninklijke Nederlandsche Wielren Unie, Federacion Española Ciclismo)

Case 36/74

1. COMMUNITY LAW - SCOPE - SPORT - LIMITATION TO ECONOMIC ACTIVITIES

2. DISCRIMINATION BASED ON NATIONALITY - PROHIBITION - SCOPE - WORK OR SERVICE (EEC Treaty, Articles 48 and 59)

3. DISCRIMINATION BASED ON NATIONALITY - PROHIBITION - SCOPE - SPORT - COMPOSITION OF SPORTING TEAMS - EXCLUSION (EEC Treaty, Articles 7, 48 and 59)

4. DISCRIMINATION BASED ON NATIONALITY - PROHIBITION - SCOPE - EXTENSION TO ACTS NOT EMANATING FROM PUBLIC AUTHORITIES (EEC Treaty, Articles 7, 48 and 59)

5. DISCRIMINATION - PROHIBITION - NATURE - TERRITORIAL SCOPE - LOCALITY - DISCRETIONARY POWERS OF NATIONAL COURT (EEC Treaty, Articles 7, 48 and 59)

6. SERVICES - FREE PROVISION - RESTRICTIONS - ABOLITION - DIRECT EFFECT (EEC Treaty, Article 59, first paragraph)

1. The practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

2. 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.

3. The prohibition of discrimination based on nationality does not affect the composition of sport teams, in particular national teams, the formation of which is a question of purely sporting interest and as such has nothing to do with economic activity.

4. Prohibition of discrimination does not only apply to the action of public authorities but extends likewise to rules of any other nature aimed at regulating in a collective manner gainful employment and the provision of services.

5. The rule on non-discrimination applies to all legal relationships which can be located within the territory of the Community by reason either of the place where they are entered into or of the place where they take effect.

6. The first paragraph of Article 59, in any event in so far as it refers to the abolition of any discrimination based on nationality, creates individual rights which national courts must protect.

Note

It was not exactly with a marathon that the Court of Justice of the European Communities ended 1974, but a case concerned with the rules of the Union Cycliste Internationale (UCI). How did cycling enter Community case-law? The plaintiffs in the main action, both of whom are Dutch, are pace-makers for medium-distance cycle races. That is to say that the cyclist (stayer) cycles in the lee of their motor cycles and thus reaches greater speeds. They take part, inter alia, in world championships, the rules of

which, laid down by the UCI, provide that "as from 1973 the pacemaker must be of the same nationality as the stayer".

The plaintiffs in the main action considered that this provision was incompatible with the rules of the Treaty of Rome relating to the prohibition of any discrimination on grounds of nationality and with those containing the principle of the free provision of services within the Community and brought an action against the UCI for the purpose of having this rule declared a nullity. The Arrondissementsrechtbank (District Court), Utrecht, before whom the case came, referred the case to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of the above-mentioned principles of Community law from the special aspect of their application to rules of sport. The Court has just ruled that:

- Having regard to the objectives of the Community, the practice of sport is subject to Community law only in so far as it constitutes an economic activity within the meaning of Article 2 of the Treaty.

- The prohibition on discrimination based on nationality does not affect the composition of sports teams, in particular national teams, which is a question which has nothing to do with economic activity.

- Prohibition on discrimination based on nationality applies not only to the action of public authorities but extends likewise to the rules of any other nature aimed at collectively regulating gainful employment and provision of services.

- The rule on non-discrimination is relevant in judging all legal relationships in so far as these relationships by reason either of the place where they are entered into or the place where they take effect, can be located within the territory of the Community.

  The first paragraph of Article 59 creates individual rights which national courts must protect. The Court thus confirms the principle of the direct applicability of the provisions of the Treaty of Rome with regard to freedom to provide services.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 January 1975

(Firma Robert Unkel v Hauptzollamt Hamburg-Jonas)

Case 55/74

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - APPLICATION - CONTROL COPY - SUBMISSION TO THE COMPETENT NATIONAL AUTHORITY (Regulation No. 1041/67 of the Commission, Article 5, as amended by Regulation No. 2586/69, Article 1)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - DOCUMENTS (UNTERLAGEN) - CONTENTS (Regulation No. 1041/67 of the Commission, Article 10)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUND - CONTROL COPY - PROBATIVE VALUE - EXAMINATION BY THE NATIONAL AUTHORITIES (Regulation No. 1041/67 of the Commission, Article 5, as amended by Regulation No. 2586/69, Article 1)

1. The submission to the competent national authority for the grant of refunds of the control copy referred to in Article 1 of Regulation No. 2315/69 and Article 5 of Regulation No. 1041/67, as amended by Article 1 of Regulation No. 2586/69, is equivalent to an application for a refund if this copy contains information enabling it to be seen that it relates to goods benefiting from this refund.

2. The documents (Unterlagen) referred to in Article 10 of Regulation No. 1041/67 must include, besides the application for a refund, all the documents enabling the competent authority to verify whether the conditions to which the grant of refund is subject are fulfilled.

3. Since the headings provided for in the control copy do not on their own make it possible to determine in every case that all these conditions are fulfilled, it is for the national authorities to determine in each case the probative value in this respect of the remarks on the control copy or the necessity for supplementary vouchers.

Note

In April 1972 the plaintiff in the main proceedings, firma R. Unkel, obtained customs clearance from the Hauptzollamt Würzburg for a consignment of lard intended for export from Germany to Great Britain via Rotterdam. The Hauptzollamt Würzburg issued two "control copies" required by Community rules. The customs office at Rotterdam certified on both copies that the goods had left the territory of the Community and sent the two control copies to the Hauptzollamt Hamburg-Jonas, the competent authority in Germany for the payment of export refunds. In November 1972 the plaintiff in the main action sent to Hamburg-Jonas an application for refund which was rejected on the ground that it had been received on a date subsequent to the expiry of the six months' time-limit after the completion of the customs export formalities. The plaintiff challenged this decision before the Finanzgericht Hamburg, which took the view that questions of interpretation of Community law arose and referred the case to the European Court for a preliminary ruling on the conditions for validity and the exact scope of the documents relating to the common organization of the market in pigmeat and the scope of the general rules relating to the grant of export refunds.

The Court ruled that the submission of the control copy referred to in the Community rules to the national authority competent for the grant of refunds is equivalent to an application for a refund if this copy contains information enabling it to be seen that it relates to goods benefiting from this refund; that the application for payment of the refund must contain, besides the application, all the documents enabling the competent authority to check whether the conditions to which the grant of the refund is subject are fulfilled; and, finally, that since the headings provided for in the

control copy are not sufficient on their own to justify a finding in any event that all these conditions are fulfilled, it is for the national authorities to assess in each case the probative value in this respect of the remarks on the control copy or the necessity for supplementary vouchers.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 January 1975

(Galli)

Case 31/74

AGRICULTURE - COMMON ORGANIZATION OF MARKETS - AGRICULTURAL PRICES - UNILATERAL ACTION BY A MEMBER STATE - PROHIBITION - APPLICATION TO A CONJUNCTURAL POLICY WITHIN THE MEANING OF ARTICLE 103 OF THE EEC TREATY - INADMISSIBILITY

In sectors covered by a common organization of the market, and especially when this organization is based on a common price system, Member States can no longer take action, through national provisions taken unilaterally, affecting the machinery of price formation as established under the common organization. Such action cannot be justified by the application of a conjunctural policy within the meaning of Article 103, which does not relate to those areas already subject to common rules such as the organization of agricultural markets.

The only way compatible with Community law of enabling Member States to attain, in a sector covered by a common organization of the market, the objectives sought by national legislation and intended to combat a rise in prices, is for those States to take, at the Community level, the necessary action for the purpose of tempting the competent Community authority to institute or authorize measures which are consistent with the single market.

Note

Inflation over the last two years has prompted certain Member States to adopt measures of price regulation so as to curb the excessive rise in prices.

The Court of Justice of the European Communities was called upon to interpret certain provisions of Community law in the light of national provisions adopted by the Italian Government in 1973 regulating domestic prices by obliging large producer and supplier undertakings to submit their price returns and any changes in the prices indicated in those returns and fixing maximum prices for important consumer goods. The facts are as follows:

A wholesaler dealing in cereals and flours derived from oilseeds was accused of contravening the Italian Decrees in relation to those two products. In his defence, he contended that the Italian regulation of prices was inapplicable, not only because the products are subject to Community price rules, but also because a national regulation of agricultural prices is incompatible with the EEC Treaty and in particular with the rules on the common organization of agricultural markets.

In reply to the preliminary reference by the Pretore of Rome, the Court ruled that, in areas covered by a common market organization, Member States cannot inferfere, by means of national provisions adopted unilaterally, with the machinery of price formation as established by that common organization; that national rules, the effect of which is to modify the formation of prices as provided for in the context of the common organization of markets, is incompatible with the rules on the common organization of the market in oils and fats; and, finally, that those Community rules ensure, with direct effect as regards private parties, the free movement of goods, in particular by the elimination of quantitative restrictions and all measures having equivalent effect.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 January 1975

(P.J. Van der Hulst's Zonen v Produktschap voor Siergewassen)

Case 51/74

1. PRELIMINARY RULINGS - JURISDICTION OF THE COURT - LIMITS (EEC Treaty, Art. 177)

2. CUSTOMS DUTIES ON EXPORT - CHARGES HAVING EQUIVALENT EFFECT - CONCEPT (EEC Treaty, Art. 16)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - LIVE TREES AND OTHER PLANTS, BULBS, ROOTS AND THE LIKE, CUT FLOWERS AND ORNAMENTAL FOLIAGE - NATIONAL INTERVENTION MECHANISM - INCOMPATIBILITY WITH COMMUNITY LAW - CONSIDERATIONS INVOLVED (Regulation No. 234/68 of the Council)

4. AGRICULTURE - COMMON ORGANIZATION OF THE MARKET - AGRICULTURAL PRODUCTS - INTERNAL LEVY FALLING MORE HEAVILY ON EXPORT SALES THAN ON SALES ON THE NATIONAL MARKET - PROHIBITION OF DISCRIMINATION WITHIN THE MEANING OF PARAGRAPH 2 OF ARTICLE 40(3) AND ARTICLE 95 OF THE EEC TREATY - APPLICATION BY ANALOGY

1. Within the framework of proceedings brought under Article 177 of the Treaty, the Court cannot settle a difference concerning the assessment of the facts involved.

2. An internal levy may have equivalent effect to a customs duty on export if it falls more heavily on export sales than on sales inside the country, or where the levy is intended to fund activities tending to make the home market more profitable than exports or in any other way

to place the product intended for the home market at an advantage compared with the product intended for export.

3. A national intervention mechanism is incompatible with Regulation No. 234/68 on the establishment of a common organization of the market in live plants in so far as products which do not satisfy Community standards laid down under the regulation qualify for the intervention.

4. An internal levy on sales of a product is incompatible with the prohibition of discrimination embodied in the EEC Treaty when it falls more heavily on export sales than on sales on the national market or when the revenue from the levy is designed to place national products at an advantage.

Note

The Netherlands Court of Appeal on economic questions made a reference to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of Regulation No. 234/68 of the Council on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage. It will be recalled that, in a recent case, that of van Haaster (Case 190/73), the Court was called upon to give an interpretative ruling as to whether the national authority concerned could prohibit the cultivation of hyacinth bulbs by a horticulturalist who was not the holder of a cultivation licence in force for the cultivation year in question.

In the present case, the Court had to consider the legality of two levies, the "surplus levy" and the "trade levy", imposed under Netherlands regulations. The questions referred were as follows: (i) Are the Netherlands levies "charges having equivalent effect" within the meaning of Community regulations? (ii) Does it follow from the provisions of Community law that Netherlands bodies having legislative capacity are no longer permitted to make any regulations affecting market organization except for the purpose of implementing a provision of Community law?

After detailed examination both of the provisions involved and of their aims and objects, the Court ruled that an internal levy may have an effect equivalent to an export duty in circumstances where it falls more heavily on export sales than on sales inside the country, or where the levy is intended to fund activities tending to make the home market more profitable than exports, or in any other way to place a product intended for the home market at an advantage compared with a product intended for export; and that an internal levy on sales of a product is incompatible with the prohibition of discrimination embodied in the EEC Treaty if it falls more heavily on export sales than on sales on the national market, or if the income from the levy is intended to favour national products.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 January 1975

(Angelo ALAIMO v Préfet du Rhône)

Case 68/74

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

In providing that the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to educational courses "under the same conditions as the nationals" of the host State, Article 12 of Regulation No. 1612/68 ensures for the children referred to an equal position with regard to all the rights arising from such admission.

Note

A request by the Tribunal Administratif de Lyon for a preliminary ruling came before the Court of Justice of the European Communities on the interpretation of a provision of the regulation of the Council on freedom of movement for workers, which guarantees to children of a national of a Member State the same conditions of admission to educational facilities as to the nationals of the host State. The Conseil Général du Rhône had refused Miss Alaimo, daughter of an Italian worker settled in France, an educational grant on the ground that there were so many applications that financial assistance had to be limited to pupils of French nationality.

The Court ruled that Community legislation must be interpreted as

guaranteeing to the children in question equality with regard to all the rights arising from admission to education. The Court is here confirming the previous and similar case (Case 9/74 - Casagrande) decided in June 1974.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 February 1975

(Compagnie continentale France v Council of the European Communities)

Case 169/73

1. NON-CONTRACTUAL LIABILITY - COUNCIL - RESOLUTION - INFORMATION FOR COMMERCIAL OPERATORS - OMISSION - MISCONDUCT (EEC Treaty, Article 215, second paragraph)

2. NON-CONTRACTUAL LIABILITY - MISCONDUCT - DAMAGE - CHAIN OF CAUSATION - ERROR OCCASIONED BY MISCONDUCT (EEC Treaty, Article 215, second paragraph)

1. When in a resolution passed to inform and guide commercial operators the Council omits to make reservations on the possible application of a provision of the Treaties, knowledge of which is important for action by those concerned, it distorts the task of informing which it has assumed and makes itself liable.

2. The existence of a chain of causation between the conduct of the administration and the alleged damage presupposes that this conduct is such as to cause error in the mind of a prudent person.

Note

The applicant, a French wholesale exporter of cereals, claimed compensation from the Council amounting to more than 5.7 million French francs for damage allegedly suffered as a result of contracts for the export of denatured wheat and barley to the United Kingdom. The chronological order of facts in this case is important. The contracts of sale

were concluded in September 1972, that is to say after the signing but before the entry into force of the Treaty of Accession of the new Member States, which provided for the adoption of a new system of compensatory amounts. Exportation was to have taken place between February and June 1973, that is to say, after the implementation of the new agricultural provisions adopted following the accession of the new Member States. The applicant stated before the Court that the contracts had been concluded on the basis of a Council resolution of 20 July 1972 to the effect that exports of cereals from the six original Member States of the Community to the United Kingdom would give right to the payment of a compensatory amount of 42.33 units of account per metric ton.

However, a Council regulation of 31 January 1973 adopted in implementation of Article 55(6) of the Act of Accession, in conjunction with the rise in prices on the world market since the summer of 1972, combined to reduce, to a considerable extent, the total compensatory amounts and to produce the loss claimed by the applicant. The company bases its application upon the following legal argument: in adopting the above-mentioned measures the Council should have informed and advised economic operators and in failing to do so rendered the Community liable.

The Court dismissed the action on the ground that it cannot be maintained that there was any causal link between the Council's actions and the alleged damage, particularly as the plaintiff, as a prudent exporter, was fully informed of the conditions of the market, as is clear from the correspondence which he exchanged with the Office National Interprofessionnel des Céréales, in particular the letter of 12 October 1972, containing the following words: "... following a price movement which was both unforeseeable and exceptional ... Community levies are likely to be lower than compensatory amounts. It is likely that the latter will be adjusted so as not to exceed the levy in force; this follows from Articles 55 to 56 of the Act of Accession."

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 February 1975

(Auditeur du travail v Jean-Pierre Cagnon and Jean-Paul Taquet)

Case 69/74

TRANSPORT - SOCIAL PROVISIONS - HARMONIZATION - DAILY REST PERIOD - OBLIGATORY OBSERVANCE - PERSONS COVERED (Regulation No. 543/69 of the Council, Art. 11(2), first sub-paragraph)

The phrase "shall have had ... a ... rest period" in the first sub-paragraph of Article 11(2) of Regulation (EEC) No. 543/69 of 25 March 1969 must be interpreted as meaning that the provisions on daily rest must be observed both by crew members themselves, who are required to stop all activities referred to in Article 14(2), (c) and (d), of the Regulation for the minimum period laid down, and by the employer running a road transport undertaking, who is required to take the necessary measures to permit crew members to have the daily rest period laid down.

Note

The Regulation of 25 March 1969 of the Council on the harmonization of certain social legislation relating to road transport provides that every crew member engaged in the carriage of passengers must have had a daily rest period of not less than 10 consecutive hours during the 24-hour period preceding a period of duty. An action pending before the Tribunal de Police, Mons, between the Auditeur du Travail and a coach driver charged with failing to conform to this Community provision led to the Court in Luxembourg being called upon to interpret by way of a preliminary ruling the words "shall have had ... a ... rest period". Is this a duty or an option for a crew member engaged in the carriage of passengers?

The Court ruled that this expression is to be interpreted as compelling

adherence to the provisions relating to daily rest periods both for crew members themselves, who are obliged not to pursue their activity during the prescribed period, and for employers engaged in road transport services who must take the measures necessary to ensure that crew members can take advantage of the prescribed daily rest period.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 February 1975

(Alfonso Farrauto v Bau-Berufsgenossenschaft)

Case 66/74

SOCIAL SECURITY FOR MIGRANT WORKERS - PENSION - APPLICATION FOR - DECISION OF THE COMPETENT INSTITUTION - DIRECT NOTIFICATION TO THE CLAIMANT - CONDITIONS - LANGUAGE - DUTIES OF NATIONAL COURTS (Regulation No. 4 of the Council, Art. 56(2))

The word "directly" in Article 56(2) of Regulation No. 4 of the Council must be interpreted as meaning that the notification referred to in the provision must be effected without an intermediary and that dispatch by the postal and telecommunication services meets this condition.

The national courts of the Member States must nevertheless take care that legal certainty is not prejudiced by a failure arising from the inability of the worker to understand the language in which a decision is notified to him.

Note

The Bundessozialgericht asked the Court of Justice of the European Communities to interpret the word "directly" as contained in the following sentence: "The competent institution shall notify the claimant of its decision directly", contained in Regulation No. 4 of the Council implementing and supplementing the provisions of Regulation No. 3 on social security for migrant workers.

The action arose out of difficulties encountered by Mr Farrauto,

plaintiff in the main action, an Italian national living in Italy after working in Germany, in communicating to the competent German authorities a request that he should again become entitled to benefit under an accident pension which he had previously received for a limited period, and in receiving the documents relating to his case.

The Court ruled that the word "directly" is to be understood as meaning that the notification provided for in the provision must be effected without intermediary and that dispatch by way of the postal and telecommunications services fulfils this condition.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 February 1975

(Commission of the European Communities v Federal Republic of Germany)

Case 12/74

1. QUANTITATIVE RESTRICTIONS ON IMPORTS - MEASURES HAVING EQUIVALENT EFFECT - REGISTERED DESIGNATIONS OF ORIGIN - INDICATIONS OF ORIGIN - DEFINITION IN RELATION TO UNPROTECTED APPELLATIONS (Directive No. 70/50/EEC, Art. 2(3))

2. QUANTITATIVE RESTRICTIONS - MEASURES HAVING EQUIVALENT EFFECT - INDUSTRIAL AND COMMERCIAL PROPERTY RIGHTS - INDICATIONS OF ORIGIN - INTRODUCTION OF A NEW MEASURE - PROTECTION OF A GENERIC APPELLATION - PROHIBITION (EEC Treaty, Art. 36)

1. In order to be protected by law, registered designations of origin and indications of origin must describe a product coming from a specific geographical area and must ensure not only that the interests of the producers concerned are safeguarded against unfair competition, but also that consumers are protected against information which may mislead them.

The appellations only fulfil their specific purpose if the product which they describe does in fact possess qualities and characteristics which are due to the fact that it originated in a specific geographical area and they must, particularly in the case of indications of origin, confer on the product a specific quality and specific characteristics of such a nature as to distinguish it from all other products.

An area of origin which is defined on the basis either of the extent of national territory or a linguistic criterion cannot constitute a

geographical area within the meaning referred to above, capable of justifying an indication of origin, particularly as the products in question may be produced from grapes of indeterminate origin.

2. Although the Treaty does not restrict the power of each Member State to legislate in matters of indications of origin, they are nevertheless prohibited by the second sentence of Article 36 from introducing new measures of an arbitrary and unjustified nature whose effects are, for this reason, equivalent to quantitative restrictions.

This is precisely the case where a national legislature grants the protection provided for indications of origin to appellations which, at the time when such protection is granted, are merely generic in nature.

Note

The object of this action was to obtain a declaration that the Federal Republic of Germany had failed to fulfil its obligations under the EEC Treaty, in particular as regards the prohibition of measures having an effect equivalent to quantitative restrictions on imports. The following is an outline of the facts, including linguistics and oenology, which prompted the Commission to bring an action for failure to fulfil an obligation on the basis of Article 169 of the EEC Treaty.

The German Law on vine products of 14 July 1971 states that the appellation "Sekt" may only describe a German sparkling wine which satisfies certain conditions as to quality, that the appellation "Prädikatssekt" may only describe a sparkling wine containing at least 60% of German grapes and that the appellation "Weinbrand" may be used only for a domestic product which satisfies the criterion of "spirits obtained by distilling quality wine". Sparkling wines and spirits obtained by distilling foreign wines are restricted to the appellations "Schaumwein", "Qualitätsschaumwein", "Branntwein aus Wein" and "Qualitätsbranntwein aus Wein".

The Commission took the view that under this legislation the Federal Republic of Germany was evading the prohibition as between Member States on the introduction of all quantitative restrictions on imports and all measures having equivalent effect. In fact, by reserving for national production certain appellations which are already well known to the consumer, while compelling the products of other Member States to use appellations which are unknown or less esteemed, the legislation on vine products is discriminatory in character and likely to favour the sale of the domestic product on the German market to the detriment of the products of other Member States.

The Federal Republic of Germany attempted to justify its legislation on vine products on grounds of protection of industrial and commercial property and also on grounds of public policy, by reason of the need to protect producers against unfair competition and consumers against deception.

The Court of Justice did not concur in these arguments and replied, first, that although the Treaty is not an obstacle to the power of each Member State to legislate in matters of indications of origin, it nevertheless prohibits them from introducing new measures of an arbitrary and unjustified nature, and that this is the case where a national legislature grants the protection provided for indications of origin to appellations which, when such protection is granted, are merely generic appellations, and secondly that vine products of the same type may differ from each other by reason of their quality and certain of their characteristics. The unsuccessful party, the Federal Republic of Germany, was ordered to pay the costs of the proceedings.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 February 1975

(Adolf Reich and Hauptzollamt Landau)

Case 64/74

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - MAIZE - IMPORTATION FROM A MEMBER STATE - LEVY FIXED IN ADVANCE - PERIOD LAID DOWN FOR IMPORTATION - NOT OBSERVED - FORCE MAJEURE (Regulation No. 31 of the Council - Article 2(1) and (2)) (Regulation No. 87/62 of the Commission, Article 8(3))

While the concept of force majeure in a case such as the present implies that the failure to observe a time limit provided for in the licence does not involve the loss of the entitlement to a levy fixed in advance, this is nevertheless on condition that the delay in importation is due to exceptional circumstances, and is in particular not due to negligence of which a prudent importer would not be guilty, either when entering into a contract to buy or to carry, or in asserting his rights against the carrier.

Note

The applicant, Firma Reich of Stuttgart, imported from France two batches of maize for fodder in October 1963. It had submitted two import licences dated 5 and 13 September 1963 in which the customs office had fixed in advance the levy applicable to imports of maize to be effected during September.

The goods arrived in Germany on 3 October and the customs office claimed, in a notice of amendment, the final amount to be applied.

Firma Reich, alleging that the delay in delivery was the responsibility of the railway services and not its own doing, maintained that the rate of levy

to be applied should be that fixed in advance in the two import licences.

The Finanzgericht Rheinland-Pfalz held that it was necessary to obtain an interpretation of the provisions of Community law governing the regulation of imports of cereals and referred the case for a preliminary ruling to the European Court, asking whether in the present case there were "reasons justifying an exception" to the wording of Regulation No. 87/62 of the Commission.

The Court ruled that the levy fixed in advance for an importation of maize from a Member State remains applicable to that importation, even if the latter is not effected during the month indicated on the application for a licence, in so far as the delay which occurs is not due to the behaviour of the importer or to normally foreseeable circumstances, but is due to circumstances of force majeure.

* * *

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 February 1975

(Bonsignore)

Case 67/74

FREE MOVEMENT OF PERSONS - EXCEPTIONS - TO BE STRICTLY CONSTRUED - OFFENCE AGAINST NATIONAL PUBLIC POLICY - NATIONAL OF A MEMBER STATE - DEPORTATION - PERSONAL CONDUCT - MEASURE OF A GENERAL PREVENTIVE NATURE - PROHIBITION (EEC Treaty, Arts. 48 and 56; Council Directive No. 64/221/EEC, Art. 3(1) and (2))

Directive No. 64/221 seeks to co-ordinate the measures justified on grounds of public policy and for the maintenance of public security envisaged by Articles 48 and 56 of the Treaty, in order to reconcile the application of these measures with the basic principle of the free movement of persons within the Community and the elimination of all discrimination, in the application of the Treaty, between the nationals of the State in question and those of the other Member States.

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.

It follows from this that Article 3(1) and (2) of Directive No. 64/221/EEC prevents the deportation of a national of a Member State if such deportation is ordered for the purpose of deterring other aliens, that is, if it is based on reasons of a "general preventive nature".

Note

Mr Bonsignore, the plaintiff in the main action, a chemical worker of Italian nationality, has worked in Germany since 1968.

While handling a pistol which he had in his possession illegally he fatally injured his younger brother.

He was sentenced to a fine for an offence against the firearms law and found guilty of causing death by negligence, although no punishment was imposed on him on this count, in view of the accidental nature of the incident and the mental distress suffered by him. Following his conviction the aliens authority ordered that Mr Bonsignore be deported pursuant to German law.

The Administrative Court of Cologne, before whom an appeal was brought against this decision, held that by reason of the special circumstances of the case the measure adopted could be justified only on the basis of "general prevention", that is to say the deterrent effect which would supposedly be created in the immigrant community by the deportation of a foreigner in illegal possession of a firearm.

In order to ensure that German law should be applied in conformity with the requirements of Community law, the Administrative Court referred the following preliminary question to the European Court: is the Council directive of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health, to be interpreted as excluding the deportation of a national of a Member State by the national authorities of another Member State for reasons of a general preventive nature?

The directive states that: "Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned". The Court of Justice reaffirmed (cf. Case 41/74, van Duyn, 4 December 1974) that this is an exception which must be strictly

construed so as to reconcile the application of this measure with the fundamental principle of freedom of movement of persons within the Community and the abolition of all discrimination between nationals of one Member State and those of others. The Court ruled that Community rules exclude the deportation of a national of a Member State if such a measure is adopted for the purpose of deterring other foreigners.

* * *

National Case-Law

For the first time, we are publishing extracts from a judgment given by a national court referring to the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments signed at Brussels on 27 September 1968. The text of this Convention was published in issue No. 12-13 of Information on the Court of Justice, pp. 60 et seq.

COUR D'APPEL, PARIS, - First Chamber

16 December 1974

1. JURISDICTION IN CIVIL AND COMMERCIAL JUDGMENTS - SPECIAL JURISDICTION WITHIN THE MEANING OF ARTICLES 5 AND 6 OF THE BRUSSELS CONVENTION OF 27 SEPTEMBER 1968 - LIMITATIVE ENUMERATION - EXTENSION TO PILLAGE - UNACCEPTABILITY

2. JURISDICTION IN CIVIL AND COMMERCIAL JUDGMENTS - SPECIAL JURISDICTION WITHIN THE MEANING OF ARTICLES 5 AND 6 OF THE BRUSSELS CONVENTION - LIMITATIVE ENUMERATION - EXTENSION TO MATTERS OF PUBLIC POLICY - UNACCEPTABILITY

1. Pillage may not be added to the limitative list of examples of special jurisdiction within the meaning of Articles 5 and 6 of the Brussels Convention of 27 September 1968. Article 5(3) of the Convention is not applicable in the event of an action against the possessor of an object pillaged if the pillage took place within the territory of another Contracting State, since the act of pillage is only the necessary condition and not the basis of the action against the possessor, since the tortious act, that is to say the illegal possession of the object in question, takes place within the territory of the State where the possessor is resident.

2. The application of the rules of jurisdiction laid down by the Brussels Convention is not subject to any exception on the grounds of public policy. There is therefore no reason to exclude from its application matters

governed by laws relating to public policy or criminal investigation.

"The Court hereby gives judgment on the objection by Henriette Schumann née Halphen and Georges Halphen to an interlocutory order made on 7 June 1974 by the President of the Tribunal de Grande Instance de Paris, which stated that it had no jurisdiction to hear their requests and that their case should be brought before the Netherlands courts.

"The authors of the objection, acting as sole heirs of their mother, Alice Halphen née Koenigswarter, widow, who died on 22 May 1963, stated before the first judge that in July 1940 German troops had seized several pictures belonging to their mother, in particular a painting by Odilon Redon entitled "Le Boudha". That painting had been conveyed to Sotheby's Auction Rooms in London by a Mrs Sanders-Polak, of Netherlands nationality, resident in the Netherlands, for the purpose of its sale. They therefore requested, in pursuance of the legislation on pillage and in particular of Article 27 of the Order of 21 April 1945 that the act of dispersal depriving their mother of that painting be declared void, that Mrs Sanders-Polak be ordered to return the painting to them and that it should be recorded that they reserve the right to claim from her all damages and interest arising from wrongful acts or omissions on her part.

"In justification of his declaration that he lacked jurisdiction the judge giving the interlocutory judgment applied Article 2 of the Convention on Jurisdiction and the Enforcement of Civil and Commercial Judgments, signed at Brussels on 27 September 1968 by the six States of the European Economic Community, according to which, subject to any provision to the contrary, persons domiciled in a Contracting State shall be answerable to the courts of that State, whatever their nationality.

"In their objection the plaintiffs request the Court to annul the Order appealed against and to rule that the President of the Tribunal de Grande Instance de Paris had jurisdiction to give a ruling on their request. They maintain that the Brussels Convention of 27 September 1968 cannot stand in the

way of the exclusive jurisdiction which French courts have always been acknowledged to possess, apart from any application of Article 14 of the Civil Code, to hear actions based on the laws relating to police and security. The Order of 21 April 1945 on pillage is of this type, as is clear from the Declaration of London of 5 January 1943, by which the Allied Governments decided to make all efforts, after the cessation of hostilities, each within its own territory, that objects pillaged by the enemy be restored. Furthermore, the act of pillage constitutes a tort or quasi-tort in respect of which Article 5 of the Brussels Convention reserves the right to hear such matters to the court of the place where the tortious act occurred. The unlawful act committed in France by the defendant in refusing to restore the pillaged property still falls within the jurisdiction of the French court. To decide the matter in any other way would be a denial of justice, since Netherlands legislation does not permit the plaintiffs to obtain a ruling from a Netherlands court of the unconditional nullity on grounds of public policy of the act of pillage of which their mother was the victim, and of all subsequent assignments.

"Mrs Sanders-Polak, adopting the reasoning of the Order in issue, requests that the latter be confirmed. In the alternative, she states that in the event of doubt the Minister for Foreign Affairs should be requested to interpret the Brussels Convention.

.....

"Title I of the Brussels Convention lays down those matters which fall outside its field of application, and Articles 5 to 16 enumerate those matters for which special jurisdiction is provided as an exception to the general jurisdiction laid down by Article 2. The judge of first instance rightly decided that he could not add pillage to the limitative list of such exceptions without contravening the provisions of the Treaty, which take precedence over domestic law.

"In particular, the Convention, which expressly excludes the application of Article 14 of the French Civil Code, refers to the concept of public policy

only in Article 27(1), according to which judgments rendered in a Contracting State may not be recognized in another State if they are contrary to public policy in the State applied to. On the other hand, no exception relating to public policy is provided for regarding the application of the rules of jurisdiction which it lays down. There is therefore no reason to withdraw from its application matters governed by laws relating to public policy or by those relating to police and security which, furthermore, according to Article 3 of the Civil Code, are binding only upon those resident within French territory, which is not the case with Mrs Sanders-Polak. It cannot be stated that the action for restitution of a chattel brought against the latter does not fall within the ambit of civil matters, to which the Convention applies, on the pretext that this action is governed by a law relating to police and security.

"Finally, Mr and Mrs Halphen are not justified in maintaining that the judge at first instance should have applied Article 5(3) of the Brussels Convention, according to which the defendant, as an exception to Article 2, may be sued, in matters of tort or quasi-tort, before the court of the place where the tortious act occurred.

.....

"On those grounds and in view of the judgment of the judge of first instance to the like effect:

"Confirms the Order appealed against;

"Orders Mr and Mrs Halphen to pay the costs of their objection;

"Delivered at the hearing on 16 December 1974, the Court being composed of Messrs Fardel, President, Sornay and Beteille, Counsellors, assisted by Maître Bodey, Secretary-Registrar;

"Mr Fardel, President, and Maître Bodey, Secretary-Registrar, signed the record of this judgment."

* * *

TRIBUNAL CORRECTIONNEL, LIEGE, - 11th Chamber

5 March 1975

EEC - RIGHT OF ESTABLISHMENT OF NATIONALS OF THE MEMBER STATES WITHIN THE TERRITORY OF ANOTHER MEMBER STATE - FORMALITIES REQUIRED BY THE LAW OF SUCH A STATE FOR THE PURPOSE OF THE ESTABLISHMENT OF FOREIGNERS - NON-COMPLIANCE BY AN INDIVIDUAL - RIGHT OF ESTABLISHMENT UNAFFECTED (EEC Treaty, Art. 52)

The right of a national of a Member State to stay within the territory of another Member State is not affected by the fact that the person concerned has not fulfilled the formalities required by the law for the purpose of the establishment of foreigners within the territory of that State.

"Regarding Charge A:

The defendant is of French nationality and is therefore a national of a Member State of the European Economic Community.

"Accordingly, in conformity with the Treaty of Rome and with national law adopted in accordance with that Treaty which is binding upon it, a national of France, Germany, Italy, Luxembourg or the Netherlands is entitled as of right to an establishment permit (Article 39 of the Royal Decree of 21 December 1965, as amended by Article 12 of the Royal Decree of 11 July 1969).

"Article 13 of the Royal Decree of 11 July 1969 states that the residence permit for nationals of a Member State of the European Economic Community merely records that right.

"Article 3 of the Royal Decree of 11 July 1969 states that the Belgian identity card for foreigners or the residence permit for nationals of a Member State of the EEC constitutes the establishment permit referred to by Article 2(C) of the Law of 28 March 1952.

"In accordance with Article 5 of the Law of 28 March 1952, no decree of expulsion may be issued against a foreigner who is a national of a Member State of the EEC or against any foreigner belonging to the family of that national who is a member of his household or lives under his roof, except after receiving the opinion of the Aliens Advisory Committee.

"It is not alleged that the defendant entered Belgium without submitting the documents required by law nor is there any evidence to this effect. Accordingly, the infringement alleged by the Procureur du Roi amounts in fact to illegal residence.

"On the basis of the above-mentioned charge, the Procureur du Roi alleges that the accused did not fulfil the formalities required by law for the purpose of his establishment within the territory. The Procureur du Roi accordingly considers that the accused's residence is illegal.

"According to the law a distinction must be made between, on the one hand, the right of residence of a national of Belgium or of a Member State of the EEC, which he enjoys by virtue of the Treaty and of the law, and, on the other hand, the administrative duties imposed by other laws, in particular that of 2 June 1856, which imposes penalties in respect of non-fulfilment of the said formalities.

"The defendant admits not having fulfilled these formalities and that he has committed an offence. Accordingly the mere fact of his omission is sufficient to establish the infringement. This infringement is not that alleged in the charge, but must be defined as follows:

'having failed, at Liège, between 24 January 1974 and 3 January 1975, in contravention of Articles 4 and 6 of the Law of 2 June 1856, to declare his establishment or the change of his place of residence in Belgium in the form and within the period prescribed by the government and in accordance with the bye-laws adopted in pursuance of Article 78 of the Loi Communale (local government Law)'.

"In addition, the orders to leave the country made by the administrative authorities do not affect the existence of an infringement of this kind once it is established that the person to whom those orders are addressed is entitled to reside within the territory.

(.....)

"On those grounds

"The Court, having heard both sides in the dispute, finds the accused guilty of Charge A as amended ....."

* * *