Information on the Court of Justice of the European Communities

1980 – I

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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1980

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COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1979 to 1980

(from 8 October 1979)

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G. BOSCO, Judge	P. PESCATORE, Judge	J. MERTENS DE WILMARS, Judge
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1 - Following an amendment to the Rules of Procedure which entered into force on 8 October 1979 a third chamber has been created of which the President of the Court, H. Kutscher, is President.

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Judgment of 8 January 1980

Case 21/79

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Mayras on 15 November 1979)

1. Tax provisions - Internal taxation - Rule that there should be no discrimination - Scope - Tax advantages for domestic products - Extension to products imported from other Member States

(EEC Treaty, Art. 95)

2. Approximation of laws - Disposal of waste oils - Undertakings concerned - Allowances in the form of reduction of domestic charges - Admissibility - Conditions - Compliance with the rule that there should be no tax discrimination

(EEC Treaty, Art. 95; Council Directive No. 75/439/EEC, Art. 13)

1. In the absence of any unification or harmonization of the relevant provisions, Community law does not prohibit Member States from granting, for proper economic and social reasons, tax advantages, in the form of exemption from or reduction of duties, to certain products or to certain classes of producers. The EEC Treaty does not therefore forbid, as far as domestic tax laws are concerned, the taxation at differential rates of products which may serve the same economic ends, especially if, objectively speaking, it appears that the cost of production differs considerably.

On the other hand the first paragraph of Article 95 of the Treaty requires that such tax advantages must also be extended without any discrimination to similar products from the other Member States which satisfy the same conditions laid down for those advantages. However that provision does not place Member States under a duty to abolish as regards internal taxes on domestic products differences which are objectively justified and which may be introduced by domestic legislation unless such abolition is the only way of avoiding direct or indirect discrimination against the imported products.

2. Pursuant to Article 13 of Directive No. 75/439 on the disposal of waste oils, when Member States implement a directive they are free either to grant indemnities directly to undertakings engaged in the recovery, disposal or regeneration of used oils or to allow regenerated oils to benefit from more favourable tax treatment, or even to

combine the two systems. Nevertheless, if in the exercise of their discretion in this field they opt for a system of lower internal taxation, they must accept the consequences of that choice and ensure that the system chosen complies with the fundamental principle laid down in Article 95 of the EEC Treaty that there must be no tax discrimination against imported products.

NOTE

The Commission brought an action before the Court seeking a declaration that the Italian Republic had failed to fulfil its obligations under Article 95 of the EEC Treaty "by imposing a differentiated charge to the disadvantage of regenerated petroleum products imported from the other Member States in pursuance of Law No. 1852 of 31 December 1962". According to Italian legislation mineral oils and processed products derived therefrom attract an "imposta interna di fabbricazione" /internal duty on manufactured goods/.

The same products imported from abroad attract an identical tax called the "sovraimposta di confine" /frontier surcharge/ when passing over the frontier.

For both economic and ecological reasons used oils are recovered, reprocessed and recycled.

But there is a difference between the recovery and the regeneration of used petroleum products, which are also dealt with differently from the fiscal point of view.

Recovery consists of recycling certain products for the same use as before after they have been cleaned, purified or filtered. Oil recovered in this way is exonerated from the imposta di fabbricazione upon the condition that the recovery and recycling is done in the same establishment as the one where the oil was first used.

Regeneration is a complicated chemical process requiring large and costly industrial plant. But the process restores all its qualities to the product and the Commission and the Italian Government admit that it is not possible to distinguish oil which has been subjected to the regeneration process from an oil newly refined in its original state.

Regenerated oil attracts an imposta di fabbricazione at a rate equivalent to 25% of the full rate. Italian legislation does not grant this reduced rate to imported oils, whether it be recovered or regenerated oil.

The Commission let it be known that it regarded the rules in question as an infringement of the first paragraph of Article 95 of the Treaty. The Government argued that the criticised fiscal reductions in reality constituted a way of implementing authorized subsidies.

The Court held that by maintaining under Law No. 1852 of 31 December 1962 modifying the tax system for petroleum products a different rate for the imposta di fabbricazione upon regenerated mineral oil produced in Italy compared to the rates of the sovraimposta di confine levied upon regenerated oil coming from other Member States, the Italian Republic had failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty.

The parties were ordered to pay their own costs.

Judgment of 10 January 1980

Case 267/78

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Warner on 7 November 1979)

1. European Communities - Own resources - Establishment and making available - Verifications and inquiries - Powers of the Commission - Arrangements for exercise

   (Council Regulations No. 2/71, Arts. 6 and 14, and No. 2891/77, Art. 18)

2. European Communities - Own resources - Establishment and making available - Verifications and inquiries - Powers of the Commission - Arrangements for exercise - Possibility of relying on privilege in respect of criminal investigations - Conditions

   (Council Regulations No. 2/71, Art. 14, and No. 2891/77, Art. 18)

1. A Member State may not contest the Commission's power to exercise its supervision as soon as the Communities' own resources have been established by the competent national authorities. Indeed the fact that, in accordance with Article 6 of Regulation No. 2/71 of the Council, the established entitlements are to be entered in the accounts of the Communities as revenue to be collected requires that the Commission shall have a right to ask for additional measures of control and to be associated with the measures applied by the Member States themselves as from the time when the resources ought to have been established.

2. Although the inspection measures which the Commission may request on the occasion of the establishment and making available of own resources by the competent national authorities and with which it must be associated cover all those which the national authorities may carry out, nevertheless it is not possible in the present state of Community law to infer from Article 14 of Regulation No. 2/71 of the Council, which has been re-enacted by Article 18 of Regulation No. 2891/77, an intention to alter the relations between the administration and the judicial authorities. Rules which in the national systems of criminal law prevent the communication to certain persons of documents in the criminal proceedings may therefore be relied upon against the Commission in so far as the same restrictions may be relied upon against the national authorities.

NOTE

The Commission brought an action seeking a declaration that, in refusing to associate it with certain inspection measures concerning the establishment and the making available of the Communities' own resources, or to communicate to it the results thereby obtained, the Italian Republic was in breach of its obligations under Article 5 of the Treaty and Article 14 of Regulation No. 2/71 of the Council.

The dispute originated from fraudulent activities involving 6 000 tonnes of butter coming from non-Member States, carried out in connexion with intra-Community trade. The goods left the port of departure in a regular manner under the procedure for internal Community transit.

However, it seemed that the documents for this procedure (T1) had been processed in an irregular manner both during the course of the voyage and in Italy by means of forged or false internal Community transit documents which enabled the goods to escape considerable sums by way of agricultural levies.

Upon learning of the frauds the Commission wrote a letter asking Italy to apply additional inspection measures, to which the Commission was to be associated. The administration of the Italian customs requested a copy of the report by the Guardia di Finanza but the investigating judge rejected this request on the ground that the facts with which the report was concerned were the subject of criminal proceedings so that the report like all the other documents involved in the preliminary investigation were subject to the secrecy of the investigation.

The reasoned opinion sent by the Commission under Article 169 of the Treaty to the Italian Republic emphasizes the power of the Commission to carry out detailed inspections by virtue of the primacy of Community law over internal law as well as the duty of Member States to co-operate by all the means at their disposal in the exercise of this right to inspect.

The Commission's power of inspection

The Italian Government maintained that the power of inspection granted to the Commission by Regulation No. 2/71 can only be exercised from the time when the national administrative body has completed the process of determining own resources, that is to say, determined the revenue and made it available to the Communities.

In opposition to this argument the Commission maintained that, in order to be effective, it must be able to exercise its supervision from the time when the existence of a fact creating own resources is determined.

The Court could not uphold the arguments of the Italian Government which meant making the provisions of the applicable regulations and law pointless and limiting the powers of the Commission to a simple ex post facto verification of the accounts relating to own resources. The Italian Government was not therefore justified in challenging the power of the Commission to exercise its supervision from the time of the phase of the "establishment" of own resources by the competent body of the Member State concerned.

The problem of the secrecy of the investigation

The question here was whether the relevant Community rules can be interpreted as imposing upon Member States the obligation to communicate information which is the subject of criminal proceedings and covered as such by the secrecy of the investigation, in derogation, if necessary, from national procedural rules. An examination of the terms of Article 14 of Regulation No. 2/71 of the Council shows that in the present state of Community law the inspection measures which the Commission may require and to which it must be associated include all those which the national authorities may carry out, but that an intention to modify the relationship between the administration and the judiciary may not be inferred from the regulations and law in question.

Rules preventing the communication of documents involved in criminal proceedings may therefore be relied upon with regard to the Commission to the extent to which those restrictions may be relied upon against the national administration.

The Court declared and ruled that the action was dismissed and ordered the applicant to pay the costs.

Judgment of 10 January 1980

Case 69/79

W. Jordens-Vosters v Bestuur van de Bedrijfsvereniging voor de Leder- en Lederverwerkende Industrie

(Opinion delivered by Mr Advocate General Warner on 22 November 1979)

1. Community law - Uniform application - Concepts - Definition - Objective criteria in Community context

2. Social security for migrant workers - Sickness and maternity benefits - Concept - Definition - Community criteria - Benefits in kind under legislation concerning invalidity - Inclusion

(Regulation No. 1408/71 of the Council, Art. 4(1) (a))

3. Social security for migrant workers - Community rules - Object - National legislation more favourable than Community rules - Permissibility

(EEC Treaty, Art. 51; Regulation No. 1408/71 of the Council)

4. Social security for migrant workers - Sickness insurance - Recipient of an invalidity pension residing in another Member State - Power of the competent institution to grant benefits of a medical or surgical nature - Power unaffected by Community rules

(Regulation No. 1408/71 of the Council, Arts. 19 and 28 (1))

1. The requirement that Community law be applied uniformly within the Community implies that the concepts to which that law refers should not vary according to the particular features of each system of national law but rest upon objective criteria defined in a Community context.

2. The concept of "sickness and maternity benefits" appearing in Article 4 (1) (a) of Regulation No. 1408/71 is to be determined for the purpose of applying the regulation, not according to the type of national legislation containing the provisions giving those benefits, but in accordance with Community rules which define what those benefits shall consist of.

It follows that the words "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1 of Title III of Regulation No. 1408/71 must be interpreted as including benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits.

3. The essential object of Regulation No. 1408/71 adopted under Article 51 of the Treaty is to ensure that social security schemes governing workers in each Member State moving within the Community are applied in accordance with uniform Community criteria. To this end it lays down a whole set of rules founded in particular upon the prohibition of discrimination on grounds of nationality or residence and upon the maintenance by a worker of his rights acquired by virtue of one or more social security schemes which are or have been applicable to him. To interpret Regulation No. 1408/71 as prohibiting national legislation to grant a worker social security broader than that provided by the application of the said regulation would therefore be going beyond that objective, and also outside the purpose and scope of Article 51.

4. Regulation No. 1408/71, having regard also to Articles 19 and 28 (1) thereof, does not fetter the power of the competent institution of a Member State to grant sickness or maternity benefits, within the meaning of Article 4 (1) (a) of the said regulation, including benefits of a medical or surgical nature, to a person who is in receipt of an invalidity pension under the legislation of that Member State and who resides in the territory of another Member State.

NOTE

The Centrale Raad van Beroep of the Netherlands asked the Court of Justice the following questions in the context of a refusal by the Netherlands social security institution to grant a person in receipt of invalidity benefits reimbursement of that part of expenditure on hospitalization and medicines incurred in 1973 and 1974 which had not been reimbursed by any other social security institution.

1. Must the words "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1 of Regulation (EEC) No. 1408/71 be interpreted as also including in principle benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits?

2. If Question 1 is answered in the affirmative, does that mean, having regard to Article 19 (1) and (2) and Article 28 (1) of the regulation, that the administering body of a Member State is not empowered to grant such benefits to a person who is entitled to invalidity benefits under the legislation of that Member State if the person concerned resides in the territory of another Member State and in that connexion the legislation concerning sickness (and maternity) benefits of the latter State is applicable to him?

3. If Question 1 is answered in the negative:
Must Article 19 and Article 28 of the regulation be interpreted as excluding supplementary measures under the legislation of a Member State concerning invalidity pursuant

to which the person concerned is entitled to invalidity benefits if the person concerned resides in the territory of another Member State and in that connexion the legislation concerning sickness (and maternity) benefits of the latter Member State is applicable to him?

The Court replied by ruling that:

1. The words "sickness and maternity benefits" within the meaning of Article 4 (1) (a) and Chapter 1 of Regulation (EEC) No. 1408/71 must be interpreted as also including benefits under legislation concerning invalidity which are in the nature of medical or surgical benefits.

2. Regulation No. 1408/71, having regard to Articles 19 and 28 (1) thereof, does not preclude the power of the competent body of a Member State to grant sickness or maternity benefits within the meaning of Article 4 (1) (a) of the said regulation, including benefits in the nature of medical or surgical benefits, to a person who receives an invalidity pension under the legislation of that Member State and who resides in the territory of another Member State.

Judgment of 17 January 1980

Case 56/79

Siegfried Zelger v Sebastiano Salinitri

(Opinion delivered by Mr Advocate General Capotorti on 11 December 1979)

1. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Jurisdiction - Jurisdiction of the court for the place of performance - Jurisdiction of the court designated by the parties - Nature and foundation of both

(Convention of 27 September 1968, Arts. 5 (1) and 17)

2. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Jurisdiction - Jurisdiction of the court for the place of performance - Designation of place of performance by a clause valid according to the law applicable - Observance of formal conditions provided for under Article 17 not required

(Convention of 27 September 1968, Arts. 5 (1) and 17)

1. The provisions of Article 5 (1) of the Convention, to the effect that in matters relating to a contract a defendant domiciled in a Contracting State may be sued in the courts for the place of performance of the obligation in question, introduce a criterion for jurisdiction, the selection of which is at the option of the plaintiff and which is justified by the existence of a direct link between the dispute and the court called upon to take cognizance of it. By contrast, Article 17 of the Convention, which provides for the exclusive jurisdiction of the court designated by the parties in accordance with the prescribed form, puts aside both the rule of general jurisdiction - provided for in Article 2 - and the rules of special jurisdiction - provided for in Article 5 - and dispenses with any objective connexion between the legal relationship in dispute and the court designated. It thus appears that the jurisdiction of the court for the place of performance and that of the selected court are two distinct concepts and only agreements selecting a court are subject to the requirements of form prescribed by Article 17 of the Convention.

2. If the place of performance of a contractual obligation has been specified by the parties in a clause which is valid according to the national law applicable to the contract, the court for that place has jurisdiction to take cognizance of disputes relating to that obligation under Article 5 (1) of the Convention, irrespective of whether the formal conditions provided for under Article 17 have been observed.

The Bundesgerichtshof /Federal Court of Justice/ referred to the Court of Justice a question on the interpretation of Articles 5 (1) and 17 of the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

The question was raised in the course of proceedings between two merchants, one domiciled in Munich (Federal Republic of Germany), and the other in Mascari (Italy), concerning the repayment by the defendant in the main action of a loan said to have been made to him by the plaintiff in the main action (the Munich merchant). The latter, founding upon an oral agreement under which Munich was said to have been fixed as the place of repayment, instituted proceedings before the Landgericht München /Regional Court, Munich/, which held that it had no jurisdiction on the ground, inter alia, that a mere oral agreement on the place of performance could not have the effect of conferring jurisdiction unless the form prescribed by Article 17 of the Brussels Convention ("agreement in writing or oral agreement evidenced in writing") had been observed. The case having come before the Bundesgerichtshof, that court asked the following question:

> Does an informal agreement which is effective under national - in this case German - law between full-scale merchants /Vollkaufleute/ concerning the place of performance of the obligation which is at issue in the proceedings suffice to found jurisdiction in that place under Article 5 (1) of the Convention, or is the capacity of such an agreement to found jurisdiction dependent upon observance of the form laid down in Article 17 of the Convention ?

The Court recalled that Article 5 (1), appearing in Section 2 of Title II of the Convention entitled "Special jurisdiction", creates a ground of jurisdiction which was an exception to the general rule of jurisdiction; the provisions of Article 5, which allow a defendant domiciled in the territory of a Contracting State to be sued in a contractual matter before the court for the place of performance of the obligation, introduce a ground of jurisdiction which is justified by the existence of a direct link between the dispute and the court called upon to take cognizance of it.

By contrast, Article 17 appearing in Section 6 of Title II of the Convention entitled "Prorogation of jurisdiction" and providing for the exclusive jurisdiction of the court specified by the parties in accordance with the prescribed forms, sets aside both the general rules on jurisdiction (provided for in Article 2) and the special rules (provided for in Article 5) and dispenses with any objective link between the legal relationship in dispute and the court specified. It appears therefore that the jurisdiction of the court for the place of performance and that of a selected court are two distinct concepts and only agreements specifying a court or tribunal are subject to the formal requirements provided for in Article 17 of the Convention. The Court accordingly ruled that if the place of performance of a contractual obligation had been specified by the parties by a clause which was valid according to the national law applicable to the contract, the court for that place had jurisdiction to deal with disputes relating to that obligation, under Article 5 (1) of the Brussels Convention of 27 September 1968 irrespective of whether the formal conditions provided for in Article 17 have been observed.

Judgment of 17 January 1980

Joined Cases 95 and 96/79

Procureur du Roi v Charles Kefer and Louis Delmelle

(Opinion delivered by Mr Advocate General Mayras on 13 December 1979)

1. References for a preliminary ruling - Jurisdiction of the Court - Limits

   (EEC Treaty, Art. 177)

2. Agriculture - Common organization of the markets - Price formation - National measures - Incompatibility with Community rules - Criteria

3. Agriculture - Common organization of the markets - Pigmeat - Beef and veal - Selling price to the consumer - Maximum gross profit margin - Unilateral fixing thereof by a Member State - Permissible - Conditions

   (Regulation No. 121/67/EEC and Regulation (EEC) No. 805/68 of the Council)

1. Although, within the framework of proceedings brought under Article 177 of the EEC Treaty, it is not for the Court to give a ruling on the compatibility of rules of internal law with provisions of Community law, the Court is competent to supply the national court with any criteria of interpretation coming within Community law enabling that court to determine whether such rules are compatible with the Community rule evoked.

2. In sectors covered by a common organization of the market, and a fortiori when this organization is based on a common price system, Member States can no longer take action, through national provisions adopted unilaterally, affecting the machinery of price formation as established under the common organization. However, provisions of a Community agricultural regulation which comprise a price system applicable at the production and wholesale stages leave Member States free - without prejudice to other provisions of the Treaty - to take appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question, in particular its price system.

3. Regulation No. 121/67/EEC of the Council and Regulation (EEC) No. 805/68 of the Council, on the common organizations of the markets in pigmeat and in beef and veal, respectively, both viewed in the light of Regulations Nos. 2305/71, 1351/73 and 1133/74 as regards pigmeat and Regulations Nos. 1652/72, 1192/73 and 667/74 as regards beef and veal, do not prohibit the unilateral fixing by a Member State of a maximum gross profit margin for the retail of pigmeat or beef and veal which is calculated essentially on the basis of the purchase prices charged at previous marketing stages and which varies according to those prices, provided that the purchase prices used in the calculation of the profit margin are increased by the marketing and import costs actually borne by the retailer at the supply stage and at the stage of sale to consumers and that the margin is fixed at a level which does not impede intra-Community trade.

NOTE

The Tribunal de Prèmiere Instance [Court of First Instance], Namur (Chambre Correctionelle [Criminal Chamber]) put to the Court of Justice certain questions on whether, and if so, to what extent, Regulation No. 121/67/EEC on the common organization of the market in pigmeat and Regulation No. 805/68/EEC on the common organization of the market in beef and veal left to the Member States power to regulate, by means of national laws, the retail prices to consumers in the said markets.

These questions were raised by the bringing of criminal proceedings against two Belgian retail butchers who were accused of having increased their retail sale prices of beef and veal and of pigmeat to an extent which was contrary to the provisions of Belgian legislation, which provides that such prices may not exceed an amount equal to the weighted average purchase price increased by a maximum gross profit margin of Bfr 22 per kilogram plus the value added tax thereon, the weighted average purchase price being calculated by dividing the total invoiced prices for each kind of purchase, exclusive of value added tax, made during the four preceding weeks, by the corresponding number of kilograms, less 2.5%.

According to a series of well-established decisions of the Court, in fields covered by a common organization of the market, and a fortiori where that organization is based upon a common price system, the Member States may no longer interfere, by means of unilaterally promulgated national measures, with the price-regulating mechanism resulting from the common organization. It has also been laid down that the provisions of a Community agricultural regulation involving a price system which applies at the stages of production and wholesaling - as in the present case - leaves intact the power of the Member States to take appropriate measures in regard to price regulation at the stage of retailing and consumption, provided that such measures do not put in danger the objectives and the working of the common organization of the markets.

The fixing of a maximum gross profit margin to be charged by the retailer is not, in principle, of such a nature as to create such a danger provided that the margin is, in its essentials, calculated on the basis of the purchase prices prevailing at the stage of production and wholesaling and in such manner as not to affect the working of the price system upon which the common organization of the markets concerned rests.

This however is not the case when the purchase prices taken into consideration do not take account of the marketing and import expenses which the retailer has actually borne both at the stage of procurement and at the stage of sale to consumers, or when the gross profit margin itself is fixed at a level which, having regard to the manner of calculating the purchase prices, is not adequate to ensure a fair remuneration to the retailer for his efforts. A gross profit margin which does not satisfy those conditions could entail a freeze on maximum retail prices which might be such as to affect the price regulating mechanism at earlier marketing stages which results from the common organization of the markets or to affect intra-Community trade by materially reducing imports.

On those grounds the Court ruled that the regulations in question do not prohibit the unilateral fixing by a Member State of a maximum gross profit margin for the retail sale of pigmeat or beef and veal which is calculated essentially on the basis of the purchase prices charged at the previous marketing stages and which varies according to those prices, provided that the purchase prices used in the calculation of the profit margin are increased by the marketing and importing costs actually borne by the retailer at the procurement stage and at the stage of sale to consumers and that the profit margin is fixed at a level which does not impede intra-Community trade.

Judgment of 22 January 1980

Case 30/79

The Land of Berlin v Wigei, Wild-Geflügel-Eier-Import GmbH & Co. KG

(Opinion delivered by Mr Advocate General Warner on 27 November 1979)

1. Agriculture - Common organization of the markets - Poultry-meat - Trade with non-member countries - Customs duties - Charges having equivalent effect - Prohibition - Derogation - Charge for public health inspections - Circumstances in which permissible

   (Regulations Nos. 123/67 and 2777/75 of the Council, Art. 11(2); Council Directive No. 71/118, Art. 15)

2. Agriculture - Common organization of the markets - Poultry-meat - Trade with non-member countries - Charge for public health inspections - Permissibility

   (Council Directive No. 71/118, Art. 15)

1. Although Article 11 (2) of Regulation Nos. 123/67 and 2777/75 prohibits the levying, in trade with non-member countries in fresh poultry-meat, of customs duties other than those laid down by the Common Customs Tariff or charges having equivalent effect, this prohibition only applies subject either to any provisions to the contrary contained in the said regulations or to any derogation therefrom decided by the Council acting by a qualified majority on a proposal from the Commission. Since Article 15 of Council Directive No. 71/118/EEC on health problems affecting trade in fresh poultry-meat is in fact a derogation within the meaning of the aforesaid provision inasmuch as it is designed to prevent national arrangements for health inspection, maintained provisionally in force in respect of imports of fresh poultry-meat from non-member countries, from being less strict and less onerous than the system of health inspections laid down by the directive for intra-Community trade, the prohibition of charges having an effect equivalent to customs duties may not be relied on for the purpose of preventing Member States levying at the external frontiers of the Community charges for the health inspections which they carry out of imports of fresh poultry-meat from non-member countries. Nevertheless, if the inspections were clearly out of all proportion to the objective sought

or if the charges were clearly to exceed the cost of the inspections, they would be outside the field of application of the derogation allowed by Article 11 (2) of the aforesaid regulations.

2. Article 15 of Directive No. 71/118/EEC authorizes a Member State to levy a charge to cover the costs of an inspection of imports of fresh poultry-meat from non-member countries, even though the law of that Member State allows such importation only if provisions for public health inspection of a standard equivalent to those which the directive lays down in the case of trade between Member States have been complied with in the non-member exporting country and even though these inspections already give rise in the non-member exporting country to the levying of charges. The fact that charges for public health inspections have been levied in the non-member exporting country does not in principle have any effect on the level of the charges levied by Member States for public health inspections at the external frontiers of the Community. These inspections may be systematic and designed to ascertain whether the consignments imported bear the requisite markings and whether, on the basis of samples taken, the poultry-meat produced for importation proves to be fit for consumption.

NOTE

The Bundesverwaltungsgericht [Federal Administrative Court] referred to the Court of Justice for a preliminary ruling a question concerning the permissibility of a charge levied to cover the costs of a health inspection on imports of fresh poultry-meat from third countries.

The question was raised in the course of proceedings between the administration of the Land of Berlin and an undertaking which, after importing consignments of such meat from Hungary into West Berlin, was required to pay charges in connexion with health inspections to which such meat was subject on importation in pursuance of German legislation.

The disputed charges amount to charges having an effect equivalent to customs duties which are forbidden in trade in fresh poultry-meat with third countries by Regulation No. 2777/75 on the common organization of the market in poultry-meat. However, the prohibition is subject to any provisions to the contrary contained in that regulation or to any derogation adopted by the Council.

The Court held that Article 15 of Directive No. 71/118 on health problems affecting trade in fresh poultry-meat constitutes a derogation within the meaning of the above-mentioned regulation. According to that provision, until the entry into force of Community provisions concerning imports of fresh poultry-meat from third countries, Member States shall apply to such imports "provisions which are at least equivalent to those of this directive". The fact that the directive does not expressly refer to the levying of charges for health inspection in trade between member countries is irrelevant in this respect. The Court recognized, in fact, in its judgment in the Bauhuis case (Case 46/76)that national charges levied for health inspections required by Community provisions - such as Directive No. 71/118 in this case - which are uniform and which are compulsory in the dispatching Member State prior to the departure of the goods may be introduced by a Member State. The existence of such charges justifies in its turn the levying of charges for health inspections at the external frontiers of the Community in order to fulfil the obligation imposed on Member States by Article 15 of Directive No. 71/118 to apply in respect of imports from third countries provisions which are "at least equivalent" to those contained in that directive in respect of trade in such products between Member States.

Accordingly the Court gave the following reply, at the same time giving a ruling as to the amount of the charges:

1. Article 15 of Council Directive No. 71/118 of 15 February 1971 on health problems affecting trade in fresh poultry-meat authorizes a Member State to levy a charge in order to meet the costs of carrying out an inspection of imports of fresh poultry-meat from third countries, even if the law of that Member State makes importation subject to the condition that in the third country exporting the goods health control requirements have been complied with which are at least equivalent to those which Directive No. 71/118 imposes in respect of trade between Member States and even if such inspections already give rise to the levying of charges in the third country from which the goods are exported.

2. The fact that charges for health inspections have been levied in the third country from which the goods have been exported has, in principle, no bearing on the amount of the charges for health inspections levied by the Member States at the external frontiers of the Community. Such inspections may be systematic and may be for the purpose of determining whether the consignments which are being imported are accompanied by the information required and whether, on the basis of sample testing, the poultry-meat to be imported is fit for consumption.

3. If the health inspections at the external frontiers of the Community were manifestly disproportionate in comparison with the objective to be achieved or if the charges were clearly in excess of the cost of inspections, that would fall outside the scope of the derogation which is authorized by Article 11 (2) of Regulation (EEC) No. 2777/75 of the Council of 29 October 1975 on the common organization of the market in poultry meat.

Judgment of 23 January 1980

Case 35/79

S.p.A. Grosoli and Others v Ministry of Foreign Trade and Others

(Opinion delivered by Mr Advocate General Mayras on 13 December 1979)

Common Customs Tariff - Community tariff quotas - Frozen beef and veal - Power of management of Member States - Apportionment of national shares - Criteria - Prior allocation of part of the national share to a single trades - Permissibility - Conditions

(Council Regulation No. 2861/77, Art. 3)

Neither Regulation No. 2861/77, opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal nor other rules of Community law preclude a management system for the national share of the quota in question which is based upon a number of criteria to define the different categories of traders and to fix the total amounts to which each of the categories is to have access, provided that such criteria are not determined in an arbitrary way and do not result in depriving some of the persons concerned of access to the share in question.

In particular there is no reason why a part of the national share, determined in advance on the basis of the criteria for apportionment, may not be allotted in advance to a single trader so long as the position occupied by the trader in question is determined in accordance with the above-mentioned criteria. The fact that under national law one category of traders consists of a single large-scale trader is not sufficient by itself to prove that the criteria adopted by that national law are arbitrary.

NOTE

The Tribunale Amministrativo Regionale of Latium has referred to the Court of Justice a number of questions concerning the interpretation of Council Regulation (EEC) No. 2861/77 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal in 1978.

In pursuance of the commitments undertaken by the Community under the GATT that regulation establishes a Community tariff quota of 38 500 tonnes for the year 1978 and gives Italy a quota of 11 050 tonnes. It provides for a system of allocation based on a single apportionment between the Member States, thus leaving to each Member State the choice of a management system for its share of the

quota. Member States should, however, take all appropriate steps to guarantee all persons concerned, established within their territories, free access to the quota shares allocated to them.

According to the Italian legislation, the quota share is to be allocated between the persons concerned so that 10% is allocated to the Ministry of Defence, 10% to local consumer bodies depending on the number of inhabitants in a given locality and 80% to commercial and industrial undertakings and traders engaged in retail sales. Furthermore, the decree divides that quantity of 80% between commercial and industrial undertakings, on the one hand, and traders engaged in retail sales, on the other. The subdivision between the two categories is on an equal basis as regards 30% of the said quantity; as regards 10% it is based upon the amounts of value added tax paid, and as regards 60% it is based upon the quantities of frozen beef and veal imported from non-member States in 1977 as well as upon the proportion of purchases made from the intervention agency.

The Tribunale Amministrativo wishes to know whether such a management system for national shares of the Community quota is compatible with the above-mentioned regulation and other elements of Community law.

The Court recalls that whilst, as it stated in Case 131/73 (Grosoli), the limits of the power of administration of a Member State are exceeded upon the introduction of conditions regarding use in pursuit of objectives of economic policy which are not the subject of provisions adopted by the Community, neither the wording or the objectives of that regulation nor the Community nature of the tariff quota in question prevents a Member State from adopting, within the limits of its power of administration, an apportionment between the persons concerned of the quota share which is allocated to it. The management of that quota share may, under the specific conditions of the market for frozen beef and veal within the territory of a Member State, reasonably involve the expediency or even the necessity of defining the different categories of persons concerned and of determining in advance the total quantity to which each of those categories may lay claim.

On those grounds, the Court ruled that neither Regulation No. 2861/71 nor any other rule of Community law precludes a system of administering the national share of the Community tariff quota for frozen beef and veal based upon a number of criteria to define the different categories of traders and to fix the total amounts to which each of the categories is to have access, provided that such criteria are not determined in an arbitrary way and do not result in depriving some of the traders concerned of access to the share in question.

Judgment of 13 February 1980

Case 74/79

Office de Commercialisation et d'Exportation (O.C.E.) v

S.A. Méditerranéenne et Atlantique des Vins, Samavins

(Opinion delivered by Mr Advocate General Mayras on 31 January 1980)

Agriculture - Monetary compensatory amounts - Community rules - Sphere of application - Relationship between trader and the party with whom he contracts - Exclusion

(Regulation No. 974/71 of the Council, as amended by Regulation No. 509/73)

The effect of the provisions of Regulation No. 974/71, as amended by Regulation No. 509/73 and of Community rules in the agri-monetary sector is that the trader who carries out the customs formalities relating to the import or export receives or pays, as the case may be, the monetary compensatory amount. These provisions are concerned only with the relationship between that trader and the public authority which levies or grants the monetary compensatory amount.

Hence the question whether the gain derived from a monetary compensatory amount must be repaid by the trader who carries out the customs formalities to the party with whom he contracts comes within the sphere of contractual relations and not of Community law.

NOTE

The Cour d'Appel, Paris, referred to the Court of Justice a question for a preliminary ruling on the interpretation of the Community provisions relating on the one hand to certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States and on the other to the application of monetary compensatory amounts.

This question has been raised in proceedings relating to a contract for the sale of 200 000 hectolitres of "EEC export category" wine entered into in 1974 between the Moroccan Office de Commercialisation et d'Exportation, referred to as "the O.C.E.", and the French company Samavins.

The O.C.E. claimed from Samavins FF 547 607.27 representing monetary compensatory amounts which Samavins had been granted on the import of wine into France.

When the claim was dismissed by the Tribunal de Commerce, Paris, the O.C.E. appealed to the Cour d'Appel, Paris.

The judgment making the reference asks "where wine from Morocco is imported by a French company does Community legislation ... require the compensatory amounts which were granted to the French importer to be paid over by it to the Moroccan exporter?".

According to the Community regulations the trader who deals with the customs formalities on import or export respectively receives or pays the monetary compensatory amount.

Apart from these provisions the position is governed by contract which is a matter for national law.

The court ruled that the question whether the monetary compensatory amount must be paid by the party dealing with the customs formalities to the other contractual party depends on the contract and not on Community law.

Judgment of 13 February 1980

Case 77/79

Marie-Louise Damas v Fonds d'Orientation et de Régularisation des Marchés Agricoles (F.O.R.M.A.)

(Opinion delivered by Mr Advocate General Warner on 17 January 1980)

1. Agriculture - Common organization of the market - Milk and milk-products - Premium for withholding from the market - Undertaking of the recipient - Personal nature - Disposal of the property or of the right to farm the land - Effect on the entitlement to the premium

   (Regulation No. 1975/69 of the Council, Art. 6)

2. Agriculture - Common organization of the market - Milk and milk-products - Premium for withholding from the market - Undertaking of the recipient - Disposal of the dairy cows which gave entitlement to the premium - Passing of the burden of the undertaking to the purchaser - None

   (Regulation No. 1975/69 of the Council, Arts. 6 and 8 (2), second subpara.)

1. The undertaking entered into by the recipient of the premium pursuant to Article 6 of Regulation No. 1975/69 not to dispose of milk or milk-products binds the recipient personally and does not attach to the property. In the event of a disposal of the property or of the right to farm the land, the recipient loses his entitlement to the premium and is bound to return to the competent authority the payment on account and any other instalment of the premium already received if the marketing of milk and milk-products has not in fact ceased at the farm in question during the whole period under consideration.

2. The obligation placed by the second subparagraph of Article 8 (2) of Regulation No. 1975/69 upon the recipient of the premium for withholding milk and milk-products from the market to hold a number of adult bovine units not less than the number of dairy cows held at the date of making the application for the grant of the premium is solely related to that number and is not linked to specific animals. In the event of the disposal of the dairy cows which were held on the farm at the time when the application was made and which gave entitlement to the premium, the burden of the undertaking given by the recipient to withhold milk and milk-products from the market does not pass to the buyer of those cows by virtue of that disposal.

NOTE

The Conseil d'Etat of the French Republic referred to the Court of Justice two questions on the interpretation of Regulation No. 1975/69 of the Council introducing a system of premiums for slaughtering cows and for withholding milk and milk products from the market. The regulation provides that farmers having more than ten dairy cows may receive a premium for withholding milk and milk products from the market. Article 6 [supplemented by Article 14 (2) (b) of Regulation No. 2195/69] provides that the grant of the premium shall be subject, in particular, to a written undertaking from the recipient "to discontinue fully and finally the sale of milk" within six months from the date of the undertaking. Article 8 provides that half the premium per dairy cow shall be paid the three months following the aforementioned undertaking and "the balance shall be paid annually in four equal instalments if the recipient has satisfied the competent authority that the number of adult bovine units he holds is not less than the number of dairy cows held at the date of making the application and that the undertaking mentioned in Article 6 has been fulfilled." Finally it is stated that the Member States shall take steps to recover the premium if either of the above-mentioned conditions is not fulfilled within a period of five years from the date of making the application for the premium.

On 8 April 1970 the plaintiff in the main action signed the undertaking provided for in Article 6. She thereupon obtained from the Fonds d'Orientation, which is the agency responsible in France for the grant and payment of the premiums in question, the first half of the premium. Suspecting that the plaintiff had continued to deliver milk after 8 October 1970 the Fonds d'Orientation sought to recover the said amount. The plaintiff challenged the validity of such recovery and claimed, in particular, that she had ceased all delivery of milk since 7 September 1970 and after converting the dairy herd to full-grown cattle she had had to discontinue all direct involvement in the farm, sell the cattle and let the property on an agricultural lease.

In view of the claim by the Fonds d'Orientation, contested by the plaintiff, that the undertaking signed by the plaintiff continued to bind her after selling the farm, the Conseil d'Etat referred the following questions to the Court:

(1) whether the undertaking referred to in Article 6 of Regulation No. 1975/69 of the Council and Article 14 of Regulation No. 2195/69 of the Commission signed by the farmer to discontinue fully and finally the sale of milk and milk products is of a personal nature or whether it attaches to the property concerned and what are the consequences, as regards the entitlement to the premium, of a disposal of the property or of the right to farm the land;

(2) whether the said undertaking attaches to the livestock and, if the dairy cows for which the premium is granted are disposed of, whether the seller's obligation is transferred to the buyer.

On the first question the Court found that the primary legal ground for granting the premium is that all marketing of the said products should cease for the period of five years and that in these circumstances the fact that during the aforementioned period the recipient handed over management of the farm to a third party does not suffice to free him from the undertaking and that the premium cannot be retained where the fundamental aim of the regulation is frustrated. The Court accordingly ruled:

> "The undertaking entered into by the recipient of a premium not to sell milk or milk products referred to in Article 6 of Regulation No. 1975/69 of the Council of 6 October 1969 binds the recipient personally and does not attach to the property. In the event of a disposal of the property or of the right to farm the land the recipient loses entitlement to the premium and is bound to return to the competent authority the payment on account and any other part of the premium already received if the marketing of milk and milk products has not in fact ceased at the farm in question during the whole period under consideration".

On the second question the Court states that the regulation aims not only to discourage the marketing of milk but at the same time to encourage recipients of premiums to use their milk for raising beef cattle. This is why Article 8 requires the recipient to hold during the period of five years a number of adult bovine animals equal to or greater than the number of dairy cows held at the date of making the application. This does not require the recipient to continue to keep the dairy cows which were on the farm when the application was made. This is why the obligation relates solely to the "number" and is not confined to the particular animals. In answer to the second question the Court ruled:

> "The undertaking by the recipient of the premium to hold a number of adult bovine animals equal to or greater than the number of dairy cows held at the time when the application was lodged is not linked to specific animals. In the event of the disposal of the dairy cows which are held on the farm at the time when the application is made and have given entitlement to the premium, the undertaking by the recipient to withhold milk and milk products from the market is not transferred to the buyer of those cows by virtue of that disposal."

Judgment of 14 February 1980

Case 53/79

Office national des pensions pour travailleurs salariés (O.N.P.T.S.)

v Fioravante Damiani

(Opinion delivered by Mr Advocate General Reischl on 17 January 1980)

1. Questions referred for a preliminary ruling - Jurisdiction of the Court - Limits - Relevance of the questions asked - Discretion - None

   (EEC Treaty, Art. 177)

2. Social security for migrant workers - Benefits - Payment on a provisional basis - Right of appeal of those concerned - Scope

   (Regulation No. 574/72 of the Council, Art. 45 (4))

1. It should be noted that it is not for this Court to pronounce on the expediency of the request for a preliminary ruling. As regards the division of jurisdiction between national courts and the Court of Justice under Article 177 of the Treaty it is for the national court, which is alone in having a direct knowledge of the facts of the case and of the arguments put forward by the parties, and which will have to give judgment in the case, to appreciate, with full knowledge of the matter before it, the relevance of the questions of law raised by the dispute before it and the necessity for a preliminary ruling so as to enable it to give judgment.

2. Article 45 (4) of Regulation No. 574/72 of the Council cannot be interpreted as being intended to exclude all possibility of protection by the courts of the entitlement to benefits on a provisional basis. The expression "not open to appeal" in Article 45 (4), coupled with the words "provisional nature" which precede it, means only that the measures adopted by the competent institutions under Article 45 (1) may not be the subject-matter of proceedings which seek to obtain a definitive settlement of the person's entitlement to benefit. However, Article 45 (4) does allow a claim to be made before the appropriate national courts against the competent institution's failure to perform, or delay in performing, the obligations imposed on it by Article 45 (1) and permits interest on the amounts payable to be awarded to the claimant at a rate to be fixed by the court in accordance with the provisions of national law as a result of such proceedings.

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The Belgian Cour de Cassation referred to the Court of Justice a question on the interpretation of Article 45 (1) and (4) of Regulation No. 574/72 of the Council fixing the procedure for implementing Regulation No. 1408/71 on social security for migrant workers. The question is whether, in application of national law, interest may be awarded by the court on the amount of benefits provisionally due under Article 45 (1) and (4) of the aforementioned regulation.

Article 45 (1) provides: "If the investigating institution establishes that the claimant is entitled to benefits under the legislation which it administers without having recourse to insurance periods completed under the legislation of other Member States, it shall pay such benefits immediately on a provisional basis."

Article 45 (4) provides that the institution required to pay benefits under paragraph (1) "shall forthwith inform the claimant of the fact, drawing his attention explicitly to the provisional nature of the measures taken and to the fact that it is not open to appeal."

The Court held that the words "not open to appeal" cannot be interpreted as excluding all possibility of legal protection for the right to provisional benefits but mean simply that the measures taken by the competent institutions under Article 45 (1) are not subject to appeal in relation to the final determination of the claimant's rights to benefit. Article 45 (4) does not prevent an action for failure by the competent institution to fulfil, or for delay in fulfilling, its obligations under Article 45 (1) from being brought before the national courts having jurisdiction or prevent them, following such an action and in application of national law, from awarding interest on the amounts due to the claimant.

The Court held that Article 45 (4) of Regulation 574/72 does not prevent the national court, before which an action is brought against the failure of the competent institution to meet the obligations imposed on it under Article 45 (1) of the said regulation, from awarding the claimant at his request and in accordance with national law, interest at a rate to be fixed by the court on the amount of the benefits payable on a provisional basis.

Judgment of 14 February 1980

Case 84/79

Richart Meyer-Uetze KG v Hauptzollamt Bad Reichenhall

(Opinion delivered by Mr Advocate General Reischl on 13 December 1979)

1. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Deduction of transport costs within the Community - Exception - Uniform free domicile price - Concept - Price not uniform

   (Regulation (EEC) No. 803/68 of the Council, Art. 8 (2), first sentence)

2. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Deduction of transport costs within the Community - Exception - Uniform free domicile price - Limits of the exception - Free-frontier price lower than uniform free domicile price - Procedures for production of evidence - Duty of the national courts

   (Regulation (EEC) No. 803/68 of the Council, Art. 8 (2), second sentence).

1. The difficulties which are involved, on the one hand, by calculation of the transport costs actually included in the uniform free domicile price and, on the other hand, by the need to ensure equal treatment of importers, and which explain the rule laid down in the first sentence of Article 8 (2) of Regulation No. 803/68, namely "where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs within the Community shall not be deducted from that price", arise in the same way whether this price is charged throughout the whole of the customs territory of the Community or only in a part thereof. Consequently the concept "uniform free domicile price" mentioned in the above-mentioned Article 8 (2) must be interpreted as meaning that the price in question is not necessarily uniform for all destinations within the customs territory of the Community.

2. In the present state of Community law it is for the national court to decide, in accordance with its national legislation, what evidence the importer is to produce to establish, as provided for in the second sentence of Article 8 (2) of Regulation No. 803/68, that the free-frontier price would be lower than the uniform free domicile price, all the other conditions of sale being identical, in the event of importation through the same place of introduction. The national court must however take into account the purpose of that Community provision which is to allow transport costs within the customs territory of the Community which are actually included in the uniform price - but only those transport costs - to be deducted from the price when the customs valuation is determined.

NOTE The Bundesfinanzhof referred three questions for a preliminary ruling on the interpretation of Article 8 (2) of Regulation No. 803/68 of the Council on the valuation of goods for customs purposes.

This provides:

"Where goods are invoiced at a uniform free domicile price which corresponds to the price at the place of introduction, transport costs within the Community shall not be deducted from that price. However, such deduction shall be allowed if evidence is produced to the customs authorities that the free frontier price would be lower than the uniform free domicile price."

The main action between a German undertaking and the German customs authorities is concerned with the refusal in 1972 to allow the undertaking to deduct the amount of transport costs within the Community from the valuation for customs purposes of frozen food and vegetables imported by road from Hungary and invoiced at a free domicile price applying to the whole of the territory of the Federal Republic of Germany.

To decide the matter the Bundesfinanzhof considered it necessary to refer the following questions to the Court for a preliminary ruling:

"1. Must the words 'uniform free domicile price' in Article 8 (2) of Regulation (EEC) No. 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes be interpreted as meaning that such price must be uniform for all destinations within the customs territory of the Community?

2. If the answer to Question 1 is in the affirmative, may the fact that uniform free domicile prices apply to only one Member State be taken into account, and if so how?

3. How is the second sentence of Article 8 (2) of Regulation (EEC) No. 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes to be interpreted in relation to the requirement with regard to the evidence to be produced?".

In order to answer these questions it is necessary to bear in mind that the main purpose of Regulation No. 803/68 is to guarantee equal treatment to importers so that the level of protection achieved by the Common Customs Tariff is the same throughout the whole of the Community.

This is why the regulation provides that the valuation for customs purposes of imported goods shall be the normal price which includes transport costs of the goods to the place of introduction into the customs territory of the Community. In principle the transport costs from the place of introduction to the place of destination must therefore be deducted from the invoice price. Article 8 (2) derogates from the principle of deducting the internal transport costs from the invoice price where the goods are invoiced at a uniform free domicile price which is the same as the price at the place of introduction.

The difficulties involved on the one hand in calculating the transport costs in fact comprised in the uniform free domicile price and on the other hand the necessity of guaranteeing equal treatment to importers are the same whether the price applies to the whole customs territory of the Community or only to a part of it.

The Court answers the first two questions by ruling that the words "uniform free domicile price" mentioned in Article 8 (2) of Regulation No. 803/68 must be interpreted as meaning that the price in question is not necessarily uniform for all the destinations within the customs territory of the Community.

Regarding the third question the wording of Article 8 (2) which uses the conditional shows that it is not necessary to prove that the goods had been sold by the same supplier and invoiced at a free frontier price. It is necessary to determine the price which the purchaser would have had to pay in the event of a free frontier purchase of the goods imported through the same place of introduction, all the other conditions of sale being identical. The Community rules on valuation for customs purposes prescribe no special procedure for proof.

In answer to the third question the Court of Justice has ruled that in the present state of Community law it is for the national court to decide in accordance with its national legislation what evidence the importer is to produce to establish, as provided for in the second sentence of Article 8 (2) of Regulation No. 803/68, that the free frontier price would be lower than the uniform free domicile price, all the other conditions of sale being identical, in the event of importation through the same place of introduction. The national court must nevertheless take into account the purpose of the Community provision which is to allow transport costs within the customs territory of the Community which are actually included in the uniform price - but only those transport costs - to be deducted from the price when the customs valuation is determined.

Judgment of 26 February 1980

Case 54/79

Firma Hako-Schuh Dietrich Bahner v Hauptzollamt Frankfurt am Main - Ost

(Opinion delivered by Mr Advocate General Mayras on 15 January 1980)

1. Common Customs Tariff - Tariff headings - Classification of goods - Criteria - Distinction between products under Tariff headings 64.02, 64.03 and 64.04

2. Common Customs Tariff - Tariff headings - Interpretation - Explanatory Notes to the Common Customs Tariff - Authority

3. Common Customs Tariff - Tariff headings - Footwear with outer soles of rubber within the meaning of Tariff heading 64.02 - Concept

1. It is apparent from Tariff headings 64.02, 64.03 and 64.04 of the Common Customs Tariff that the distinction between products falling under one or the other heading depends basically only on the characteristics of the outer sole, that is to say the part of the footwear in direct contact with the ground.

2. Although the Explanatory Notes to the Common Customs Tariff cannot modify the text of that tariff, they nevertheless constitute an important factor in its interpretation enabling the scope of the various Tariff headings or subheadings to be defined or clarified.

3. Footwear with outer soles of hempen rope, 57% of the surface of which is reinforced with rubber at the toe, joint and heel, must be classified as footwear with outer soles of rubber under heading 64.02 of the Common Customs Tariff and, having regard to the material of which the uppers are made, under subheading B of that heading.

NOTE

The Finanzgericht /Finance Court/ Hesse has referred to the Court for a preliminary ruling the question whether "footwear with outer soles of hemp, approximately half the area of which is provided with a rubber reinforcement, may be classified as "Footwear with outer soles of rubber" under heading 64.02 of the Common Customs Tariff.

The footwear in question is sandals imported from Spain which consist of fabric uppers and hempen rope soles which have a coating of rubber at the toes and under the ball and heel (the coating covers 57% of the sole). The importer had declared these sandals as footwear with outer soles of rope (rate of duty 2.8%). The customs office on the other hand considered that they came within the above-mentioned tariff heading 64.02 (rate of duty 12%).

The Court ruled that the sandals described above must be classified as footwear with outer soles of rubber falling within heading 64.02 of the Common Customs Tariff and, having regard to the material of their uppers, under letter B thereof.

Judgment of 26 February 1980

Case 94/79

Criminal proceedings against Peter Vriend

(Opinion delivered by Mr Advocate General Mayras on 10 January 1980)

1. Reference for a preliminary ruling - Jurisdiction of the Court - Limits

(EEC Treaty, Art. 177)

2. Agriculture - Common organization of the markets - Live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage - Principles - Freedom of commercial transactions - National measures restricting marketing - Incompatibility

(Regulation No. 234/68 of the Council)

3. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - National marketing system for material for plant propagation -Compulsory affiliation to a body approving such material - Prohibition - Incompatibility with the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage

(EEC Treaty, Arts. 30 and 34; Regulation No. 234/68 of the Council, Art. 10)

1. Although the Court is not competent in the context of a reference to it for a preliminary ruling under Article 177 of the EEC Treaty to rule whether national legal rules are compatible with provisions of Community law, it does on the other hand have jurisdiction to provide the national court with all the factors relating to interpretation under Community law which enable that court to decide whether those national rules are compatible with the Community rules mentioned.

2. It follows from the general scheme of Regulation No. 234/68 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 that as far as trade within the Community is concerned the common organization of the market in the products in question is based on freedom of commercial transactions and is opposed to any national rule which could hinder directly or indirectly, actually or potentially, intra-Community trade.

For this reason any national provisions or practices which could modify the patterns of imports and exports by not allowing producers to market the products concerned freely are incompatible with the common organization of the market established by Regulation No. 234/68.

3. National rules whereby a Member State, directly or through the intermediary of bodies established or approved by an official authority, reserves exclusively to persons affiliated to such bodies the right to market, resell , import, export and offer for export material for plant propagation such as chrysanthemum plants which are covered by the common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage established by Regulation No. 234/68 and forbids persons who are not so affiliated to market, resell, import, export and offer for export such products, whatever their quality may be, is incompatible with the said regulation and in particular with Article 10 thereof and also with Articles 30 and 34 of the EEC Treaty.

NOTE

The Gerechtshof /Regional Court of Appeal/, Amsterdam, has referred to the Court of Justice for a preliminary ruling questions designed to ascertain whether Articles 30 to 47 inclusive of the EEC Treaty and Regulation (EEC) No. 234/68 of the Council on the establishment of a common organization of the markets in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage prevent a Member State, directly or through the intermediary of bodies set up or approved by an official authority from reserving exclusively to persons affiliated to such bodies the right to market, re-sell, import, export and offer for export material for plant propogation (such as chrysanthemum plants) which are covered by the said common organization of the markets and forbids persons who are not members of such bodies to market, re-sell, import or export such products or offer them for export whatever their quality may be.

The Court held that any national rules such as those described are incompatible with the above-mentioned regulation and also with Articles 30 to 34 of the Treaty. In fact the general structure of the regulation makes it clear that, as far as concerns trade within the Community, the common organization of the markets in the products in question is based on freedom to conclude commercial transactions /free trade/ and is opposed to any national rules which might impede intra-Community trade directly or indirectly, actually or potentially. Any rules such as those at issue, which moreover do not satisfy the requirement of fair and effective competition, would clearly be incompatible with the common organization of the market, since owing to their general application to products marketed by non-members they in fact remove from the market even products the quality whereof is satisfactory.

Judgments of 27 February 1980

Case 168/78 - Commission of the European Communities v French Republic
Case 169/78 - Commission of the European Communities v Italian Republic
Case 170/78 - Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland
Case 171/78 - Commission of the European Communities v Kingdom of Denmark
Case 55/79 - Commission of the European Communities v Ireland

Direct actions - 27 February 1980

and

Case 68/79 - Firma Hans Just v Minister for Fiscal Affairs, Denmark - Reference for a preliminary ruling - Tax arrangements for spirits

Introductory Note

The Commission has brought separate actions under Article 169 of the EEC Treaty for declarations that the French Republic, the Italian Republic and the Kingdom of Denmark, by applying to certain spirits a differential system of taxation, have failed to fulfil their obligations under Article 95 of the Treaty.

The interpretation of Article 95 (common to the cases brought against France, Italy and Denmark)

The first paragraph of Article 95 provides that: "No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products".

The second paragraph of Article 95 goes on to say: "Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products".

The aim of these provisions, which complement those relating to the alimination of customs duties and charges having equivalent effect, is to ensure free movement of goods between Member States under normal conditions of competition by the removal of every form of protection which may result from the application of discriminatory internal taxation.

An analysis of the market in spirits has led the Court to draw two conclusions, the first being that there is an indefinite number of drinks which have to be classified as "similar products" within the meaning of the first paragraph of Article 95 and the second being that even in those cases where it would be impossible to identify a sufficient degree of similarity between the products concerned the spirits nevertheless all have common characteristics, which are sufficiently distinctive for it to be acknowledged that in every case they are at least potentially or partially in competition with each other.

It is therefore apparent that Article 95, taken as a whole, may apply indiscriminately to all the products concerned.

The Commission also brought an action for a declaration that the United Kingdom, by levying relatively higher excise duty on still light wines of fresh grapes than that levied on beer, had failed to fulfil its obligations under the second paragraph of Article 95 of the Treaty.

The final action brought by the Commission was for a declaration that Ireland, by the discriminatory application of provisions relating to deferred payment of excise duty on spirits, beer and made wine, had failed to fulfil its obligations under the first paragraph of Article 95.

In addition the Østre Landsret of Denmark referred a number of questions to the Court on the interpretation of Article 95 of the Treaty.

For the notes on those cases see the following pages.

Judgment of 27 February 1980

Case 168/78

Commission of the European Communities v French Republic

(Opinion delivered by Mr Advocate General Reischl on 28 November 1979)

1. Tax provisions - Internal taxes - Provisions of the Treaty - Aim

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxes - Prohibition of discrimination between imported products and similar national products - Similar products - Concept - Interpretation - Criteria

   (EEC Treaty, Art. 95, first paragraph)

3. Tax provisions - Internal taxes - Taxes of such a nature as to afford indirect protection to other products - Competing products - Criteria

   (EEC Treaty, Art. 95, second paragraph)

4. Tax provisions - Internal taxes - Grant of tax benefits to national products - Permissibility - Conditions - Extension to products imported from other Member States

   (EEC Treaty, Art. 95)

5. Tax provisions - Internal taxes - Similar products - Competing products - Criteria - Common Customs Tariff classification - Not a decisive criterion

   (EEC Treaty, Art. 95, first and second paragraphs)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law, as it stands at present, does not prohibit certain tax exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without these special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The classifications in the Common Customs Tariff, which were designed with the Community's foreign trade in mind, do not provide conclusive evidence as to whether different products in relation one to another are similar within the meaning of the first paragraph of Article 95 of the EEC Treaty, or in competition, even partial, indirect or potential, and so covered by the second paragraph of that article.

NOTE

It appears that the action brought by the Commission only in fact relates to certain aspects of French legislation in this field, namely to the differential taxation, on the one hand, of gin and other alcoholic drinks obtained from the distillation of cereals and, on the other hand, of spirits obtained by distilling wines and fruit. More specifically the Commission refers in particular to the difference between the taxation of whisky and cognac.

The Court:

1. Declared that the French Republic, by applying a differential system of taxation in the field of spirits on the one hand to gin and other alcoholic drinks obtained from the distillation of cereals and, on the other hand, to spirits obtained by distilling wines and fruit, as provided for in Articles 403 and 406 of the Code Général des Impôts /General Code of Duties/, has, in so far as products imported from the other Member States are concerned, failed to fulfil its obligations under Article 95 of the EEC Treaty;

2. Ordered the French Republic to bear the costs.

Judgment of 27 February 1980

Case 169/78

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Reischl on 28 November 1979)

1. Tax provisions - Internal taxes - Provisions of the Treaty - Aim
(EEC Treaty, Art. 95)

2. Tax provisions - Internal taxes - Prohibition of discrimination between imported products and similar national products - Similar products - Concept - Interpretation - Criteria
(EEC Treaty, Art. 95, first paragraph)

3. Tax provisions - Internal taxes - Taxes of such a nature as to afford indirect protection to other products - Competing products - Criteria
(EEC Treaty, Art. 95, second paragraph)

4. Tax provisions - Internal taxes - Grant of tax benefits to national products - Permissibility - Conditions - Extension to products imported from other Member States
(EEC Treaty, Art. 95)

5. Tax provisions - Internal taxes - Similar products - Competing products - Criteria - Common Customs Tariff classification - Nomenclature of customs statistics - Not a decisive criterion
(EEC Treaty, Art. 95, first and second paragraphs)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons betwen the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law as it stands at present does not prohibit certain exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without those special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The classifications in the Common Customs Tariff, which were designed with the Community's foreign trade in mind, do not provide conclusive evidence as to whether different products in relation one to another are similar within the meaning of the first paragraph of Article 95 of the EEC Treaty or in competition, even partial, indirect or potential, and so covered by the second paragraph of that article.

The same conclusion applies to customs statistics the aim of which is to record the volume of movement of goods coming under the various tariff headings.

NOTE

This action brought by the Commission is concerned with the affixing, as provided for in Italian tax legislation, of tax labels to containers filled with spirits intended for retailing. It appears that the rates which vary according to the content of the containers are in the case of spirits distilled from cereals and sugar cane a multiple of the rates applicable to spirits obtained by distilling wine and marc respectively.

The Court held:

1. That the Italian Republic, by applying differential taxation in the field of spirits, taking the form of affixing tax labels to containers filled with spirits intended for retailing, as provided for under Italian tax legislation in Article 6 of Decree-Law No. 745 of 26 October 1970, which was confirmed by Law No. 1034 of 18 December 1970, on the one hand, to spirits distilled from cereals and sugar-cane and, on the other hand, to spirits obtained by distilling wine and marc, has failed, as far as concerns products imported from the other Member States, to fulfil its obligations under Article 95 of the EEC Treaty;

and

2. Ordered the Italian Republic to pay the costs.

Judgment of 27 February 1980

Case 170/78

Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Opinion delivered by Mr Advocate General Reischl on 28 November 1979)

1. Tax provisions - Internal Taxes - Provisions of the Treaty - Aim - Prohibition of discrimination between imported products and similar national products - Prohibition of taxes of such a nature as to afford indirect protection to other products

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxes - Taxes of such a nature as to afford indirect protection to other products - Competing products - Criteria - Present state of market and possibilities for development - How the protective effect is to be shown

   (EEC Treaty, Art. 95, second paragraph)

3. Tax provisions - Internal taxes - Taxes of such a nature as to afford indirect protection to other products - Competing products - Degree of substitution possible - Criteria - Consumer benefits - Inadequate criterion

   (EEC Treaty, Art. 95, second paragraph)

1. The aim of Article 95 of the EEC Treaty, as a whole, is to eliminate the adverse effects on the free movement of goods and on normal conditions of competition between Member States of the discriminatory or protective application of internal taxation.

   To this end, the first paragraph, which relates to "similar" products, which are thus by definition largely comparable, prohibits any tax provision whose effect is to impose, by whatever tax mechanism, higher taxation on imported goods than on similar domestic products.

   The second paragraph, for its part, applies to the treatment for tax purposes of products which, without fulfilling the criterion of similarity, are nevertheless in competition, either partially or potentially, with certain products of the importing country. That provision, precisely in view of the difficulty of making a sufficiently precise comparison between the products in question, employs a more general criterion, in other words the indirect protection afforded by a domestic tax system.

2. In order to determine the existence of a competitive relationship under the second paragraph of Article 95, it is necessary to consider not only the present state of the market but also the possibilities for development within the context of free movement of goods at the Community level and the further potential for the substitution of products for one another which may be revealed by intensification of trade, so as fully to develop the complementary features of the economies of the Member States in accordance with the objectives laid down by Article 2 of the Treaty.

   Where there is such a competitive relationship between an imported product and national production, the second paragraph of Article 95 prohibits tax practices "of such a nature as to afford indirect protection" to the production of the importing Member State.

   For the application of that provision it is impossible to require in each case that the protective effect should be shown statistically. It is sufficient for it to be shown that a given tax mechanism is likely, in view of its inherent characteristics, to bring about the protective effect referred to by the Treaty. Without disregarding the importance of the criteria which may be deduced from statistics from which the effects of a given tax system may be measured, it is impossible to require the Commission, in proceedings which it has brought under Article 169 of the Treaty, to supply statistical data on the actual foundation of the protective effect of the tax system complained of.

3. For the purpose of measuring the possible degree of substitution between two products for the application of the second paragraph of Article 95 of the EEC Treaty, it is impossible to restrict oneself to consumer habits in a Member State or in a given region. Such habits, which are essentially variable in time and space, cannot be considered to be a fixed rule; the tax policy of a Member State must not therefore crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to comply with them.

NOTE

In this case the Commission has brought an action for a declaration that the United Kingdom, by levying relatively higher excise duty on still light wines of fresh grapes than that levied on beer, has failed to fulfil its obligations under the second paragraph of Article 98 of the Treaty.

The Court:

1. Ordered the parties to re-examine the subject-matter of the dispute in the light of the legal considerations set out in its judgment and to report to the Court on the result of that examination before 31 December 1980. The Court will give final judgment after that date after examining the reports which have been submitted to it or in the absence of those reports;

2. Reserved the costs.

Judgment of 27 February 1980

Case 171/78

Commission of the European Communities v Kingdom of Denmark

(Opinion delivered by Mr Advocate General Reischl on 28 November 1979)

1. Tax provisions - Internal taxes - Provisions of the Treaty - Aim

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxes - Prohibition of discrimination between imported products and similar national products - Similar products - Concept - Interpretation - Criteria

   (EEC Treaty, Art. 95, first paragraph)

3. Tax provisions - Internal taxes - Taxes of such a nature as to afford indirect protection to other products - Competing products - Criteria

   (EEC Treaty, Art. 95, second paragraph)

4. Tax provisions - Internal taxes - Grant of tax benefits to national products - Permissibility - Conditions - Extension to products imported from other Member States

   (EEC Treaty, Art. 95)

5. Tax provisions - Internal taxes - Harmonization of laws - Preliminary condition to application of Article 95 of the Treaty - Impossibility - Prohibition of discriminatory or protective taxes - Fiscal harmonization - Respective objectives

   (EEC Treaty, Arts. 95 and 99)

1. Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

2. The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of "similar products" with sufficient flexibility. It is necessary to consider as similar products which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

3. The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

   Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

4. Whilst Community law, as it stands at present, does not prohibit certain tax exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without these special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

5. The implementation of the programme of harmonization laid down by Article 99 of the EEC Treaty cannot constitute a preliminary to the application of Article 95. Whatever the disparities between the national tax systems, Article 95 lays down a basic requirement which is directly linked to the prohibition on customs duties and charges having an equivalent effect between the Member States in that it intends to eliminate before any harmonization all national tax practices which are likely to create discrimination against imported products or to afford protection to certain domestic products. Articles 95 and 99 pursue different objectives, since Article 95 aims to eliminate in the immediate future discriminatory or protective tax practices, whilst Article 99 aims to reduce trade barriers arising from the differences between the national tax systems, even where those are applied without discrimination.

NOTE This is also a case where the Commission has brought an action for a declaration that the Kingdom of Denmark, by applying a differential system of taxation to spirits, has failed to fulfil its obligations under Article 95 of the Treaty. Danish laws protect home-produced spirits, namely akvavit.

The Court held:

1. That the Kingdom of Denmark, by applying a differential system of taxation to spirits, as provided for under Danish legislation and consolidated at the present time by Law No. 151 of 4 April 1978, has, in so far as products imported from the other Member States are concerned, failed to fulfil its obligations under Article 95 of the EEC Treaty;

2. Ordered the Kingdom of Denmark to pay the costs.

Judgment of 27 February 1980

Case 55/79

Commission of the European Communities v Ireland

(Opinion delivered by Mr Advocate General Reischl on 28 November 1979)

1. Tax provisions - Internal taxes - Discrimination - Criteria - Actual effect of taxation borne by national products and imported products respectively - Criteria
(EEC Treaty, first paragraph of Art. 95)

2. Tax provisions - Internal taxes - Discriminatory taxation - Justification - Inappropriate exchange rate for national currency - Not permissible
(EEC Treaty, Art. 95)

3. Tax provisions - Internal taxes - Harmonization of laws - Preliminary condition for application of Article 95 of the Treaty - None
(EEC Treaty, Arts. 95, 99 and 100)

1. It is necessary, for the purposes of the application of the prohibition on discrimination laid down in Article 95 of the EEC Treaty, to take into consideration not only the rate of tax but also the provisions relating to the basis of assessment and the detailed rules for levying the various duties. In fact the decisive criterion of comparison for the purposes of the application of Article 95 is the actual effect of each tax on national production on the one hand and on imported products on the other, since even where the rate of tax is equal, the effect of that tax may vary according to the detailed rules for the basis of assessment and levying thereof applied to national production and imported products respectively.

2. If a Member State considers that the difference between the exchange rates for its currency and that of another Member State have not been fixed appropriately, it should seek the remedy for that situation by the appropriate means. It is not entitled itself to correct such a monetary situation by means of discriminatory tax provisions contrary to Article 95 of the EEC Treaty.

3. Although obstacles to the free movement of goods may be eliminated by applying the procedure for the harmonization of tax legislation under Articles 99 and 100 of the Treaty the implementation of those provisions and particularly of Article 99 cannot be put forward as a condition for the application of Article 95, which imposes on Member States with immediate effect the duty to apply their tax legislation without discrimination even before there is any harmonization.

NOTE

The Commission has brought an action for a declaration that Ireland, by the discriminatory application of provisions relating to deferred payment of excise duty on spirits, beer and made wine, has failed to fulfil its obligations under the first paragraph of Article 95, or alternatively, Article 30 of the EEC Treaty.

The Court:

1. Declared that by the discriminatory application to products imported from other Member States of provisions relating to deferment of payment of excise duty on spirits, beer and made wine, pursuant in particular to the Imposition of Duties (No. 221) (Excise Duties) Order, 1975, Ireland has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty;

2. Ordered Ireland to pay the costs.

Judgment of 27 February 1980

Case 68/79

Firma Hans Just v Danish Ministry for Fiscal Affairs

(Opinion delivered by Mr Advocate General Reischl on 4 December 1979)

1. Tax provisions - Internal taxes - Differentiated tax system - Permissibility - Conditions

   (EEC Treaty, Art. 95)

2. Tax provisions - Internal taxes - Taxes incompatible with Community law - Obligations of Member States

   (EEC Treaty, Art. 95)

3. Community law - Direct effect - Individual rights - Protection by national courts - Principle of co-operation

   (EEC Treaty, Art. 5)

4. Tax provisions - Internal taxes - Taxes incompatible with Community law - Reimbursement by Member States - Procedural conditions - Application of national law - Conditions - Taking account of any passing on of tax or of damage suffered by the importer - Permissibility

   (EEC Treaty, Art. 95)

1. Whilst the Treaty does not exclude, in principle, a difference in the taxation of various alcoholic products, such a distinction may not be used for the purposes of tax discrimination or in such a manner as to afford protection, even indirect, to domestic production. A system which consists in conferring a tax advantage on a single product which represents the major proportion of domestic production to the exclusion of all other similar or competing imported products is incompatible with Community law.

2. Where a national system of taxation at different rates is found to be incompatible with Community law, the Member State in question must apply to imported products a rate of tax which eliminates the margin of discrimination or protection prohibited by the Treaty. Article 95 accords such treatment only to products which are imported from other Member States.

3. In application of the principle of co-operation laid down in Article 5 of the Treaty, it is the courts of the Member States which are entrusted with ensuring the legal protection which subjects derive from the direct effect of the provisions of Community law.

4. In the absence of Community rules concerning the refunding of national charges which have been levied in breach of Article 95 of the EEC Treaty, it is for the Member States to arrange for the reimbursement of such charges in accordance with the requirements of their domestic legal system; it is for them to designate to this intent the courts having jurisdiction and to determine the procedural conditions governing actions at law.

Such conditions cannot be less favourable than those relating to similar actions of a domestic nature and must not make it impossible in practice to exercise the rights conferred on individuals by the Community legal system.

Community law does not require an order for the recovery of charges improperly made to be granted in conditions which would involve the unjust enrichment of those entitled. Thus it does not prevent account being taken of the fact that it has been possible for the burden of such charges to be passed on to other traders or to consumers.

It is equally compatible with the principles of Community law for account to be taken in accordance with the national law of the State concerned, of the damage which an importer may have suffered because the effect of the discriminatory or protective tax provisions was to restrict the volume of imports from other Member States.

The Court of Appeal for East Denmark (Østre Landsret) referred to the Court on 26 March 1979 for a preliminary ruling questions on the interpretation of Article 95 of the Treaty to enable it to decide to what extent a taxpayer who has to pay taxes levied in breach of Community law may claim a refund of the taxes collected.

In respect of the first three questions the Court referred to its judgment in Case 171/78, Commission v Denmark.

The fourth question submitted by the national court is worded as follows:

"Does Community law contain any rules of significance for deciding the question of the refunding of taxes, payment of which was contrary to Article 95 ? In this connexion is it of any relevance that a trader can establish that he has suffered loss ?"

The undertaking Hans Just states in this connexion that for a long time, on the assumption that Danish legislation complied with Community law, it paid the duty on imported alcohol in good faith and in the belief that it was legally liable to do so. During 1978 it became aware that Danish legislation might be in breach of Community law, and it lodged complaints. However, since it was threatened with distress and being struck off the register of the Directorate General of Customs it was compelled to pay the duties levied and then to commence proceedings for a refund.

The Danish Government acknowledges that the protection of the direct effect of Community law implies in principle that taxpayers are entitled to claim a refund of taxes collected in breach of Community law. It takes the view that this refund must be effected in accordance with national rules of law. Under Danish law it is the test of enrichment which is the cornerstone of the rules for refunding taxes paid but not due. Viewing the matter in this light the Danish Government points out that the plaintiff in the main action, after it had paid the taxes, sold its products at normal prices, so that, in addition to recovering its cost price, has recovered the duties at issue, at the same time adding a normal profit margin. In fact it is therefore the consumers who have paid the duties and consequently the plaintiff has not suffered any loss. According to Danish case-law the courts in such actions take into account the fact that taxes which have been paid though not due and are included in the prices of goods have been able to be passed on to persons placed further along the economic chain. It also appears that these courts may take into consideration, for the purpose of determining the amounts of the refunds, the loss which a taxpayer may have suffered as a result of the effect of illegal taxation on the volume of his business.

The Court, in answer to this fourth question, ruled that it is for the Member States to refund taxes collected in breach of Article 95 in accordance with the provisions of their national law on terms which must not be less favourable than those applicable to similar domestic cases and which in any case must not in practice make it impossible for rights conferred by the Community legal order to be exercised. Community law does not prevent account being taken of the fact that it has been possible for the burden of taxes which have been collected though not due to be passed on to other traders or consumers. It is in keeping with the principles of Community law to take into consideration, if need be, under the domestic law of the State concerned the loss suffered by the person liable to pay the taxes, because of the restrictive effect of the latter on the volume of imports from other Member States.

Judgment of 28 February 1980

Case 67/79

Waldemar Fellinger v Bundesanstalt für Arbeit, Nuremberg

(Opinion delivered by Mr Advocate General Mayras on 24 January 1980)

1. Social security for migrant workers - Unemployment - Community rules - Objects

(Regulation No. 1408/71 of the Council)

2. Social security for migrant workers - Unemployment - Benefits - Calculation - Previous wage or salary - Concept - Actual or notional wage or salary in the last employment

(Regulation No. 1408/71 of the Council, Art. 68 (1))

3. Social security for migrant workers - Unemployment - Benefits - Calculation - Previous wage or salary - Frontier workers - Wage or salary received in the employment held immediately prior to the unemployment

(Regulation No. 1408/71 of the Council, Art. 68 (1))

1. As appears from the ninth recital in the preamble thereto, Regulation No. 1408/71 "in order to secure mobility of labour under improved conditions", seeks to ensure the worker without employment of "the unemployment benefit provided for by the legislation of the Member State to which he was last subject". Such an objective clearly implies that in Regulation No. 1408/71 unemployment benefit is regarded in such a manner as not to impede the mobility of workers, including frontier workers, and to that end seeks to ensure that the persons concerned receive benefits which take account, so far as possible, of conditions of employment and in particular of the remuneration, which they enjoyed under the legislation of the Member State of last employment.

2. It appears from the first sentence of Article 68 (1) that, apart from the special case contemplated in the second sentence, the "previous" wage or salary which normally constitutes the basis of calculation of unemployment benefit, is, according to that regulation, the wage or salary "received" in the last employment of the worker and that it is only by way of exception and derogation that the basis of calculation of those benefits may in certain cases be the notional and not the actual wage or salary in the last employment.

3. Article 68 (1) of Regulation No. 1408/71, viewed in the light of Article 51 of the Treaty and the objectives which it pursues, must be interpreted as meaning that, in the case of a frontier worker, within the meaning of Article 1 (b) of that regulation, who is wholly unemployed, the competent institution of the Member State of residence, whose national legislation provides that the calculation of benefits should be based on the amount of the previous wage or salary, shall calculate those benefits taking into account the wage or salary received by the worker in the last employment held by him in the Member State in which he was engaged immediately prior to his becoming unemployed.

NOTE

The Bundessozialgericht /Federal Social Court/ has referred to the Court for a preliminary ruling questions on the interpretation of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons and their families moving within the Community. These questions were raised in an action brought by an employed person, Mr Fellinger, a German national residing in the Federal Republic of Germany, against the Federal Labour Office concerning the calculation of unemployment benefit payable to him. Mr Fellinger worked in the Federal Republic of Germany until October 1974 after which date he was unemployed. After working as a frontier worker in the Grand Duchy of Luxembourg and being unemployed again from November 1975 he was awarded unemployment benefit by the competent German institution calculated on the basis of the wages which he would have earned in the Federal Republic of Germany for employment equivalent to his last one in Luxembourg. Mr Fellinger, relying on Article 68 (1) of Regulation No. 1408/71, disputes this calculation submitting that he should be paid unemployment benefit on the basis of the (higher) wages he received for his last employment in Germany, whereas the Labour Office, having regard to the long period of time between his "last" employment and his registration as an unemployed person, takes the view that the second sentence of Article 68 (1) should be applied and that the said calculation therefore complies with Community law.

Article 68 (1) reads as follows: "(1) The competent institution of a Member State whose legislation provides that the calculation of benefits should be based on the amount of the previous wage or salary shall take into account exclusively the wage or salary received by the person concerned in respect of his last employment in the territory of that State. However, if the person concerned had been in his last employment in that territory for less than four weeks, the benefits shall be calculated on the basis of the normal wage or salary corresponding in the place where the unemployed person is residing or staying to an equivalent or similar employment to his last employment in the territory of another Member State".

The Court in answer to the questions of interpretation referred to it by the Bundessozialgericht has declared that Article 68 (1) is based on the general principle that the previous wages used for calculating unemployment benefits are normally the wages actually received by the worker for his last employment immediately before his unemployment commenced. Such a principle is not only in accordance with the essential requirements of freedom of movement for workers set out in Article 51 of the Treaty but also with the need underlying Regulation No. 1408/71 to ensure that workers are awarded unemployment benefit proportionate to the terms governing their remuneration at the date when their unemployment commenced.

The Court ruled that the provision at issue must be interpreted as meaning that in the case of a frontier worker who is wholly unemployed the competent institution of the Member State of residence, whose legislation provides that the calculation of benefits shall be based on the amount of the previous wages, must when calculating these benefits take account of the wage which the worker received for his last employment in the Member State where he was employed immediately before becoming unemployed.

Judgment of 4 March 1980

Case 49/79

Richard Pool v Council of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 17 January 1980)

1. Non-contractual liability - Conditions - Illegality - Damage - Chain of causality

   (EEC Treaty, Art. 215, second paragraph)

2. Agriculture - Common organization of the markets - Beef and veal - Price system - Right of producers to precise price levels of Community rules - None

   (Regulation No. 805/68 of the Council)

1. The non-contractual liability of the Community under the second paragraph of Article 215 of the EEC Treaty depends on the coincidence of a set of conditions as regards the unlawfulness of the acts alleged against the institution, the fact of damage, and the existence of a direct link in the chain of causality between the wrongful act and the damage complained of.

2. The price system which is an integral part of the common organization of the market in beef and veal - established by Regulation No. 805/68 - does not have the effect of guaranteeing to individual traders that their produce will be disposed of at the precise price level determined by Community rules. That level, expressed in units of account, does not therefore constitute a value which could be used as a basis for comparison with the prices obtained by a producer on the market with a view to demonstrating that certain damage has been caused.

NOTE

The applicant, a cattle breeder established in the United Kingdom, made an application under the second paragraph of Article 215 of the EEC Treaty seeking an award of £9 504 for damages which the Council caused him owing to the determination of the conversion rate for the pound sterling by Regulation No. 2498/74 of the Council fixing representative conversion rates to be applied in agriculture and the subsequent regulations on the same subject.

The applicant takes the view that as a result of the Council's wrong determination of the conversion rate for the pound sterling for the purposes of the common agricultural policy ("green rate") he did not, when selling his produce, obtain the prices which he should have received under the provisions of the common organization of the market in beef and veal if the "green rate" for the pound sterling used to convert agricultural prices fixed in European units of account into the national currency of the United Kingdom had been determined by the Council in the proper way.

He considers that when determining the conversion rate the Council manifestly infringed the provisions of Article 40 (3) of the Treaty which requires the common organizations of the market to exclude any discrimination between producers or consumers within the Community and provides that any common price policy shall be based on common criteria and uniform methods of calculation.

According to the applicant, the Council, when determining the conversion rate applicable to the pound sterling under the common agricultural policy, considerably overvalued that currency, so that agricultural prices in the United Kingdom were fixed at an appreciably lower level than that of prices guaranteed to agriculture in other Member States.

The application calls in question several Council regulations relating to fairly fundamental questions of economic and monetary policy in the agricultural sector.

It is appropriate to call to mind that Community liability depends on the coincidence of a set of conditions as regards unlawful conduct alleged against the institution, the fact of damage, and the existence of a direct link in the chain of causality between the wrongful act and the damage complained of.

The Court's examination of the case leads to the conclusion that the applicant has not been able to prove the existence of the damage which he claims to have suffered; that is sufficient for the dismissal of his application without there being any need to enter into the question of the unlawfulness of the monetary measures criticized by the applicant.

Consequently the Court dismisses the application and orders the applicant to pay the costs.

Judgment of 5 March 1980

Case 243/78

Simmenthal S.p.A. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 31 January 1980)

Application for annulment - Interest in taking legal action - Events intervening during the proceedings - Application deprived of foundation - Prosecution of the action - Improper nature - Rejection

(EEC Treaty, Art. 173)

If, in the light of events intervening during the proceedings, the applicant should have recognized that its application for annulment was devoid of foundation, it no longer had any interest in prosecuting its action. In those circumstances the prosecution of that action is an abuse of process and the application must be dismissed.

A judgment of the court given in another case between the same parties and concerning a strictly similar question and the decision of the defendant institution adopted pursuant to that judgment may constitute such events.

By an application of 3 November 1978 the applicant sought the annulment of Commission Decision 78/940 fixing the minimum selling prices for frozen beef put up for sale by intervention agencies pursuant to Regulation (EEC) No. 2900/77 and specifying the quantities of frozen beef for processing which may be imported under special terms in the fourth quarter of 1978.

In implementation of this decision the applicant's tender to purchase a quantity of frozen beef and veal was refused, since it did not come within the terms of the invitation to tender.

It should be remembered that in an action by the same undertaking, Simmenthal, challenging Commission Decision No. 78/258 adopted for the first quarter of 1978 under the same special rules, the Court gave judgment in Case 92/78 on 6 March 1979 (see Proceedings of the Court, No. 7/79) in favour of the applicant by setting aside the decision challenged. However it further ruled that the new decision could in no circumstances have the effect of ensuring that the applicant might buy intervention meat at a price lower than the price for reducing intervention stocks usually charged at the relevant time in the case of meat of the qualities in question. Pursuant to that judgment and in view of the fact that the tender made by Simmenthal was lower than the indicated price, the Commission again rejected this tender.

Simmenthal did not bring an action against this decision but pursued proceedings in the action pending against the decision relating to the invitation to tender for the fourth quarter of 1978.

The Court considers that it is evident that the applicant no longer had any interest afrer the judgment of 6 March 1979 or, at the latest, after the decision taken by the Commission in implementation of that judgment, in continuing the said action. From that moment the applicant was in fact able to foresee with certainty that its offer (which was for 950 units of account per tonne as against 1291 units of account per tonne - the price for reducing intervention agency stocks usually charged at the relevant time) would be rejected like the one for the first quarter in view of the principles laid down by the above mentioned judgment.

It therefore appears that the continuance by the applicant of its action is vexatious. The action should therefore be dismissed and the applicant ordered to pay the whole of the costs.

Judgment of 5 March 1980

Case 265/78

H. Ferwerda B.V. v Produktschap voor Vee en Vlees

(Opinion delivered by Mr Advocate General Warner on 27 September 1980)

1. European Communities - Own resources - System - Principles - Equality of treatment

   (EEC Treaty, Art. 201; Council Decision of 21 April 1970)

2. European Communities - Own resources - Export refunds wrongly made - Repayment - Disputes - Jurisdiction of the national courts - Requirement of co-operation

   (EEC Treaty, Art. 5; Regulation No. 729/70 of the Council, Art. 8)

3. European Communities - Own resources - Export refunds wrongly made - Repayment - Application of national law - Principle of legal certainty - Applicability - Conditions

   (Regulation No. 1957/69 of the Commission, Art. 6 (5))

1. The general arrangements regarding the financial provisions of the Treaty are governed by the general principle of equality which requires that comparable situations may not be treated differently unless difference of treatment is objectively justified.

   It follows that the revenues which are contributed to the Community budget and the financial advantages charged thereto must be so arranged and applied as to constitute a uniform burden or confer uniform benefits on all persons who meet the conditions specified in the Community provisions on such burdens or advantages.

2. Disputes in connexion with the reimbursement of amounts collected for the Community are thus a matter for the national courts and must be settled by them under national law in so far as no provisions of Community law are relevant. In those circumstances it is for the courts of the Member States to provide, in pursuance of the requirement of co-operation embodied in Article 5 of the Treaty, the legal protection made available as a result of the direct effect of the Community provisions both when such provisions create obligations for the subject and when they confer rights on him. It is thus for the national legal system of each Member State to determine the courts having jurisdiction and to fix the procedures for applications to the courts intended to protect the rights which the subject obtains through the direct effect of Community law but such procedures may not be less favourable than those in similar procedures concerning internal matters and may in no case be laid down in such a way as to render impossible in practice the exercise of the rights which the national courts must protect.

Such considerations apply both where there is an express reference to national laws as there is in Article 8 of Regulation No. 729/70, and where an implied reference is made to such laws.

3. Community law in its present state and Article 6 (5) of Regulation No. 1957/69 in particular do not preclude the application, in proceedings concerning the recovery by the authorities of the Member States of sums paid in error as export refunds to traders, of a principle of legal certainty based on national law whereby financial benefits granted in error by the public authorities may not be recovered if the error committed was not due to incorrect information supplied by the beneficiary or if such error, despite the fact that the information supplied was incorrect though supplied in good faith, could easily have been avoided.

NOTE

The College van Beroep voor het Bedrijfsleven asked the Court a series of questions upon the interpretation of a Community provision on additional detailed rules for granting export refunds on products subject to a single price system.

These questions were asked in the context of a dispute between a Netherlands meat exporter, Ferwerda, and the competent Netherlands authority which asked it to return export refunds which had admittedly been wrongly granted and paid following the mistaken application of Article 3 of Regulation No. 192/75 of the Commission of 17 January 1975 laying down detailed rules for the application of export refunds in respect of agricultural products.

The national court wonders whether the obligation to make repayment laid down in Article 6 (5) of Regulation No. 1957/69, which has direct effect in the legal systems of the Member States, may be neutralized or limited in its effect by a national rule derived from a general legal principle.

Ferwerda in fact argues that the request sent to it to return the export refunds which it had wrongly received was contrary to the principle of legal certainty. According to the national court this principle is recognized by the legal system of the Netherlands as a valid defence in a recovery action by the administration.

The Court of Justice ruled that, in actions by authorities of Member States to recover amounts wrongly paid to traders by way of export refunds, Community law as it stands and Article 6 (5) of Regulation No. 1957/69 of the Commission of 30 September 1969 do not preclude the application of a principle of legal certainty derived from national law by which sums overpaid by mistake by a public authority cannot be recovered if the mistake was not due to inaccurate information supplied by the recipient or if that mistake, notwithstanding the fact that information was inaccurate but was supplied in good faith, could easily have been avoided.

Judgment of 5 March 1980

Case 38/79

Butter- und Eier-Zentrale Nordmark v Hauptzollamt Hamburg-Jonas

(Opinion delivered by Mr Advocate General Capotorti on 16 January 1980)

1. Agriculture - Monetary compensatory amounts - Objective - Currency exchange risks for traders - Not covered

   (Regulation No. 974/71 of the Council)

2. Agriculture - Monetary compensatory amounts - Destruction in transit of the exported product - Situation of force majeure - Grant of monetary compensation on importation - None - Application by analogy of the provisions relating to export refunds - Not permissible

   (Regulation No. 192/75 of the Commission, Art. 6 (1); Regulation No. 1380/75 of the Commission, Art. 11 (2))

1. The system of monetary compensatory amounts was introduced in order to remedy, in a general manner, a monetary situation which threatens the existence of the Community system of prices for agricultural products and it was not, therefore, conceived in order to give individual traders security against all the risks which flow from fluctuations in exchange rates or to indemnify them for any loss suffered as a result of those fluctuations.

2. In view of the differences between the system of monetary compensatory amounts and that of refunds on exports to non-member countries, there is no reason to interpret Article 11 (2) of Regulation No. 1380/75 of the Commission - by analogy with Article 6 (1) of Regulation No. 192/75 - as meaning that, where goods exported from a Member State have perished in transit as a result of force majeure, the exporter is entitled to the same monetary compensatory amounts as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there.

NOTE

The Finanzgericht /Finance Court/ Hamburg submitted a question on the interpretation of Article 11 of Regulation No. 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amcunts.

The question is put in the context of litigation between, on the one hand, an undertaking which exported from the Federal Republic of Germany 18 160 kgs. of butter which, as the result of a shipwreck in the North Sea, failed to arrive at its destination in the United Kingdom and, on the other hand, the German customs authorities who refused to pay to the exporting company the monetary compensatory amounts for importation into the United Kingdom on the ground that that company had failed to furnish proof, as required by the above-mentioned provision, that customs import formalities had been completed.

As the price which was to be paid by the British purchaser, and which was reimbursed by the insurance company, had been calculated on the basis of the price level in the United Kingdom, the exporting firm suffered a loss equivalent to those amounts.

The national court requested a ruling from the Court on the following question:

> "Is Article 11 (2) of Regulation No. 1380/75 of the Commission of 29 May 1975 to be interpreted, by analogy with Article 6 (1) of Regulation No. 192/75 of the Commission of 17 January 1975, as meaning that, if goods exported from a Member State perish in transit as a result of force majeure, the exporter thereof, in the event of the monetary compensation being granted by the exporting instead of the importing State in accordance with Article 2a of Regulation No. 974/71 of the Council of 12 May 1971, has a claim for payment by the exporting Member State of the same monetary compensation as would have been due to him if the goods had reached their destination and if customs import formalities had been completed there?".

The plaintiff in the main action relied by analogy on previous decisions of the Court which allowed the provision on force majeure in relation to export refunds.

But in view of the differences between the system of refunds on exports to non-member countries and the system of monetary compensatory amounts, the Court ruled that there is no call for applying by analogy a rule expressly laid down for refunds in order to indemnify the plaintiff in the main action against a loss which normally constitutes one of the commercial risks which traders must assume, by taking out, where appropriate, a suitable insurance.

The Court's reply to the question was as follows:

Article 11 (2) of Regulation No. 1380/75 of the Commission of 29 May 1975 laying down detailed rules for the application of monetary compensatory amounts is to be interpreted as meaning that where goods exported from a Member State have perished in transit as a result of force majeure, the exporter is not entitled to the same monetary compensatory amounts as would have been due to him if the goods had reached their destination and if import formalities had been completed there.

Judgment of 5 March 1980

Case 76/79

Karl Könecke Fleischwarenfabrik GmbH & Co. KG v Commission of the European Communities

(Opinion of Mr Advocate General Reischl delivered on 31 January 1980)

1. Application for annulment - Time-limits - Time at which the period fixed begins to run - Notification of the contested measure - Concept

(EEC Treaty, Art. 173, third paragraph; Rules of Procedure, Art. 81 (1))

2. Application for annulment - Legal interest in taking proceedings - Impossibility of implementing the judgment annulling the measure - No effect - Basis of a possible action for damages

(EEC Treaty, Arts. 173, 176)

1. It is impossible to consider as "notification" for the purposes of Article 81 (1) of the Rules of Procedure the communication to the undertaking concerned by a national intervention agency of the existence of a Community measure if such communication does not contain any details enabling the undertaking to identify the decision taken and to ascertain its precise content in such a way as to enable it to exercise its right to institute proceedings.

2. An application for annulment is not inadmissible for want of a legal interest on the sole ground that if the contested measure were annulled the institution whose act was declared void would be unable having regard to the circumstances to fulfil its obligation under the first paragraph of Article 176 of the EEC Treaty. In such a case the application still constitutes a legal interest at least as the basis for possible proceedings for damages.

NOTE

By an application of 7 May 1979 the applicant sought the annulment of Commission Decision 79/187 on the same subject-matter as in Case 243/78 for the first quarter of 1979. Unlike the situation on which the Court ruled in the previous judgment, the tenders rejected in the case in question were higher than the prices for reducing intervention stocks usually charged at the relevant time.

Admissibility

The Commission nevertheless contends that the applicant had no interest in the action since it could not lead to a result which would be of benefit to it. Since the tendering procedure was definitively closed it would be impossible for the Commission to accommodate the applicant even if the applicant obtained a favourable judgment.

However this preliminary objection shows that the Commission fails to appreciate the obligation upon it under Article 176 of the Treaty in the event of one of its acts being annulled. That article provides that the institution whose act has been declared void "shall be required to take the necessary measures to comply with the judgment of the Court of Justice". Even if on the facts it proved impossible to meet that obligation, the application for annulment still retained an interest for the applicant as the basis of a possible application to establish liability.

Substance

Decision 79/187 is from the legal point of view identical in all respects to Decision 78/258 which is the subject of Judgment 92/78 of 6 March 1979 (see Proceedings of the Court No. 7/79). For the reasons given in that judgment, it should therefore be annulled on the understanding that the annulment is confined to the particular decision of rejection which resulted, for the applicant, from the disputed decision regarding the tenders in question.

The Court adds that consequent upon this annulment it is primarily for the Commission to assess whether, under tendering rules which met the legal requirements stated in the judgment of 6 March 1979, the applicant's tenders could have come within its terms. If the Commission considers that they could have done so it is for the Commission to take any decision under Article 176 of the Treaty with regard to the applicant which would provide fair compensation to it for the disadvantages resulting from the annulled decision.

Judgment of 5 March 1980

Case 98/79

Josette Pecastaing v Belgian State

(Opinion delivered by Mr Advocate General Capotorti on 31 January 1980)

1. Free movement of persons - Derogations - Decisions on policy regarding aliens - Protection provided by the courts - Legal remedies available to nationals against acts of the administration - Less favourable conditions concerning form or procedure for nationals of other Member States - Not permissible

   (Council Directive No. 64/221/EEC, Art. 8)

2. Free movement of persons - Derogations - Decisions on policy regarding aliens - Protection provided by the courts - Legal remedies available to nationals against acts of the administration - Stay of execution of the act contested - Identical conditions as to admissibility for nationals of the host State and for nationals of other Member States

   (Council Directive No. 64/221/EEC, Art. 8)

3. Free movement of persons - Derogations - Decisions on policy regarding aliens - Protection provided by the courts - No suspensory effect of applications - Permissibility - Duties of Member States - Right to a fair hearing - Regard for rights of the defence

   (Council Directive No. 64/221/EEC, Art. 8)

4. Free movement of persons - Derogations - Decisions on policy regarding aliens - Expulsion - Appeal to the competent authority - Procedure prior to the expulsion order - Immediate execution of the decision after obtaining the opinion of the competent authority - Permissibility - Conditions

   (Council Directive No. 64/221/EEC, Art. 9)

5. Free movement of persons - Derogations - Decisions on policy regarding aliens - Expulsion - Appeal to the competent authority - Procedure prior to the expulsion order - Exception - Cases of urgency duly justified - Appraisal of urgency by the administrative authority

   (Council Directive No. 64/221/EEC, Art. 9)

6. Free movement of persons - Derogations - Decisions on policy regarding aliens - Procedure concerning examination by and opinion of the competent authority - Objective - No effect on the jurisdiction of the national courts

(Council Directive No. 64/221/EEC, Art. 9)

1. Article 8 of Directive No. 64/221 imposes upon the Member States the duty to make available to any national of a Member State of the Community affected by any decision concerning entry or refusing the issue or renewal of a residence permit or ordering expulsion from the territory in question the same legal remedies as are available to nationals in respect of acts of the administration. A Member State cannot, without being in breach of that duty, make the right of appeal for persons covered by the directive conditional on particular requirements as to form or procedure which are less favourable than those pertaining to remedies available to nationals in respect of acts of the administration.

2. Article 8 of Directive No. 64/221 imposes upon the Member States the duty to provide for the persons covered by the directive protection by the courts which is not less than that which they make available to their own nationals as regards appeals against acts of the administration, including, if appropriate, suspension of the acts appealed against. It covers all the remedies available in a Member State in respect of acts of the administration, within the framework of the judicial system and the division of jurisdiction between judicial bodies in the State in question. This means inter alia that if, in a Member State, the administrative courts were not empowered to grant a stay of execution of an administrative decision but such power was recognized to the ordinary courts that State would be obliged to permit persons covered by the directive to apply for a stay of execution to such courts on the same conditions as nationals of that State.

3. Article 8 of Directive No. 64/221 imposes no specific obligation concerning any suspensory effect of applications available to persons covered by the directive. There cannot be inferred from that provision an obligation for the Member States to permit an alien to remain in their territory for the duration of the proceedings, so long as he is able nevertheless to obtain a fair hearing and to present his defence in full. That requirement implies inter alia that the decision ordering expulsion may not be executed - save in cases of urgency - before the party concerned is able to complete the formalities necessary to avail himself of his remedy.

4. The procedure of appeal to a "competent authority" referred to in Article 9 of Directive No. 64/221 must precede the decision ordering expulsion, save in cases of urgency. In particular if a Member State has applied Article 9 in order to compensate for the fact that the appeals to the courts which are available do not carry suspensory effect that provision would be rendered nugatory if, always save in cases of urgency, execution of the expulsion order contemplated were not suspended until that authority has given its decision. It therefore follows from Article 9 that as soon as the opinion in question has been obtained and notified to the person

concerned an expulsion order may be executed immediately, subject always to the right of that person to stay on the territory for the time necessary to avail himself of the remedies accorded to him under Article 8 of the directive.

5. The first subparagraph of Article 9 (1) shows that determination of the existence of urgency in cases which have been properly justified is a matter for the administrative authority and that expulsion from the territory may then be effected even before the "competent authority" has been able to give its opinion.

6. The procedure concerning the consideration of the decision and concerning the opinion referred to in Article 9 of Directive No. 64/221, which is intended to mitigate the effect of deficiencies in the remedies referred to in Article 8, is not intended to confer upon the courts additional powers concerning suspension of the measures referred to by the directive or to empower them to review the urgency of an expulsion order.

The performance of these duties by the national courts is governed by Article 8 of the directive.

The scope of that provision nevertheless may not be restricted by measures taken by a Member State under Article 9.

NOTE

Mrs J. Pecastaing of French nationality lawfully entered Belgium in 1977 with a view to pursuing paid employment in the Liège area. She was entered in the population registers.

She submitted an application for a residence permit in order to work in Belgium as a bar waitress.

The Administration de la Sureté Publique /Public Security Administration/, Office des Étrangers /Aliens' Office/ refused her a permit on the grounds that she had worked in a bar in Belgium which was morally suspect and that she had been reported for prostitution in France and Germany.

The decision contained an order to leave Belgian territory within 15 days of notification (effected on 16 May 1978).

Beginning on 24 May 1978, Mrs Pecastaing started a series of administrative and then judicial proceedings which led to the present reference for a preliminary ruling by the President of the Tribunal de Première Instance /Court of First Instance/ Liège.

The national court asked a series of questions on the interpretation of Articles 8 and 9 of Directive 64/221 of the Council. These questions seek a detailed definition of the obligations upon Member States under Articles 8 and 9 of Directive 64/221 concerning the suspensory effect of actions begun against such a measure or the possible ways of obtain a suspension of them as well as of the meaning of urgency in Article 9 of the directive. In asking these questions the national court refers to the case-law of the Court in the Royer judgment (8 April 1976) and the concept of a "fair hearing" in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Interpretation of Article 8 of the directive

Under Article 8 "the person concerned shall have the same legal remedies in respect of any decision concerning entry, or refusing the issue or renewal of a residence permit, or ordering expulsion from the territory, as are available to nationals of the State concerned in respect of acts of the administration".

The questions about the interpretation of Article 8 ask whether the remedies made available in a Member State by virtue of this provision also include, besides actions before an administrative court to set aside any measure taken in the control of aliens, actions begun in other courts and whether the commencement of such an action has a suspensory effect so that the person concerned has the right to reside in the territory for the duration of the proceedings which that person started.

Article 8 does not state before which court such an action could be brought. The answer to this question depends upon the judicial system of each Member State. The only obligation imposed upon Member States by Article 8 is to grant remedies to persons protected by Community law which are no less favourable than those available to their own nationals in respect of acts of the administration.

On the other hand Article 8 does not contain any specific obligation as regards the possible suspensory effect of remedies available to persons covered by the directive.

The Court replied to this first question by ruling that Article 8 of Directive 64/221 of the Council 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, covers all actions begun in a Member State in respect of the acts of the administration, within the framework of the judicial system and the division of jurisdiction within the State concerned. This provision requires Member States to guarantee judicial protection to persons covered by the directive which is no less favourable than that given to their own nationals in cases brought in respect of acts of the administration, including, if necessary, the suspension of the acts challenged.

On the other hand, there cannot be deduced from Article 8 of Directive 64/221 any obligation upon Member States to allow an alien to remain in its territory for the duration of proceedings subject to the proviso that he may nevertheless receive a fair hearing and make all his defence submissions.

Interpretation of Article 9 of the directive

The provisions of Article 9 of Directive 64/221 are complementary to the provisions of Article 8. They are intended to give a minimum procedural guarantee to persons affected by one of the measures envisaged in the directive in three specific cases:

(a) a claim before a "competent authority" other than the authority empowered to take the decision must mitigate the absence of any judicial remedy;

(b) the intervention by a competent authority must be capable of providing an exhaustive inquiry into the circumstances of the person concerned, including the suitability of the measure envisaged;

(c) this procedure must enable the person concerned to request and obtain if necessary a suspension of the intended measure in order to remedy the inability to obtain a suspension by judicial authority.

The Court interpreted Article 9 of Directive 64/221 by ruling that the procedure for inquiry and for obtaining an opinion set out in this article, intended to mitigate the insufficiencies of the remedies referred to in Article 8, is not intended to confer additional jurisdiction upon courts as regards the suspension of the measures referred to by the directive or to empower them to determine the urgency of an expulsion measure.

The exercise of such powers by national courts comes under Article 8 of the directive.

However, the scope of that provision may not be restricted by measures taken by a Member State under Article 9 of the directive.

As regards the requirement of a "fair hearing" (Article 6 of the European Convention on Human Rights) mentioned by the national court, there is no need to give a reply since the question is resolved by the directive itself.

Judgment of 6 March 1980

Case 120/79

Luise de Cavel v Jacques de Cavel

(Opinion delivered by Mr Advocate General Warner on 31 January 1980)

1. Convention of 27 September 1978 on Jurisdiction and the Enforcement of Judgments - Scope - Subject of maintenance obligations - Inclusion

(Convention of 27 September 1968, Art. 1, first paragraph)

2. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Scope - Claim ancillary to proceedings which are excluded by virtue of their subject-matter - Inclusion

(Convention of 27 September 1968, Art. 1, first paragraph)

3. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Scope - Distinction between interim and final measures - None

(Convention of 27 September 1968, Arts. 1 and 24)

4. Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Scope - Interlocutory measure ordering the payment of a maintenance allowance during divorce proceedings - Interim compensation payment awarded by a divorce judgment - Inclusion

(Convention of 27 September 1968, Art. 1, first paragraph)

1. The subject of maintenance obligations falls of itself within the concept of "civil ... matters" within the meaning of the first paragraph of Article 1 of the Convention and accordingly comes within the scope of the Convention since it has not been excepted by the second paragraph of that article.

2. A claim falls within the scope of the Convention where its own subject-matter is one of the matters covered by the Convention even if it is ancillary to proceedings which, because of their subject-matter, do not come within the Convention's sphere of application.

3. The interim or final nature of a judgment is not relevant to whether the judgment comes within the scope of the Convention.

4. The Convention is applicable, on the one hand, to the enforcement of an interlocutory order made by a French court in divorce proceedings whereby one of the parties to the proceedings is awarded a monthly maintenance allowance and, on the other hand, to an interim compensation payment, payable monthly, awarded to one of the parties by a French divorce judgment pursuant to Article 270 et seq. of the French Civil Code.

NOTE

The question was referred to the Court in the context of a dispute upon the enforcement in the Federal Republic of Germany of an order made by the judge in matrimonial matters at the Tribunal de Grande Instance, Paris, awarding the wife an interim maintenance allowance in the divorce proceedings.

The first question asks whether the Convention (especially Article 31 thereof) applies to "the enforcement of an interlocutory order made by a French judge in divorce proceedings, whereby one of the parties to the proceedings is awarded maintenance payable monthly" or whether, on the contrary, such a decision must not be considered as being made in a "civil matter".

In the second question it is asked whether the Convention is applicable to "the payment of interim compensation, on a monthly basis, granted to one of the parties in a French judgment dissolving a marriage pursuant to Articles 270 et seq. of the Code Civil".

According to the first paragraph of Article 1 of the Convention, it shall apply in "civil and commercial matters" except those set out in the second paragraph - status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession.

It is established that maintenance obligations fall under "civil matters" and that since they do not appear in the exceptions provided for by the Convention, come within its scope.

It is also necessary to examine whether the fact that a judicial decision upon maintenance obligations falls within the sphere of divorce proceedings, which are undeniably connected with the status of persons and consequently outside the scope of the Convention, should cause a dispute on maintenance obligations also to fall outside its scope, such a dispute being ancillary to divorce proceedings, with the effect that it cannot be the subject of, amongst other things, simplified forms of recognition and enforcement.

It must be noted that the Convention does not link the outcome of claims described as "ancillary" to the outcome of the main claim.

Ancillary claims come within the scope of the application of the Convention depending on the subject with which they are concerned and not on the subject with which the main claims is concerned.

The Court replied by ruling that the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters is applicable on the one hand to the execution of an interlocutory order made by a French judge in divorce proceedings whereby one of the parties to the proceedings is granted a monthly maintenance allowance and, on the other hand, to a provisional compensatory allowance, payable monthly, which a French divorce decree grants to a party pursuant to Article 270 et seq. of the French Civil Code.

Judgment of 11 March 1980

Case 104/79

Pasquale Foglia v Mariella Novello

(Opinion delivered by Mr Advocate General Warner on 23 January 1980)

Preliminary questions - Jurisdiction of the Court - Limits - Questions submitted in the course of a friendly suit before a national court - Inadmissibility.

(EEC Treaty, Art. 177)

The duty of the Court of Justice under Article 177 of the EEC Treaty is to supply all courts in the Community with the information on the interpretation of Community law which is necessary to enable them to settle genuine disputes which are brought before them.

On the other hand the court does not have jurisdiction - otherwise the whole system of legal remedies available to private individuals to enable them to protect themselves against tax provisions which are contrary to the Treaty would be jeopardized - to give rulings on questions asked within the framework of proceedings whereby the parties to the main action are concerned to obtain a ruling that the tax system of a Member State is invalid by the expedient of proceedings before a court of another Member State between two private individuals who are in agreement as to the result to be attained and who have inserted a clause in their contract in order to induce that court to give a ruling on the point. The artificial nature of this expedient is underlined by the fact that the parties did not avail themselves of the remedies open under the national law of the first Member State against the tax in question.

NOTE

The main proceedings concern the transport costs incurred by the plaintiff Foglia, a wine dealer in Italy, for the dispatch to Menton in France of certain cases of Italian liqueur wines which he had sold to the defendant, Mariella Novello.

From the file on the case the Court of Justice was able to establish that the parties to the main action are seeking a declaration that the French fiscal provisions relating to liqueur wines are unlawful by means of an action before an Italian court between two private parties who are agreed as to the results to be obtained and who have inserted into their contract a clause designed to induce the Italian courts to give a ruling on that point.

The artificial character of that procedure is rendered all the more apparent by the fact that the remedies available under French law against the levying of the consumer tax have not been made use of by Danzas (the carrier) in whose interest, however, such action would have been.

The task entrusted to the Court of Justice by Article 177 of the EEC Treaty consists in presenting any court in the Community with the instruments for interpreting Community law which that court requires in order to resolve genuine disputes brought before it. As a result, the Court held that it is not competent to decide the questions which have been referred to it by the national court.

Judgment of 13 March 1980

Case 111/79

S.A. Caterpillar Overseas v Belgian State

(Opinion delivered by Mr Advocate General Warner on 7 February 1980)

1. Common Customs Tariff - Value for customs purposes - Normal price of the goods - Determination - Reference to the price paid or payable

   (Regulation No. 803/68 of the Council, Arts. 1 and 9)

2. Common Customs Tariff - Value for customs purposes - Normal price of the goods - Determination - Reference to the price paid or payable - Conditions - Buyer established in the customs territory of the Community - Concept - Company having its registered office is in a non-member country and an establishment in a Member State of the Community - Inclusion

   (Regulation No. 603/72 of the Commission, Art. 1)

3. Common Customs Tariff - Value for customs purposes - Normal price of the goods - Determination - Reference to the price paid or payable - Conditions - Sale in the open market - Criteria

   (Regulation No. 803/68 of the Council, Art. 9)

4. Common Customs Tariff - Value for customs purposes - Normal price of the goods - Determination - Reference to the price at which the goods are resold - Permissibility - Conditions - Deduction of the buyer-reseller's costs and profit margin

   (Regulation No. 803/68 of the Council)

1. By providing that in certain circumstances and subject to certain adjustments the price paid or payable may be accepted as the value for customs purposes, Article 9 of Regulation No. 803/68 is merely accepting one method for calculating the normal price of the goods and does not therefore give a definition independent of, or different from, the value for customs purposes by reference to the normal price to which Article 1 of that regulation refers.

2. Article 1 of Regulation No. 603/72 under which the price paid or payable may be accepted as the value for customs purposes only if it has been made on a sale to a buyer established in the customs territory of the Community must be interpreted as meaning that he who has a genuine place of business in that territory must be considered as such a buyer. A company whose registered office is outside that territory meets the requirement when it has inside that territory an establishment which carries on activities such as may be exercised by an independent undertaking in the same sector and has its own accounts allowing the customs authorities to carry out the necessary inspections and checks.

3. The price paid or payable within the meaning of Article 9 of Regulation No. 803/68 corresponds, at the time it is agreed upon, to prices on a sale in the open market only if the price is not influenced by commercial, financial or other relationships between the seller and buyer other than the relationship created by the sale itself. To determine whether such influence exists it is necessary to consider whether the buyer is commercially independent of the seller and whether the price agreed between them is not appreciably lower than the prices at which identical or similar goods are freely sold at the same time to any buyer in the customs territory of the Community at the same commercial level.

4. The possibility allowed by Article 9 of Regulation No. 803/68 of accepting the price paid or payable as the value for customs purposes, subject to certain adjustments, in no way precludes recourse to other methods of calculating the true value of the imported goods. Thus it is in accordance with that regulation, and in particular Articles 1 and 7 thereof, to calculate the value for customs purposes on the basis of the price at which the goods are resold in unaltered state after deduction of all the costs incurred by the buyer-reseller in respect of transactions within the customs territory of the Community and if need be of an appropriate profit margin.

NOTE

The Court was asked by the Tribunal de Première Instance, Brussels, for a preliminary ruling on questions concerning the interpretation of Regulation No. 803/68 of the Council on the valuation of goods for customs purposes and Regulation No. 603/72 of the Commission on the buyer to be taken into consideration when determining the value of goods for customs purposes.

These questions arose in an action brought by the Swiss company Caterpillar Overseas against the Belgian State for an order that the latter should reimburse the customs duties which it was alleged had been unlawfully levied on imports into the customs territory of the EEC of spare parts for Caterpillar machines, the duties having been paid by the plaintiff in the main action under protest in order to avoid prosecution. The issue in the litigation is which value must be taken as the basis for calculating customs duties payable upon the entry into the EEC of spare parts marketed by Caterpillar Overseas.

The company, which is a subsidiary of Caterpillar Tractor Company (USA), has its head office in Switzerland and a branch company established in Belgium. The substance of its case is that for some time, and rightly, the customs authorities have accepted that the customs duties in question should be calculated on the basis of the price actually paid by its branch office in Belgium in transactions with its spare parts suppliers; those parts are ordered through the branch office from Caterpillar Tractor in the United States, or from other subsidiaries of Caterpillar Tractor, or from companies associated with it.

The Belgian customs authorities maintained that the value for customs purposes of the spare parts must be established on a different basis, leading to a value some 20% in excess of the price actually applied.

The concept of value for customs purposes

The court making the reference asked three questions concerning the relationship between the concept of the "normal price", which constitutes the value for customs purposes of imported goods according to Article 1 of Regulation No. 803/68, and that of the "price paid or payable" which may, on certain conditions, be accepted as the value for customs purposes by virtue of Article 9 of the same regulation.

Examination of the provisions led the Court to rule that in providing that on certain conditions and subject to certain adjustments the price paid or payable may be accepted as the value for customs purposes, Article 9 of Regulation No. 803/68 of the Council on the valuation of goods for customs purposes does not give a definition of the value for customs purposes which is independent of or different from that relating to the normal price referred to in Article 1 of that regulation.

The interpretation of Regulation No. 603/72

The national court requested clarification as to the method of calculating the value for customs purposes on the basis of the price paid or payable, asking what interpretation is to be placed on Article 1 of Regulation No. 603/72, according to which the price paid or payable shall be accepted as the value for customs purposes only if it has been agreed upon in a sale to a buyer established in the customs territory of the Community.

This brings in the issue of the legal status of the Caterpillar concern in Belgium, bearing in mind that the parent company is in the United States and that a Caterpillar subsidiary, constituted under Swiss law, has been established in Geneva.

In reply the Court held that Article 1 of Regulation No. 603/72 of the Commission on the buyer to be taken into consideration when determining the value of goods for customs purposes is to be interpreted as meaning that a buyer is established in the customs territory of the Community if he has a genuine place of business there. An undertaking whose registered office is outside that territory meets the requirement if it has inside that territory an establishment which carries on activities such as may be exercised by an independent undertaking in the same sector and has its own accounts allowing the customs authorities to carry out the necessary inspections and checks.

The interpretation of Article 9 of Regulation No. 803/68

The court asked, in effect, what are the conditions under which the price paid or payable referred to by Article 9 corresponds, at the time it is agreed upon, to the price concluded in a sale on the open market between a buyer and a seller independent of each other.

The Court held that the price paid or payable within the meaning of Article 9 of Regulation No. 803/68 corresponds, at the time it is agreed upon, to prices on a sale in the open market only if that price is not influenced by commercial, financial or other relationships which may exist between the seller and the buyer, other than those created by the sale itself. In order to determine whether such influence exists account must be taken of whether the buyer is commercially independent of the seller and whether the price agreed between them is not appreciably lower than the price for which identical or similar goods are freely sold at that time to any buyer operating at the same commercial level within the customs territory of the Community.

The so-called deductive method

These questions were put by the national court in the event that the value for customs purposes of the Caterpillar spare parts is not to be calculated on the basis of the price paid or payable. They concerned the possibility of employing a different method of calculation and they asked, in effect, whether the value for customs purposes may be established on the basis of the prices fixed for distributors or for certain other customers, bearing in mind that those prices may vary depending on the commercial status of the purchasers.

On that last point the Court replied that it is in accordance with Regulation No. 803/68 to calculate the value for customs purposes on the basis of the price at which the goods are re-sold without alteration after deduction of all the costs incurred by the buyer who re-sells in respect of transactions within the customs territory of the Community and, where appropriate, a suitable profit margin.

Judgment of 13 March 1980

Case 124/79

J.A. Van Walsum B.V. v Produktschap voor Vee en Vlees

(Opinion delivered by Mr Advocate General Warner on 28 February 1980)

Common Customs Tariff - Community tariff quotas - Frozen beef and veal - Power of management of Member States - Allocation of national shares - Persons concerned - Concept - Undertakings benefiting from the special system for importation of frozen beef and veal intended for processing - Inclusion

(Council Regulation No. 3063/78, Art. 3 (1))

Any methods of allocation laid down by a competent national authority, which involve including undertakings which benefit from the system contained in Article 14 (1) (b) of Regulation No. 805/68 of the Council, as amended by Council Regulation No. 425/77, amongst the "persons concerned", who are referred to in the provisions of Article 3 (1) of Council Regulation No. 3063/78 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal, are compatible with those provisions, even if they result in a corresponding reduction in other importers' shares in the allocation of the quota in question.

NOTE

The Netherlands court requested a preliminary ruling on a question concerning the interpretation of Article 3 of Council Regulation No. 3063/78 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal for the year 1979.

It appears from the file on the case that the Community undertook, under the General Agreement on Tariffs and Trade, to open an annual Community tariff quota at a rate of duty of 20% for imports of beef and veal from third countries which are parties to the G.A.T.T.

That quota is apportioned each year between the Member States by the Community, a fixed share being set for the Benelux countries which they divide among themselves. The quota allotted to the Netherlands for 1979 was 2 756 tonnes.

The intervention agency established a guide for apportioning the quotaamong those interested, and included in the imports of meat taken into consideration in making allocations imports effected under Article 14 of Regulation No. 805/68 of the Council, which provides for the total or partial suspension of the levy in respect of frozen meat intended for the manufacture of certain preserved foods.

The plaintiff in the main action considered that it had suffered damage as a result of the new method of calculation which had been adopted by the agency.

Since the new rules reserved a considerable share of the quota for the processing industry the possibilities open to non-manufacturing importers to import at the lower rate of duty were considerably reduced.

The College van Beroep was of the opinion that the compatibility of the decision adopted by the intervention agency with Community law is open to considerable doubt.

The Court held otherwise, and ruled that any methods of allocation, laid down by a competent national authority, which involve including undertakings which benefit from the system contained in Article 14 (1) (b) of Regulation No. 805/68 of the Council, as amended by Council Regulation No. 425/77, amongst the "persons concerned" referred to in the provisions of Article 3 (1) of Council Regulation No. 3063/78 of 18 December 1978 opening, allocating and providing for the administration of a Community tariff quota for frozen beef and veal falling within sub-heading 02.01 A II (b) of the Common Customs Tariff (1979) are compatible with those provisions, even if they result in a corresponding reduction in other importers' shares in the allocation of the quota in question.

Judgment of 18 March 1980

Case 52/79

Procureur du Roi v Marc J.V.C. Debauve and Others

(Opinion delivered by Mr Advocate General Warner on 13 December 1979)

1. Freedom to provide services - Provisions of the Treaty - Matters covered - Broadcast of television signals - Transmission of signals by cable diffusion of television - Inclusion

   (EEC Treaty, Arts. 59 and 60)

2. Freedom to provide services - Provisions of the Treaty - Not applicable to situations within a Member State

   (EEC Treaty, Arts. 59 and 60)

3. Freedom to provide services - Restrictions - National rules prohibiting television advertising - Grounds of general interest - Permissible - Conditions

   (EEC Treaty, Arts. 59 and 60)

4. Freedom to provide services - Restrictions - National rules prohibiting television advertising - Infringement of the principle of proportionality and of the prohibition of discrimination - Absent

   (EEC Treaty, Arts. 59 and 60)

5. Community law - Principles - Equality of treatment - Discrimination - Concept - Natural inequality - Excluded

1. The broadcasting of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services. The same is true of the transmission of such signals by cable television.

2. The provisions of the EEC Treaty on freedom to provide services cannot apply to activities whose relevant elements are confined within a single Member State. Whether that is the case depends on findings of fact which are for the national court to establish.

3. Articles 59 and 60 of the EEC Treaty do not preclude national rules prohibiting the transmission of advertisements by cable television - as they prohibit the broadcasting of advertisements by television - if those rules are applied without distinction as regards the origin, whether national or foreign, of those advertisements, the nationality of the person providing the service, or the place where he is established.

   Indeed, in the absence of any harmonization of the relevant national laws, a prohibition of this type falls within the residual power of each Member State to regulate, restrict or even totally prohibit television advertising in its territory on grounds of general interest, even if that prohibition extends to such advertising originating in another Member State.

4. National rules prohibiting the transmission by cable television of advertisements cannot be regarded as constituting either a disproportionate measure in relation to the objective to be achieved, in that the prohibition in question is relatively ineffective in view of the existence of natural reception zones, or discrimination which is prohibited by the Treaty in regard to foreign broadcasters, in that their geographical location allows them to broadcast their signals only in the natural reception zone.

5. Differences in situation, which are due to natural phenomena, cannot be described as "discrimination" within the meaning of the EEC Treaty; the latter regards only differences in treatment arising from human activity, and especially from measures taken by public authorities, as discrimination. The Community has no duty to take steps to eradicate differences which are the consequence of natural inequalities.

NOTE

The facts

The questions for a preliminary ruling upon the interpretation of Articles 59 and 60 of the EEC Treaty (freedom to provide services) were referred to the Court by the Tribunal Correctionnel [Criminal Court] Liège. The main proceedings consisted of criminal prosecutions subsequent to complaints lodged by consumer organizations against cable diffusion companies on the ground that these companies had infringed a prohibition on the transmission of television broadcasts in the nature of advertising. It emerged from the file that the two companies in question provided, with the authority of the Belgian administration, a cable television distribution service covering part of Belgium. Subscribers to this service are linked by cable to a central aerial which enables Belgian broadcasts to be picked up and also certain foreign broadcasts which the subscriber cannot pick up, at least upon his individual aerial. This cable diffusion system enables broadcasts to be picked up containing advertisements broadcast by broadcasting stations established outside Belgium. Belgian legislation prohibits national radio and television broadcasting organizations from making broadcasts in the nature of advertising and this prohibition also extends to cable diffusion.

The judgment making the reference stated that in practice cable television distributors have disregarded this prohibition and have transmitted foreign programmes without excising advertisements. It must be pointed out that the Belgian Government has tolerated this practice and that a large number of Belgian television viewers can pick up foreign programmes without the help of the relay systems set up by the cable diffusion companies.

It was in the light of these factual circumstances that the Tribunal Correctionnel formulated its questions relating to Articles 59 and 60 of the Treaty. It thought that the application of the prohibition in question might have an effect upon the freedom to provide services at Community level. On the one hand, foreign broadcasting organizations derive part of their revenue from advertising and the blotting out of advertisements in Belgium might cause these advertisers to restrict their advertising and, on the other hand, advertisers, traders or manufacturers established in neighbouring countries would be more restricted in reaching the Belgian market.

Decision

The central question raised by the national court was whether Articles 59 and 60 of the Treaty must be interpreted as prohibiting all national rules against the transmission of advertisements by cable television to the extent to which such rules do not make any distinction between the origin of broadcasts, the nationality of the person providing services or his place of establishment.

The strict requirements of Article 59 of the Treaty involve the abolition of all discrimination against a provider of services on the grounds of his nationality or the fact that he is established in a Member State other than the one where the service must be provided. From information given to the Court during the proceedings it seemed that the broadcasting of advertisements by television is regulated by law in greatly varying degrees in different Member States, going from quasi-total prohibitions as in Belgium, to rules comprising fairly strict restrictions, and to broad commercial freedom. In the absence

of any approximation of national laws and taking into account the considerations of the public interest underlying such restrictive rules in this area, application of the laws in question cannot be regarded as a restriction upon the freedom to provide services so long as those laws treat all such services identically whatever their origin or the nationality or place of residence of the persons providing them.

A prohibition of the type contained in the Belgian legislation referred to by the national court was therefore to be judged in the light of these considerations. In the absence of any approximation of the relevant rules, a prohibition of this type fell within the residual power of each Member State to regulate, restrict or even totally prohibit television advertising on its territory on the ground of the public interest. It made no difference that such restrictions or prohibitions extend to television advertising originating in other Member States if the position is that they are actually applied in the same terms to national television institutions.

In answer to this question the Court ruled that Articles 29 and 60 of the EEC Treaty do not prohibit national rules against the transmission of advertisements by cable television or the broadcasting of advertisements by television, if those rules are applied without distinction as regards the origin, national or foreign, of those advertisements, or the nationality of the person providing the services, or the place of his establishment.

The national court further asked if rules against the transmission of advertisements by cable television were not a disproportionate measure compared to the intended object owing to the fact that the prohibition on the broadcasting of television advertising was still relatively ineffective in view of the existence of zones of natural reception for certain foreign stations.

The Court replied in the negative since the transmission of television programmes by cable enables them to be diffused over a wider area and improves their penetration, hence the restrictions or prohibitions do not lose their justification.

Finally, the national court wished to know whether national rules against the transmission of advertisements by cable caused discrimination against foreign broadcasting stations owing to the fact that their geographical location allows them to broadcast their programmes only within the zone of natural reception.

Indeed, natural and technical factors (natural relief, built-up areas, and so on) lead to differences as regards reception of television broadcasts. Such differences, which are due to natural phenomena, cannot be described as "discrimination" within the meaning of the Treaty.

The Court ruled on this point that national rules prohibiting the transmission by cable television of advertisements cannot be regarded as constituting either a disproportionate measure in relation to the objective to be achieved, in that the prohibition in question is relatively ineffective in view of the existence of natural reception zones, or discrimination which is prohibited by the Treaty in regard to foreign broadcasters, in that their geographical location allows them to broadcast their signals only in the natural reception zone.

Judgment of 18 March 1980

Case 62/79

Compagnie Générale pour la Diffusion de la Télévision, Coditel S.A. and Others v Ciné Vog Films S.A. & Others

(Opinion of Mr Advocate General Warner delivered on 13 December 1979)

1. Freedom to provide services - Restrictions - Application of national laws on the protection of copyrights - Assignment of rights - Permissible - Conditions

   (EEC Treaty, Art. 59)

2. Freedom to provide services - Restrictions - Cable television diffusion in a Member State of a film shown in another Member State with the consent of the owner of the right - Objection by the assignee of the performing rights in the first State - Permissible

   (EEC Treaty, Art. 59)

1. Whilst Article 59 of the EEC Treaty prohibits restrictions upon freedom to provide services, it does not thereby encompass limits upon the exercise of certain economic activities which have their origin in the application of national legislation for the protection of intellectual property, save where such application constitutes a means of arbitrary discrimination or a disguised restriction on trade between Member States. Such would be the case if that application enabled parties to an assignment of copyright to create artificial barriers to trade between Member States.

2. The provisions of the EEC Treaty relating to the freedom to provide services do not preclude an assignee of the performing right in a cinematographic film in a Member State from relying upon his right to prohibit the exhibition of that film in that State, without his authority, by means of cable diffusion if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

   Indeed, whilst copyright entails the right to demand fees for any exhibition of a cinematographic film, the rules of the Treaty cannot in principle constitute an obstacle to the geographical limits which the parties to a contract of assignment have agreed upon in order to protect the author and his assigns in this regard. The mere fact that those geographical limits may coincide with national frontiers does not point to a different solution in a situation where television is organized in the Member States largely on the basis of legal broadcasting monopolies, which indicates that a limitation other than the geographical field of application of an assignment is often impracticable.

NOTE

The Cour d'Appel /Court of Appeal/ Brussels referred to the Court questions on the interpretation of Article 59 in an action brought by Ciné Vog Films S.A., the respondent before the Cour d'Appel, for infringement of copyright.

This action presents certain analogies with the previous case in that compensation was sought for the damage allegedly caused to Ciné Vog by the reception in Belgium of a German television broadcast of a film "Le Boucher" for which Ciné Vog had obtained from Films La Boëtie (France) the exclusive distribution right in Belgium for seven years.

The film was shown in cinemas in Belgium from 15 May 1970. However, on 5 January 1971, the first channel of German television broadcast a German version of the film which could be picked up in Belgium by means of the cable diffusion network belonging to Coditel. Ciné Vog considered that the broadcast had compromised the commercial future of the film in Belgium.

On the effect of Community law, Coditel raised the argument that a possible prohibition on the transmission of films in which the copyright had been granted by the producer to a distribution house for the whole of Belgium, was contrary to the principle of freedom to provide services (Articles 59 and 60 of the EEC Treaty).

The Cour d'Appel, Brussels, wondered if the action taken by Ciné Vog against the cable television companies, "inasmuch as it limits the ability of a broadcasting station established in a country neighbouring Belgium, the country of the recipients of the service, freely to perform the same", infringed Article 59 of the Treaty. The question raised the issue whether Articles 59 and 60 of the Treaty prohibit an assignment, limited to the territory of a Member State, of the copyright in a film, assuming that a series of such assignments might result in the splitting up of the Common Market as regards economic activity in the film industry.

A cinematographic film belongs to the category of literary and artistic works made available to the public by exhibitions which may be infinitely repeated. In view of this the problems of observing copyright as against the requirements of the Treaty are not the same as those which arise in connexion with literary and artistic works for which the means of making them available to the public consists of the distribution of the physical medium of the works as in the case of books or records.

In these circumstances the owner of the copyright in a film and his assigns have a legitimate interest in calculating the fees due for the licence to show the film according to the actual or probably number of showings and in authorizing a television broadcast of the film only after it has been shown in cinemas for a period of time. The right to have the film "Le Boucher" broadcast by Belgian television could not be exercised until forty months after the first showing of the film.

These statements of fact were important since they highlighted that the right of a copyright owner to require fees for any showing of a film is inherent in the nature of copyright in this type of literary and artistic work. They also demonstrated that the exploitation of copyright in films and the fees attaching to it cannot be regulated without regard to the broadcasting of these films by television.

The question whether an assignment of copyright limited to the territory of a Member State is capable of constituting a restriction upon freedom to provide services had to be examined in this context. Whilst Article 59 of the Treaty prohibits restrictions upon freedom to provide services, it is not meant to extend to limits upon the exercise of certain economic activities which originate from the application of national legislation to protect intellectual property, except if such application were to constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

The rules of the Treaty cannot in principle preclude geographical limits which the parties to assignments have agreed upon in order to protect the author and his assigns in this regard.

The Court replied by ruling that the provisions of the Treaty relating to the freedom to provide services do not preclude an assignee of the performing rights of a cinematographic film in a Member State from relying upon his right to prohibit the exhibition of that film in that State, without his authority, by means of cable diffusion if the film so exhibited is picked up and transmitted after being broadcast in another Member State by a third party with the consent of the original owner of the right.

Judgment of 18 March 1980

Joined Cases 154, 205, 206, 226 to 228, 263 and 264/78, 39, 31, 83 and 85/79

S.p.A. Ferriera Valsabbia and Others v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 5 December 1979)

1. Procedure - Plea of illegality - Admissibility - Examination by the Court of its own motion

   (ECSC Treaty, para 3 of Art. 36)

2. Procedure - Plea of illegality within the meaning of para 3 of Article 36 of the ECSC Treaty - Admissibility - Conditions - Reference to para 1 of Article 33 of that Treaty - Meaning

   (ECSC Treaty, para 1 of Art. 33 and para 3 of Art. 36)

3. Measures of the institutions - General ECSC decisions - Duty to state reasons - Extent

   (ECSC Treaty, Art. 5 and Art. 15)

4. ECSC - Community institutions - Duty to act in the common interest - Extent

   (ECSC Treaty, Art. 3)

5. ECSC - Community institutions - Duty to pursue the objectives set out in Article 3 of the Treaty - Reconciliation of the various objectives - State of crisis - Adoption of exceptional measures - Failure to respect certain objectives - Permissible

   (ECSC Treaty, Art. 3)

6. ECSC - Steel sector - Anti-crisis policy - Foundation - Principle of solidarity between the various undertakings

   (ECSC Treaty, Arts. 3, 49 et seq., 53, 55 (2) and 56)

7. ECSC - Production - Quota system - Permissible - Conditions

(ECSC Treaty, Art. 58)

8. ECSC - Prices - Fixing of minimum prices - Method - Discretionary power of the Commission - Review by the Court - Limits

(ECSC Treaty, Arts. 3 and 61)

9. ECSC - Prices - Fixing of minimum prices - Propriety - Conditions

(ECSC Treaty, Arts. 3 and 61)

10. Community law - General legal principles - Fundamental rights - Right to property - Guarantee - Limits

11. Community law - General legal principles - Proportionality - Duties of the institutions - Extent

12. Community law - Principles - Legitimate self-protection - Concept - Possibility of reliance thereon as against a public authority acting within its powers - None

13. Community law - Principles - Force majeure - Concept

14. Community law - Principles - State of necessity - Concept

15. ECSC - Prices - Alignment on prices fixed in contravention of a provision imposing minimum prices - Not permissible

(ECSC Treaty, Art. 60; General Decision No. 962/77/ECSC, para 1 of Art. 6)

1. Arguments intended to show that a plea of illegality raised pursuant to the third paragraph of Article 36 of the ECSC Treaty is inadmissible, even if they are not accompanied by formal conclusions, may be considered by the Court of its own motion where they concern the Court's jurisdiction.

2. The expression "under the same conditions as in the first paragraph of Article 33", appearing in the third paragraph of Article 36 of the ECSC Treaty, means that the applicants may plead the illegality of the general decisions which they are alleged not to have observed only in the cases permitted under that first paragraph, that they must prove that they have an interest in taking action and that the Court, in examining the plea of illegality, may not assess the situation resulting from economic facts or circumstances in the light of which the decisions were taken, save within the limits fixed by the second sentence of the first paragraph of Article 33.

3. Articles 5 and 15 of the ECSC Treaty oblige the Commission to mention in the reasons on which its general decisions are based the situation as a whole which led to their adoption and the general objectives which they seek to attain. Therefore, the Commission cannot be required to specify the numerous, complex facts in the light of which the decision was adopted, and a fortiori it cannot be required to provide a more or less complete appraisal thereof or to refute the opinions expressed by the consultative bodies.

4. The Commission is indeed under an obligation by virtue of Article 3 of the ECSC Treaty to act in the common interest, but that does not mean that it must act in the interest of all those involved without exception, for its function does not entail an obligation to act only on condition that no interest is affected. On the other hand, when taking action it must weigh up the various interests, avoiding harmful consequences where the decision to be taken reasonably so permits. The Commission may, in the general interest, exercise its decision-making power according to the requirements of the situation, even to the detriment of certain individual interests.

5. It may not be inferred from Article 3 of the ECSC Treaty that the Community institutions are bound, in all circumstances, to pursue all the objectives set out in that provision simultaneously. It is necessary and sufficient that they should permanently reconcile any conflict which may be implied by those objectives when considered individually, and when such conflict arises must grant such priority to one or other of those objectives as appears necessary having regard to the economic facts and circumstances in the light of which they adopted the measures in question.

   If the need for a compromise between the various objectives is imperative in a normal market situation, it must be accepted a fortiori in a state of crisis justifying the adoption of exceptional measures which derogate from the normal rules governing the working of the Common Market and which clearly entail non-compliance with certain objectives laid down by Article 3 of the Treaty.

6. The anti-crisis policy in the iron and steel sector is based on the fundamental principle of solidarity between different undertakings, proclaimed in the preamble to the ECSC Treaty and given practical expression in numerous articles such as, inter alia, Article 3 (priority accorded to the common interest, which presupposes a duty of solidarity), Article 49 et seq. (a system of financing the Community based on levies), Article 55 (2) (general availability of the results of research in the technical and social fields), Article 56(re-conversion and re-adaptation aids) and Article 53 (the making of financial arrangements).

7. The Commission may be required to introduce a system of production quotas, pursuant to Article 58 of the ECSC Treaty, only if it is established that the crisis cannot be remedied by means of, inter alia, intervention in regard to prices.

8. The method to be used to fix the level of prices laid down in Article 61 of the ECSC Treaty is a discretionary and technical matter governed by the principle of solidarity, adherance to the criteria laid down by the penultimate paragraph of Article 61 and compliance with the formal requirements consisting in consultations with the Consultative Committee and the Council. Only when the economic assessment discloses a manifest infringement of a legal rule, such as the fixing of prices at such a level as manifestly to impede the pursuit of the objectives laid down in Article 3 of the Treaty, may the Court review the choices made by the Commission.

9. The terms of Article 61 of the ECSC Treaty - referring solely to Article 3 of that Treaty - must be interpreted as meaning that compliance with the objectives and principles laid down in that article of itself ensures the legality of a decision imposing minimum prices.

10. The guarantee afforded to the ownership of property cannot be extended to protect commercial interests, the uncertainties of which are part of the very essence of economic activity.

11. In exercising their powers, the institutions must ensure that the amounts which commercial operators are charged are no greater than is required to achieve the aim which the authorities are to accomplish; however, it does not necessarily follow that that obligation must be measured in relation to the individual situation of any one particular group of operators.

12. The concept of legitimate self-protection, which implies an act of defence against an unjustified attack, cannot exempt from liability commercial operators who knowingly contravene a general decision the legality of which does not give rise to doubts either taken by itself or in relation to the economic facts and circumstances in the light of which the decision was adopted. Legitimate self-protection may not be pleaded against a public authority acting lawfully within the legal framework of its powers.

13. Recognition of circumstances of force majeure presupposes that the external cause relied on by individuals has consequences which are inexorable and inevitable to the point of making it objectively impossible for the persons concerned to comply with their obligations.

14. A state of necessity presupposes a real threat to the existence of the undertaking concerned; the consequences of personal conduct cannot justify reliance on a state of necessity.

15. Article 6 (1) of Decision No. 962/77/ECSC must be interpreted as meaning that undertakings may not align their prices on those fixed by their competitors in violation of the provisions imposing minimum prices which must be observed by all Community undertakings.

NOTE

Thirteen undertakings producing concrete reinforcement bars submitted applications, received by the Court Registry between 14 July 1978 and 31 May 1979, seeking the annulment, or, in the alternative, the variation of the individual decisions whereby the Commission had imposed fines on them for infringements of general Decision No. 962/77/ECSC of 4 May 1977 fixing minimum prices for certain concrete reinforcement bars (a decision taken under Article 61 of the ECSC Treaty).

All those undertakings (namely, the companies S.p.A. Valsabbia, Odolo, S.p.A. Acciaierie e Ferriere Stefana Fratelli fu Girolamo, Nave, S.p.A., Acciaierie e Ferriere Industria Metallurgica, Nave, S.p.A. Acciaiere e Ferriere Antonio Stefana, Brescia, S.p.A., Acciaieria di Darfo, Darfo-Boario, Terme, S.p.A. Sider Camuna, Berzo Inferiore; S.p.A. Metallurgica Luciano Rumi, Bergamo, S.p.A. Feralpi, Lonato, Officine Laminatoi Sebino-Acciaiere e Ferriere Laminatoi e Trafilati, Pisogna, Société des Aciéries de Montereau, Montereau Fault, Eisenwerk-Gesellschaft Maximilianshütte mbH, Sulzbach-Rosenberg, Korf Industrie und Handels GmbH & Co. KG, Baden-Baden, and Forges de Thy-Marcinelle et Monceau S.A., Marcinelle) based their applications on Article 36 of the ECSC Treaty, pleading, in the first place, the illegality of general Decision No. 962/77, which they were alleged to have infringed, and secondly a series of claims concerning the individual decisions imposing pecuniary sanctions.

Having accepted that the objection alleging the illegality of the general decision was admissible, the Court went on to consider whether the objection was well-founded in the light of Article 61 and the other provisions of the ECSC Treaty and the general principles relied on by the applicants. It found that the formal requirements imposed on the Commission by the Treaty were observed and that no requirement whose non-observance would entail invalidity was disregarded. The Commission had also complied with the substantive conditions laid down by Article 61: it had properly recognized the existence or imminence of a manifest crisis and the necessity of fixing minimum prices in order to attain the objectives set out in Article 3, and it had taken into account the need to maintain the competitive capacity of the steel industry and the consumer industries in accordance with its duty to ensure the establishment of the lowest prices, while allowing necessary amortization and normal return on invested capital. As for the applicants' claim that the decision imposed excessive burdens on the most productive undertakings and that the sacrifices thus required of those undertakings were disproportionate, the Court found that the very nature of Article 61 necessarily results in certain undertakings' having to bear a greater burden than others in the name of European solidarity and that therefore the complaint that the measures were disproportionate could not be upheld. As the applicants had not adduced proof that the Commission's powers were used for ends other than those laid down by Article 61, it followed that general Decision No. 962/77 was lawful.

In a second part of the judgment of the Court examined the legality of the individual decisions imposing pecuniary sanctions. It found that there was no foundation in the claim alleging a failure to state proper reasons or in the various factors relied on by the applicants to justify their conduct (legitimate self-protection in the face of an unjustified attack, the application of the concept of force majeure and a state of necessity brought about by a threat to their existence). The Court also rejected the argument put forward by Feralpi and the other Italian applicants to the effect that their conduct was lawful on the ground that they sold concrete reinforcement bars at very low prices as a result of alignments carried out in accordance with the Community provisions, and therefore concluded that the individual decisions were lawful.

The last part of the judgment is devoted to the applicants' alternative claim for a reduction in the fines.

The Court accepted that in compliance with the principle of solidarity at a time of crisis the most productive undertakings were under a duty to accept sacrifices. But since the Commission had decided to apply a relatively low rate in assessing fines (25% of the amount of under-pricing in the case of the undertakings without particular financial difficulties, 10% of that amount in the case of medium-sized undertakings operating at a loss and 1% of that amount for the insolvent undertakings) having regard to the rate which it is entitled to apply by virtue of Article 64 of the Treaty - double the amount of the unlawful sales - it had taken the facts of the case into account in a fair manner. Only in some particular cases and for essentially technical reasons did the Court reduce the fines: from Lit 50 852 to Lit 20 340 800 in the case of Antonio Stefana (by application of a rate of 10% instead of 25%); from Lit 27 830 000 to Lit 26 883 780

in the case of Di Darfo (a reduction in the amount of under-pricing of 34%); from Lit 55 110 000 to Lit 50 000 000 in the case of Feralpi (extra for quality which the Commission did not take into account in calculating the amount of under-pricing).

The Court:

1. Reduced the fines imposed on the applicants as follows:

   In the case of Antonio Stefana (226/78) to 19 042 units of account, that is to say Lit 20 340 800;

   In the case of Di Darfo (227/78) to 25 168 units of account, that is to say Lit 26 883 780;

   In the case of Feralpi (228/78) to 46 298 units of account, that is to say Lit 50 000 000;

2. Dismissed the remainder of the applications;

3. Ordered the applicants in Cases 154/78 (Valsabbia), 205/78 (Stefana Fratelli), 206/78 (AFIM), 227/78 (Di Darfo), 228/78 (Sider Camuna), 263/78 (Rumi), 264/78 (Feralpi), 31/79 (Montereau), 39/79 (O.L.S.), 83/79 (Maximilianshütte) and 85/79 (Korf Industrie), to pay the whole of the costs;

4. Ordered the parties in Case 226/78 (Antonio Stefana) to bear their own costs.

In Joined Cases 26/79 and 86/79 the Court:

1. Dismissed the applications;

2. Ordered the applicants to bear the costs.

Judgment of 18 March 1980

Joined Cases 26 and 86/79

Forges de Thy-Marcinelle et Monceau S.A. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 5 December 1979)

1. Communtiy law - General principles of law - Proportionality - Duties of institutions - Scope

2. ECSC - Prices - Compulsory minimum prices for transactions effected as from a certain date - Transactions "effected" - Concept

   (General Decision No. 962/77/ECSC, Art. 2)

3. ECSC - Prices - Minimum prices system - Practices leading to actual prices lower than the minimum prices - Not permissible

   (General Decision No. 962/77/ECSC)

1. Although in exercising their powers the Institutions must ensure that the burdens which commercial operators are required to bear are no greater than is required to achieve the aim which the authorities are to accomplish,it does not necessarily follow that that obligation must be measured in relation to the individual situation of any one particular group of operators.

2. A transaction is not "effected" within the meaning of Article 2 of Decision No. 962/77/ECSC, which is intended to prohibit all transactions below a minimum price from 8 May 1977 throughout the Community, until the exact price actually charged is fixed. If the price remains uncertain, because there is no price indicated in the contract or because reference is made to list prices "in force at the time of despatch", the transaction cannot be regarded as having been effected within the meaning of Article 2 of that decision.

3. Under a system of minimum prices such as that laid down by General Decision No. 962/77/ECSC, transactions which are still to be concluded or completed must all comply with the requirement inherent in the imposition of such prices, so that any practice entailing rebates and credit notes devoid of any real substance cannot be relied on to justify sales at prices lower than the minimum prices imposed. Whatever method of calculation is used, the actual price, calculated after the entry into force of the decision, may not therefore be lower than the minimum prices.

For a note on these cases please turn to page 102.

Judgment of 18 March 1980

Case 91/79

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Mayras on 5 February 1980)

1. Member States - Obligations - Implementation of directives - Partial implementation - Failure to fulfil

(EEC Treaty, Art. 169)

2. Measures adopted by institutions - Legal nature - Decisions and directives - Treatment as international agreement - Not permissible

(EEC Treaty, Art. 189)

3. Harmonization of laws - Protection of the environment - Legal basis of directives - Article 100 of the Treaty - Permissibility

(EEC Treaty, Art. 100)

4. Member States - Obligations - Implementation of directives - Failure to fulfil - Justification - Not permissible

(EEC Treaty, Art. 169)

1. Member States are obliged to ensure the full and exact application of the provisions of any directive. Consequently there is a failure on the part of the Member State concerned to fulfil its obligations so long as it has not completely complied with a directive even if it has to a large extent already secured the objectives of the directive.

2. A measure which has the features of a Community decision or directive when viewed in the light of its objective and the institutional framework within which it has been drawn up cannot be described as an "international agreement".

3. Directives on the environment may be based upon Article 100 of the Treaty since provisions which are made necessary by considerations relating to the environment and health may be a burden upon the undertakings to which they apply and if there is no harmonization of national provisions on the matter competition may be appreciably distorted.

4. A Member State may not plead provisions, practices or circumstances existing in its internal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.

NOTE

The Commission brought an action before the Court seeking a declaration that the Italian Republic failed to fulfil an obligation imposed upon it under the Treaty by reason of the fact that it failed to adopt within the prescribed period the provisions necessary to comply with Council Directive No. 73/404/EEC of 22 November 1973 on the approximation of the laws of the Member States relating to detergents.

The Court pointed out that a Member State cannot plead provisions, practices or situations in its internal legal order in order to justify non-compliance with the obligations and time-limits laid down by Community directives. It held that the Italian Republic failed to fulfil an obligation arising under the Treaty.

Judgment of 18 March 1980

Case 92/79

Commission of the European Communities v Italian Republic

(Opinion delivered by Mr Advocate General Mayras on 5 February 1980)

1. Member States - Obligations - Implementation of directives - Partial implementation - Failure to fulfil

(EEC Treaty, Art. 169)

2. Measures adopted by institutions - Legal nature - Decisions and directives - Treatment as international agreement - Not permissible

(EEC Treaty, Art. 189)

3. Harmonization of laws - Protection of the environment - Legal basis of directives - Article 100 of the Treaty - Permissibility

(EEC Treaty, Art. 100)

4. Member States - Obligations - Implementation of directives - Failure to fulfil - Justification - Not permissible

(EEC Treaty, Art. 169)

1. Member States are obliged to ensure the full and exact application of the provisions of any directive. Consequently there is a failure on the part of the Member State concerned to fulfil its obligations so long as it has not completely complied with a directive even if it has to a large extent already secured the objectives of the directive.

2. A measure which has the features of a Community decision or directive when viewed in the light of its objective and the institutional framework within which it has been drawn up cannot be described as an "international agreement".

3. Directives on the environment may be based upon Article 100 of the Treaty since provisions which are made necessary by considerations relating to the environment and health may be a burden upon the undertakings to which they apply and if there is no harmonization of national provisions on the matter competition may be appreciably distorted.

4. A Member State may not plead provisions, practices or circumstances existing in its internal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.

NOTE

The Commission brought an action before the Court seeking a declaration that the Italian Republic failed to fulfil an obligation imposed on it under the Treaty by reason of the fact that it failed to adopt within the prescribed period the provisions necessary to comply with Council Directive No. 75/716/EEC of 24 November 1975 on the approximation of the laws of the Member States relating to the sulphur content of certain liquid fuels.

The Court held that the Italian Republic failed to fulfil an obligation arising under the Treaty.

Judgment of 20 March 1980

Case 100/79

Hauptzollamt Essen v Interatalanta Handelsgesellschaft

(Opinion delivered by Mr Advocate General Mayras on 24 January 1980)

Agriculture - Monetary compensatory amounts - Rate applicable - Reference date - Determination by Member States in absence of Community provisions - Goods in private customs warehouse - Day of removal from warehouse

(Regulation No. 974/71 of the Council, Art. 1)

Before the relevant Community provisions entered into force it was not ultra vires for the national legislature to specify the day of removal from the warehouse as the reference date for the application, in accordance with the provisions of Regulation No. 974/71, of the rate of monetary compensatory amounts in the case of the importation into the Community of goods from non-member countries, which were placed in a private warehouse in a Member State in September 1971 and subsequently put into free circulation.

NOTE

The Bundesfinanzhof referred a question to the Court concerning the interpretation of Regulation No. 974/71 of the Council on certain measures of conjunctural policy to be taken in agriculture following the temporary widening of the margins of fluctuation for the currencies of certain Member States.

This question was raised in the context of a dispute about the calculation made by a German customs office of monetary compensatory amounts on five consignments of frozen beef from South America. The German firm Interatalanta had put the goods into customs warehousing in its private warehouse between 20 August and 24 September 1971. Removal from the warehouse took place during a period extending from September to November 1971. In accordance with the German regulations implementing Regulation No. 974/71 of the Council the Customs Office fixed the monetary compensatory amounts from the rates in force on each occasion on which goods were removed from the warehouse. These rates were higher than those in force when the goods were warehoused. Taking the view that the calculation of the compensation should be made with reference to the rates in force at the time when the goods were warehoused, Interatalanta made a claim, which was rejected. It then brought an action before the competent finance court which upheld its claim. For its part, the defendant in the main proceedings made an appeal upon a point of law to the Bundesfinanzhof.

The latter court asked whether it was prohibited for the national legislature, within the context of its power to charge compensatory amounts on imports under Article 1 of Regulation (EEC) No. 974/71, to specify, in the case of goods which have been given customs clearance for storage in a private customs warehouse (offenes Zollager), the day on which the goods are removed from the private customs warehouse as the relevant date for the application of the rate of the compensatory amounts.

The Community regulations in force at the relevant time did not contain any provision on the determination of the date to be taken into consideration. It was only after March 1973 that the Commission adopted express rules in this matter. In these circumstances there were grounds for holding that, before these rules came into force, it was permissible for the national legislature to issue rules determining this reference date.

The Court therefore ruled that the national legislature was not prohibited from choosing the date on which goods left the warehouse as the relevant reference date for the application, pursuant to the provisions of Regulation No. 974/71, of monetary compensatory amounts in the case of the import into the Community of goods from non-member States, warehoused privately in a Member State in September 1971 and subsequently put into free circulation.

Judgment of 20 March 1980

Case 106/79

Vereniging ter Bevordering van de Belangen des Boekhandels and Others v Eldi Records B.V.

(Opinion delivered by Mr Advocate General Capotorti on 28 February 1980)

1. Competition - Agreements - Notification - Arrangements - Incomplete information on form - Entire text of agreement attached - Proper notification

(Regulation No. 17 of the Council, Art. 5)

2. Competition - Agreements - Notification - Effects - Request from Commission for further information - Effects of notification unaltered

(Regulation No. 17 of the Council, Arts. 5 and 11)

3. Competition - Agreements - Notification - Effects - Scope in case of temporary limitation of sphere of application of agreement

(Regulation No. 17 of the Council, Art. 5)

1. An agreement may be regarded as properly notified in its entirety and may therefore benefit from the effects of an agreement which has been notified, where its entire text has been attached to the notification form, even though some only of the clauses of the agreement are quoted on the form, provided that the description given there constitutes a fair and accurate record of the provisions which at the time were considered the most important.

2. A letter from the Commission requesting, under Article 11 of Regulation No. 17, further information about an agreement which has been notified does not in any way alter the effects of the notification.

3. The effects of notification extend to the sphere of application of the agreement at the time of its notification. Hence the re-introduction of a category of goods which fell within the scope of an agreement at the time of its notification, but which was subsequently excluded voluntarily by the parties for a certain period, is covered by the effects of the original notification.

NOTE

The Vice-President of the Arrondissementsrechtbank /District Court/, Amsterdam, by way of an interlocutory order, submitted four questions on the interpretation of provisions relating to the notification of agreements, decisions and concerted practices existing at the date of the entry into force of Regulation No. 17 of the Council of 6 February 1962: First Regulation implementing Articles 85 and 86 of the EEC Treaty.

Those questions were raised during interlocutory proceedings in which the Netherlands association to promote the interests of the book trade, together with three publishers recognized by the association, sought an injunction restraining a Netherlands undertaking from selling to individuals books, in particular strip cartoons, published by the recognized publishers, at a price other than that fixed by those publishers.

The plaintiffs based their action on a set of rules governing the book trade in the Netherlands ("the agreement") which was drawn up by the association and which imposed inter alia a vertical system of prices.

The defendant undertaking, for its part, pleaded that the agreement was contrary to Article 85 (1) of the Treaty, that it had not benefited from exemption under Article 85 (3) and that it was not provisionally valid either as it had not been satisfactorily notified within the meaning of Article 5 (1) of Regulation No. 17.

The agreement existed at the time of the entry into force of Regulation No. 17 and it was properly notified to the Commission by the Netherlands association in its various amended versions.

The Netherlands judge asked whether an old agreement, the entire text of which was attached to the notification form, may be regarded as notified and thus provisionally valid in its entirety, even though only some of the articles of that agreement are quoted on the notification form.

By means of notification the Commission must be given the information necessary to enable it to take decisions under Regulation No. 17.

In reply to that first question the Court ruled that an agreement may be regarded as properly notified in its entirety and may therefore benefit from the effects of an agreement which has been notified, where its entire text has been attached to the notification form, even though only some of the clauses of the agreement are quoted on the form, provided that the description there constitutes a fair and accurate record of the provisions which at the time were considered the most important.

In the second question the judge making the reference asked whether a letter from the Commission requesting further information and stating that the agreement notified would be examined as a whole, had any bearing on the extent of the effects of the notification.

In reply the Court ruled that a letter from the Commission requesting, under Article 11 of Regulation No. 17 of the Council of 6 February 1962: First Regulation implementing Articles 85 and 86 of the EEC Treaty, further information about an agreement which has been notified does not in any way alter the effects of the notification.

In a final question, the judge making the reference, assuming that a particular category of goods fell within the scope of an agreement at the time of its notification, asked whether the fact that those goods were subsequently excepted from the scope of that agreement for a certain time may undo the effects of the notification with relation to the category in question.

In reply to that question the Court ruled that the re-introduction of a category of goods which fell within the scope of an agreement at the time of its notification, but which was subsequently excluded voluntarily by the parties for a certain period, is covered by the effects of the original notification.

Judgment of 20 March 1980

Joined Cases 87, 112 and 113/79

Gebrüder Bagusat KG v Hauptzollamt Berlin-Packhof;

Einkaufsgesellschaft der deutschen Konservenindustrie mbH v Hauptzollamt Hamburg-Waltershof and Hauptzollamt Bad Reichenhall

(Opinion delivered by Mr Advocate General Reischl on 14 February 1980)

1. Common Customs Tariff - Tariff headings - Classification of goods - Power of the Commission to make regulations - Scope (Regulation No. 97/69 of the Council)

2. Common Customs Tariff - Tariff headings - Fruit "provisionally preserved... but unsuitable in that state for immediate consumption" within the meaning of tariff heading 08.11 - Concept - Definition by contrast to heading 20.06

3. Common Customs Tariff - Tariff headings - Fruit "prepared or preserved ... Containing added spirit" within the meaning of subheading 20.06 B I - Concept - Cherries put up in a mixture of water and alcohol - Inclusion (Regulation No. 1709/74 of the Commission)

1. In its Regulation No. 97/69 on measures to be taken for the application of the customs tariff the Council conferred upon the Commission, acting in co-operation with the customs experts of the Member States, a wide power of discretion in defining the subject-matter of tariff headings coming into consideration for classification.

2. It follows from the wording of heading 08.11 of the Common Customs Tariff that it covers provisionally preserved fruit, provided, however, that in that state it is unsuitable for consumption.

   It follows that fruit provisionally preserved cannot come under heading 08.11 if it appears that the preservation process used has not resulted in making it unsuitable for immediate consumption in that state. Whether or not the goods at issue are to undergo subsequent processing is irrelevant for the purpose of defining the scope of headings 08.11 and 20.06.

3. Fruit put up in a mixture of water and alcohol, which is not unsuitable in that state for immediate consumption, must be classified under subheading 20.06 B 1 of the Common Customs Tariff.

   The validity of Regulation No. 1709/74 cannot be affected inasmuch as it makes provision for such a tariff classification of cherries put up in a mixture of water and ethyl alcohol as fruit suitable in that state for immediate consumption.

NOTE

By three separate orders, the Bundesfinanzhof [Federal Finance Court] referred to the Court the question whether subheading 20.06 B I of the Common Customs Tariff must be interpreted as meaning that it also includes fruit which has been put up in a mixture of water and alcohol (12 to 16.3% of alcohol) so as to preserve it during transportation in casks.

The subject-matter of tariff subheading 20.06 B I has been defined by Regulation No. 1709/74 of the Commission, which provides that "cherries put up in a mixture of water and ethyl alcohol shall be classified as fruit suitable for immediate consumption in the following subheading of the Common Customs Tariff: 20.06 B I". Thus the questions referred to the Court were really whether goods having the characteristics referred to by the Bundesfinanzhof come within the scope of application of Regulation No. 1709/74 and, if so, whether that regulation is valid to the extent to which it classifies such goods under subheading 20.06 B I.

The Court held that the interpretation of the plaintiffs in the main action to the effect that Regulation No. 1709/74 does not cover cherries put up in a mixture of water and ethyl alcohol whose alcoholic strength is barely sufficient to preserve them temporarily, cannot be reconciled with the general nature of the terms used by the regulation, which does not make any distinction according to the alcoholic strength of the mixture. As the plaintiffs did not raise any factor enabling it to be said that the position adopted by the Commission in Regulation No. 1709/74 was manifestly incorrect, the Court held that fruit put up in a mixture of water and alcohol, and not unsuitable for immediate consumption, must be classified under subheading 20.06 B I of the Common Customs Tariff. The proceedings disclosed no factor of such a kind as to affect the validity of Regulation No. 1709/74 of the Commission providing for such a tariff classification of cherries put up in a mixture of water and ethyl alcohol, as fruit suitable for immediate consumption.

Judgment of 20 March 1980

Case 118/79

Firma Gebrüder Knauf Westdeutsche Gipswerke v

Hauptzollamt Hamburg-Jonas

(Opinion delivered by Mr Advocate General Reischl on 14 February 1980)

Agriculture - Common organization of the markets - Cereals - Export levy on maize for the manufacture of starch - Export - Concept - Exportation under outward processing arrangements included

(Regulation No. 1132/74 of the Council, Art. 7 (2))

The concept of "export" within the meaning of Article 7 (2) of Regulation (EEC) No. 1132/74 on production refunds in the cereals and rice sectors must be interpreted as meaning that any levy which may be introduced in pursuance of that provision must also be imposed on the exportation of the products in question when they are exported under outward processing arrangements and later re-imported as compensating products.

NOTE

The Bundesfinanzhof /Federal Finance Court/ referred to the Court a question on the interpretation of the term "export" within the meaning of Article 7 (2) of Regulation (EEC) No. 1132/74 of the Council on production refunds in the cereals and rice sectors. That question was raised in the context of a dispute between, on the one hand, a German company which exported special maize starch to Austria under outward processing arrangements and re-imported the compensating products manufactured from that starch, and on the other hand, Hauptzollamt /Principal Customs Office/ Hamburg-Jonas, which, at the time of export, imposed the levies laid down in the Commission regulations adopted pursuant to the aforesaid provision.

In particular, the company pleaded that the spirit and the aim of Regulation No. 1132/74 did not authorize the imposition of an export levy, since the products were not disposed of on the external market, but re-imported into the Community after being processed into a different product. Whilst recognizing that the wording of the provisions in question favours the opinion of the customs authorities, the Bundesfinanzhof shared the company's doubts and pointed out that it was not sufficient to establish that the term "export", on a purely literal interpretation, includes cases in which goods leave the geographical territory of the Community under outward processing arrangements.

In order to answer the question the Court considered whether such cases are covered by the intention of the Community legislature, which is, according to the preamble to the regulation, to avoid disturbances on the markets in non-member countries. The essential aim of Regulation No. 1132/74 is in fact to grant production refunds for inter alia maize intended for the manufacture of starch, so as to maintain competitive prices for that product in relation to the prices of substitute products. As maize prices on the world market are normally below prices in the Community, the export of maize starch benefiting from those refunds does not disturb the markets in non-member countries, except in the event of an appreciable and persistent increase in prices on those markets. In that event, Article 7 (2) of the regulation provides for the introduction of an export levy to compensate for the difference between prices on the world market and supply prices within the Community. In view of the absence of a Community system of supervision to ensure that the products exported under outward processing arrangements are re-imported or that levies are imposed retroactively, the very presence, on the markets of non-member countries, of Community goods which may be disposed of on those markets at a price below the market price, may cause disturbances.

Consequently, the Court ruled that the concept of exports within the meaning of Article 7 (2) of Regulation No. 1132/74 of the Council of 29 April 1974 on production refunds in the cereals and rice sectors must be interpreted as meaning that a levy introduced under that provision must also be charged on the export of the products in question when they are exported under outward processing arrangements and subsequently re-imported as compensating products.

Judgment of 27 March 1980

Case 61/79

Amministrazione delle Finanze dello Stato v Denkavit Italiana S.r.l.

(Opinion delivered by Mr Advocate General Reischl on 9 January 1980)

1. Free movement of goods - Customs duties - Charges having an equivalent effect - Prohibition - Direct effect - Consequences

   (EEC Treaty, Art. 13 (2))

2. References for a preliminary ruling - Intepretation - Effects in time of interpretative judgments - Retroactive effect - Limits - Legal certainty

   (EEC Treaty, Art. 177)

3. Community law - Direct effect - Individual rights - Protection by national courts - Principle of co-operation

   (EEC Treaty, Art. 5)

4. Community law - Direct effect - National charges incompatible with Community law - Conditions for recovery - Application of national law - Conditions - Taking into account possible passing on of charge - Permissibility

5. Aids granted by States - Concept - Repayment of charges unduly levied - Exclusion

   (EEC Treaty, Art. 92 (1))

1. Article 13 (2) of the EEC Treaty comprises a clear and precise prohibition, as from the end of the transitional period at the latest, in other words as from 1 January 1970, and for all charges having an effect equivalent to customs duties, on the collecting of the said charges, which prohibition lends itself, by its very nature, to producing direct effects in the legal relations between Member States and their subjects.

   These effects imply that, from the end of the transitional period, applications directed against national charges having an effect equivalent to customs duties or claims for repayment of such charges may, according to the circumstances, be brought before the authorities and courts of the Member States, even in respect of the period before that classification of those charges follows from an interpretation given by the Court of Justice under Article 177 of the Treaty.

2. The interpretation which, in the exercise of the jurisdiction conferred upon it by Article 177, the Court of Justice gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied.

   It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order and in taking account of the serious effects which its judgment might have, as regards the past, on legal relationships established in good faith, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships.

3. Applying the principle of co-operation laid down in Article 5 of the EEC Treaty, it is the courts of the Member States which are entrusted with ensuring the legal protection which subjects derive from the direct effect of the provisions of Community law.

4. In the absence of Community rules concerning the contesting or the recovery of national charges which have been unlawfully demanded or wrongfully levied, it is for the domestic legal system of each Member State to lay down the conditions in which taxpayers may contest that taxation or claim repayment thereof, provided that those conditions are no less favourable than the conditions relating to similar applications of a domestic nature and that they do not make it impossible in practice to exercise the rights conferred by the Community legal order.

   However, Community law does not require an order for the recovery of charges improperly levied to be granted in conditions such as would involve an unjustified enrichment of those entitled. There is therefore nothing, from the point of view of Community law, to prevent national courts from taking account in accordance with their national law of the fact that it has been possible for charges unduly levied to be incorporated in the prices of the undertaking liable for the charge and to be passed on to the purchasers.

5. The duty of the authorities of a Member State to repay to taxpayers who apply for such repayment, in accordance with national law, charges or dues which were not payable because they were incompatible with Community law does not constitute an aid within the meaning of Article 92 of the EEC Treaty.

NOTE

The Tribunale Civile e Penale [Civil and Criminal Court], Milan, submitted to the Court two questions on the interpretation of Articles 13 (2) and 92 of the EEC Treaty in relation to the right of taxpayers to obtain repayment of national charges which they had previously paid and which were incompatible with Community law.

Those questions are worded as follows:

(A) Is the repayment of sums levied by way of customs charges (in the case in point, public health inspection charges) prior to their classification by the Community institutions as charges having an effect equivalent to customs duties, the burden of which has already been passed on in turn to the purchasers of the imported products, compatible with the Community rules, and in particular with the basic intention of Articles 13 (2) and 92 of the EEC Treaty?

(B) Are the Community rules and in particular Articles 13 (2) and 92 of the EEC Treaty opposed to the creation, by the prohibition and abolition of charges having an effect equivalent to customs duties, of a right in favour of individuals to request repayment of sums paid but not owed by them to the State, which for its part the State has illegally levied by way of a charge having equivalent effect, following the abolition of such charges by operation of Community law but prior to their classification by the Community institutions as charges having an effect equivalent to customs duties?

The questions were put in the course of proceedings commenced in 1978 between the Italian company, Denkavit, and the Italian Finance Administration concerning a sum of Lit 2 783 140 which that company had paid between 1971 and 1974 by way of public health inspection charges. They are directed to establishing the effect of Articles 13 (2) and 92 of the Treaty on the right of the citizen to claim repayment of national charges and on the correlative duty on the Member State to make repayment where there are satisfied either or both of the two conditions set forth by the national court, namely: (a) where, after the expiry of the transitional period, it is established that those national charges are in the nature of charges having an effect equivalent to customs duties on imports, and consequently that they are incompatible with the prohibition in Article 13 (2), only subsequent to an interpretation given by the Court of Justice under Article 177 of the Treaty; (b) where the trader who paid the said charges has passed the burden on to the purchasers of the imported products.

Article 13 (2)

According to the well-settled case-law of the Court, Article 13 (2) imposes, from the end of the transitional period at the latest, as regards all charges having an effect equivalent to customs duties, a clear and unconditional prohibition on the levying of such charges, with the result that that provision, by its very nature, is aptly designed to produce direct effects on the legal relationship between the Member States and their citizens. That interpretation clarifies and defines the meaning and the scope of the rule in Article 13 (2) as it must be or ought to have been understood and applied from the time of its coming into force. The rule as thus interpreted must be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation.

It is only exceptionally that the Court of Justice may, by applying the general principle of legal certainty inherent in the Community legal order, take account of the serious disturbance which its judgment may involve, as regards the past, for legal relationships established in good faith and be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships. The conditions necessary for such restrictions are not satisfied, however, where the dispute before the national court arises from the prohibition on the levying of national charges having an effect equivalent to customs duties on imports, since the general scope of that prohibition and its absolute nature were recognized by the Court of Justice as early as 1962, that is to say, before the end of the transitional period, in its judgment of 14 December 1962 (Joined Cases 2 and 3/62 Commission v Grand Duchy of Luxembourg and Kingdom of Belgium).

It is important to note, however, that, where the result of a rule of Community law is to prohibit the levying of national charges and dues, the safeguarding of the rights which the direct effect of such prohibition confers on individuals does not necessarily demand a uniform rule, common to all the Member States, regarding the formal and substantive conditions to the observation of which the disputing or the recovery of those charges is subject. In the absence of a system of Community rules, it is for the internal legal order of each Member State to designate the courts having

jurisdiction and to determine the procedural conditions governing judicial proceedings intended to ensure the protection of rights which individuals derive from the direct effect of Community law, it being understood that those conditions may not be less favourable than those relating to similar actions of a domestic nature and that in no case should they be so adapted as to make impossible in practice the exercise of the rights which the national courts are obliged to protect.

It should be stated in that regard that the protection of those rights guaranteed under the Community legal order does not require the making of a refund of charges wrongly levied in circumstances which would involve an unjustified enrichment of the interested party. From the point of view of Community law therefore, nothing prevents national courts from taking account, in accordance with their national law, of the fact that charges wrongly levied were able to be incorporated in the prices charged by the undertakings liable to the charge and passed on to purchasers.

Article 92

In referring in its questions to Article 92 of the Treaty, the national court asks, in essence, whether recovery by traders of wrongly levied national charges may not require to be regarded as an aid within the meaning of Article 92 of the Treaty and therefore be incompatible with Community law.

Article 92 concerns measures taken by the Member States whereby the latter, with a view to pursuing their own economic and social objectives, by unilateral and independent decisions place resources at the disposal of undertakings or other legal entities or confer advantages on them which are designed to assist the attainment of the social and economic objectives sought. It does not apply to an obligation to pay or to make restitution of monies which is grounded in the fact that those monies were not due by the person who has paid them. It follows that a national fiscal system which allows a taxpayer to dispute or to claim reimbursement of a tax does not constitute an aid within the meaning of Article 92 of the Treaty.

The answers which the Court gave to the questions from the Tribunale Civile e Penale, Milan, are worded as follows:

1. (a) The direct effect of Article 13 (2) of the EEC Treaty implies that, from the end of the transitional period, applications directed against national charges having an effect equivalent to customs duties or claims for repayment of such charges may, according to the circumstances, be brought before courts and authorities of the Member States, even in respect of the period before that classification of those charges was clarified by an interpretation given by the Court of Justice within the context of Article 177 of the Treaty.

(b) It is for the legal order of each Member State to lay down the conditions under which taxpayers may contest those charges or claim reimbursement thereof, provided that those conditions are no less favourable than the conditions relating to similar applications of a domestic nature and that they do not make it impossible in practice to exercise the rights conferred by the Community legal order.

(c) There is nothing under Community law to prevent the national courts from taking into account, in accordance with their national law, the fact that charges wrongfully levied may have been incorporated into the prices of the undertaking from which the charge is due and passed on to purchasers.

2. The obligation on the authorities of a Member State to repay to taxpayers who claim such repayment, in accordance with national law, charges or dues which were not payable because they were incompatible with Community law does not constitute an aid within the meaning of Article 92 of the EEC Treaty.

Judgment of 27 March 1980

Joined Cases 66, 127 and 128/79

Amministrazione delle Finanze v S.r.l. Meridionale Industria Salumi, Fratelli Vasanelli and Fratelli Ultrocchi

(Opinion delivered by Mr Advocate General Reischl on 9 January 1980)

1. References for a preliminary ruling - Interpretation - Effects in time of interpretative judgments - Retroactive effect - Limits - Legal certainty

   (EEC Treaty, Art. 177)

2. European Communities - Own resources - System - Principles - Equality of treatment

   (EEC Treaty, Art. 201; Council Decision of 21 April 1970)

3. European Communities - Own resources - Agricultural levies - Detailed rules for an disputes regarding collection - Application of national law - Conditions and limits

   (Council Decision of 21 April 1970, Art. 6)

1. The interpretation which, in the exercise of the jurisdiction conferred on it by Article 177 of the EEC Treaty, the Court gives to a rule of Community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force. It follows that the rule as thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied.

   It is only exceptionally that the Court may, in application of the general principle of legal certainty inherent in the Community legal order and in taking account of the serious effects which its judgment might have, as regards the past, on legal relationships established in good faith, be moved to restrict for any person concerned the opportunity of relying upon the provision as thus interpreted with a view to calling in question those legal relationships.

2. The general arrangements regarding the financial provisions of the Treaty are governed by the general principle of equality which requires that comparable situations may not be treated differently unless difference of treatment is objectively justified.

It follows that the revenues which are contributed to the Community budget and the financial advantages charged thereto must be so arranged and applied as to constitute a uniform burden or to confer uniform benefits on all persons who meet the conditions specified in the Community provisions on such burdens or advantages.

3. In so far as no provisions of Community law are relevant, it is for the national legal system of each Member State to lay down the detailed rules and conditions for the collection of Community revenues in general and agricultural levies in particular and to determine the authorities responsible for collection and the courts having jurisdiction to decide disputes to which that collection may give rise but such procedures and conditions may not make the system for collecting Community charges and dues less effective than that for collecting national charges and dues of the same kind.

A special system of national rules relating to the collection of Community charges and dues which restricts the powers granted to the national authority to ensure the collection of those charges as compared with the powers granted to the same authority in regard to national charges or dues of the same kind is therefore not in accordance with Community law.

NOTE

The Corte Suprema di Cassazione /Italian Supreme Court of Cassation/ submitted the following questions, the wording of which was identical in all of the three orders making the references:

(a) For the purpose of Article 177 of the EEC Treaty where, in respect of imports and with regard to relationships as yet undefined according to their own national law, the national authorities of a State have charged amounts which they should not have charged or, on the other hand, not levied amounts which they should have levied pursuant to the Community provisions applicable in that sector according to the interpretation subsequently placed upon them by judgment of the Court of Justice, does that judgment also apply to such relationships within the domestic legal system of the Member State or not, or does it apply subject to specific limits and on specified conditions: if the latter is the case, what are those limits and conditions ?

(b) Also for the purposes of Article 177 of the Treaty, is it prohibited or required by Community law or irrelevant in relation thereto that in respect of such relationships those concerned are empowered under national law to institute proceedings to claim or recover, on the basis of the interpretation provided by the judgment of the Court of Justice, amounts due but not collected or amounts paid in error?

These questions are put in the context of disputes between traders and the competent Italian authorities which are claiming from them, in respect of imports of beef and veal carried out in 1968, additional agricultural levies on imports, payable under regulations on the progressive establishment of a common organization of the market in beef and veal.

At the time, the amount of these levies had been calculated by the Italian customs authorities by applying the method whereby, in the event of a reduction in customs duty after the import declaration but before the goods were released for consumption, the more favourable rate was to be applied should the importer so request.

By judgment of 15 June 1976 in the Frecassetti case the Court of Justice declared, however, that that method could not be applied to agricultural levies on imports from third countries, which had to be uniformly calculated in accordance with the rate of levy on the date on which the import declaration for the goods is accepted by the customs authorities. From that it followed that the traders concerned would be liable to pay levies of a higher amount. In essence, the first question seeks to establish, in particular in regard to charges and dues payable under Community law, whether, where the interpretation of a provision of Community law by the Court of Justice under Article 177 makes it apparent that the application of that provision by national authorities was

not compatible with the provision in question, whose scope was defined by the Court, the provision thus interpreted must be applied by national courts, duly called upon to decide disputes to which that application gives rise, even to legal relationships arising and established before the date of the judgment ruling on the request for interpretation.

The Court of Justice defines the interpretation of a rule of Community law. It is a matter of explaining and defining the meaning and scope of such rules as they should have been applied from the date of their coming into force. It follows therefrom that the rule thus interpreted must be applied even to legal relationships established before the judgment ruling on the request for interpretation.

The temporal limitation placed by the Court of Justice in the judgment of 8 April 1976 in the Defrenne case is wholly exceptional and is an application of the general principle of legal certainty which is inherent in the Community legal order.

The Court answered the question by ruling that the interpretation given, in the exercise of the jurisdiction conferred on it by Article 177 of the EEC Treaty, by the Court of Justice to a rule of Community law clarifies and defines, where necessary, the meaning and scope of that rule as it must be or should have been understood and applied from the date of its coming into force. It follows therefrom that the rule thus interpreted may, and must, be applied by the courts even to legal relationships arising and established before the judgment ruling on the request for interpretation, provided that in other respects the conditions enabling an action relating to the application of that rule to be brought before the courts having jurisdiction are satisfied. It is only exceptionally that the Court may be moved, in the very judgment ruling on the request for interpretation, to restrict for any person concerned the opportunity of relying upon the provision thus interpreted with a view to calling in question once more legal relationships arising and established prior thereto.

The second question asks, in essence, whether the exercise of rights which citizens, or as the case may be, public authorities, derive from the direct effect of a provision of Community law interpreted in the circumstances and with the results described above may or may not be adapted, and possibly limited, by national law.

That question has in view, in particular, the power of the administration to take legal proceedings for the recovery of Community charges or dues which ought to have been levied.

The Court answered that question by ruling that special national rules relating to the collection of Community charges and dues which restrict the powers given to the national authority to ensure the collection of those charges as compared with the powers given to the same authority in respect of national charges or dues of the same kind are not in accordance with Community law.

Judgment of 27 March 1980

Case 129/79

Macarthys Ltd. v Wendy Smith

(Opinion delivered by Mr Advocate General Capotorti on 28 January 1980)

1. Social policy - Male and female workers - Pay - Equality - Principle - Scope - Application not confined to the contemporaneous performance of "equal work" - Difference in pay due to factors unconnected with any discrimination on grounds of sex - Matter for the national court or tribunal to decide

   (EEC Treaty, Art. 119)

2. Social policy - Male and female workers - Pay - Equality - Criteria of assessment - Work actually performed

   (EEC Treaty, Art. 119)

1. The first paragraph of Article 119 of the EEC Treaty applies directly, and without the need for more detailed implementing measures on the part of the Community or the Member States, to all forms of direct and overt discrimination which may be identified solely with the aid of the criteria of equal work and equal pay referred to by the article in question. Cases where men and women receive unequal pay for equal work carried out in the same establishment or service are among the forms of discrimination which may be thus judicially identified.

   In such a situation the decisive test lies in establishing whether there is a difference in treatment between a man and a woman performing "equal work" within the meaning of Article 119. That concept is entirely qualitative in character in that it is exclusively concerned with the nature of the services in question. Its scope may not therefore be restricted by its being confined to situations in which men and women are contemporaneously doing equal work for the same employer.

   It cannot, however, be ruled out that a difference in pay between two workers occupying the same post but at different periods in time may be explained by the operation of factors which are unnconnected with any discrimination on grounds of sex. That is a question of fact which it is for the court or tribunal to decide.

2. In cases of actual discrimination falling within the scope of the direct application of Article 119 comparisons are confined to parallels which may be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service.

The principle of equal pay enshrined in Article 119 therefore applies to the case where it is established that, having regard to the nature of her services, a woman has received less pay than a man who was employed prior to the woman's period of employment and who did equal work for the employer.

NOTE

Questions have been referred to the Court of Justice on the interpretation of Article 119 of the EEC Treaty in relation to the application of the principle of equal pay for men and women.

The facts are as follows: Mrs Wendy Smith was employed as from 1 March 1976 by Macarthys Ltd., wholesale dealers in pharmaceutical products, as a warehouse manageress at a weekly salary of £50. She complains of discrimination in pay because her predecessor, a man, whose post she took up after an interval of four months, received a salary of £60 per week. Mrs Smith brought proceedings before the Industrial Tribunal on the basis of the Equal Pay Act 1970 and was successful in her case.

Her employer, Macarthys Ltd., appealed and contended that the Equal Pay Act makes it impossible for a woman to compare her situation with that of a man formerly in the employment of the same employer. In its opinion, that interpretation of the statute would not be inconsistent with the principle of equal pay for men and women laid down in Article 119 of the EEC Treaty. Mrs Smith, for her part, contended that the principle of equal pay for equal work is not confined to situations in which men and women are contemporaneously doing equal work for their employer.

This dispute led the Court of Appeal to frame a series of questions on the interpretation of Article 119 of the EEC Treaty. The first question asks whether the application of Article 119 of the Treaty is confined to situations in which men and women are contemporaneously doing equal work for their employer.

According to the first paragraph of Article 119 the Member States are obliged to ensure and maintain "the application of the principle that men and women should receive equal pay for equal work.

As the Court indicated in the judgment of 8 April 1976 in the Defrenne case, that provision applies directly, and without the need for more detailed implementing measures on the part of the Community and the Member States, to all forms of direct and overt discrimination which may be identified solely with the aid of the criteria of equal work and equal pay referred to by the article in question.

The decisive test lies in establishing whether there is a difference in treatment between a man and a woman performing "equal work" within the meaning of Article 119. The scope of that concept, which is entirely qualitative in character in that it is exclusively concerned with the nature of the services in question, may not be restricted by the introduction of a requirement of contemporaneity.

The Court answered that first question by ruling that "the principle that men and women should receive equal pay for equal work, enshrined in Article 119 of the EEC Treaty, is not confined to situations in which men and women are contemporaneously doing equal work for the same employer".

The second question put by the Court of Appeal concerns the framework within which the existence of possible discrimination in pay may be established. This question is intended to enable the Court to rule upon a submission developed by Mrs Smith to the effect that a woman may claim not only the salary received by a man who previously did the same work for her employer but also, more generally, the salary to which she would be entitled were she a man even in the absence of any man who was currently performing, or had previously performed, similar work. Mrs Smith defined this term of comparison by reference to the concept of what she described as "a hypothetical male worker".

The Court considered that, in cases of actual discrimination falling within the scope of the direct application of Article 119, comparisons are confined to parallels which may be drawn on the basis of concrete appraisals of the work actually performed by employees of different sex within the same establishment or service and it consequently ruled that the principle of equal pay enshrined in Article 119 applies to the case where it is established that, having regard to the nature of her services, a woman has received less pay than a man who was employed prior to the woman's period of employment and who did equal work for the employer.

Judgment of 27 March 1980

Case 133/79

Sucrimex S.A. and Westzucker GmbH v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 6 March 1980)

1. Application for annulment - Acts capable of forming basis for action - Act not producing any legal effect - Exclusion

(EEC Treaty, Art. 173, second paragraph)

2. Agriculture - Common organization of market - Export refunds - Interpretation by Commission of Community provisions - Not binding on national authorities

3. Application for damages - Application against an expression of opinion by the Commission on the occasion of national measures of execution - Inadmissibility

(EEC Treaty, Arts. 178 and 215, second paragraph)

1. A written expression of opinion from a Community institution cannot constitute a decision of such a nature as to form the basis of an action for annulment under the second paragraph of Article 173 of the EEC Treaty since it is neither capable of producing nor intended to produce any legal effect.

2. The application of Community provisions on export refunds is a matter for the national bodies appointed for that purpose. The Commission has no power to take decisions on their interpretation but may only express its opinion, which is not binding upon the national authorities.

3. An action for compensation under Article 178 and the second paragraph of Article 215 of the EEC Treaty, which is based on conduct by the Commission forming part of the internal co-operation between the Commission and the national bodies responsible for applying Community rules in this field is in principle inadmissible; as a general rule such co-operation cannot make the Community liable to individuals.

That is in any case the position where it is not the Commission's expression of opinion but solely the national authority's decision ratifying it which might be regarded as causing damage to the applicant. Indeed, a review of administrative acts of Member States in applying Community law is primarily a matter for national courts, without prejudice to their power to refer questions for a preliminary ruling to the Court under Article 177 of the EEC Treaty. In these circumstances the remedy to be envisaged in such a case is an action before the national courts.

NOTE

A French company, Sucrimex S.A., and a German company, Westzucker GmbH, requested the Court under the second paragraph of Article 173 of the EEC Treaty to annul - in the applicant's words - "the Commission decision addressed to the F.I.R.S. /Fund for Intervention in and Stabilization of the Market in Sugar/ on 3 July 1979, refusing to pay Sucrimex the refund calculated on the basis of the rate fixed by tender ..." and, in the alternative, on the basis of Article 178 and the second paragraph of Article 215, to order the Commission to pay the sum of FF 921 339.04 by way of compensation for the loss suffered by the applicants.

The action has its origin in the assignment by Westzucker to Sucrimex of the rights attaching to export licences issued by the Bundesanstalt für landwirtschaftliche Marktordnung for 2 600 tonnes of sugar with advance fixing by tender of the export refund. The licences having been mislaid, the Bundesanstalt issued new licences and the 2 600 tonnes of sugar which were the subject of the licences were exported under cover thereof.

Subsequent to that exportation, Sucrimex sought from the F.I.R.S. payment of the refunds at the rate fixed in advance. The problem raised by the lost licences was thereafter discussed with a representative of the Legal Department of the Commission, regard being had to the rule laid down by Article 17 (7) of Regulation No. 193/75 of the Commission laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products which provides: "where a licence or certificate or extract therefrom is lost, issuing agencies may, exceptionally, supply the party concerned with a duplicate thereof, drawn up and endorsed in the same way as the original document and clearly marked with the word "Duplicate" on each copy.

Duplicates may not be submitted for purposes of carrying out import or export operations".

Following upon those discussions, the F.I.R.S. received on 3 July 1979 a Telex signed by the Director General for Agriculture at the Commission, who therein reached the conclusion that there was no valid reason for proceeding to make payment of a refund calculated on the basis of the rate fixed by tender mentioned in those documents since, as the export of the sugar was to be regarded as having been carried out without licences, the exporter could only claim the normal refund applicable on the day of completion of the customs export formalities. Having regard to the view expressed by the Commission's department in that Telex, the F.I.R.S. subsequently refused Sucrimex's claim. It consequently agreed to pay only the refund applicable on the dates when the customs export formalities were completed, which was an amount FF 921 339.04 less than that claimed by Sucrimex. Thereupon Sucrimex and Westzucker brought the present action.

Under Article 91 (1) of the Rules of Procedure the Commission objected to the admissibility of the action.

In regard to the application for annulment, the Commission contended that its Telex of 3 July 1979 amounted only to an informative letter, addressed to the F.I.R.S., which confined itself to drawing attention to the rules applicable to the case in question and was therefore not capable of producing any legal effect.

In order to establish whether the Telex constitutes a decision of such a nature as to be the subject-matter of proceedings by the applicants under the second paragraph of Article 173 of the Treaty, it is appropriate to examine whether it is capable of producing legal effects. The application of the Community provisions on export refunds is a matter for the national bodies appointed for that purpose and the Commission has no powers to take decisions on their interpretation but has only the opportunity of expressing its opinion, which does not bind the national authorities. From that it follows that, in the present case, there is no act of the Commission which is capable of being the subject-matter of an action for annulment and that the action must be dismissed as inadmissible in so far as it is based on the second paragraph of Article 173.

So far as concerns the claim for compensation of an amount equivalent to the total of the refunds not paid, which is presented as an alternative claim and is therefore closely connected with the application for annulment, it is sufficient to recall the relationship, described above, between the Commission and the F.I.R.S. The Telex falls within the framework of internal co-operation between the Commission and the national bodies responsible for applying the Community rules in this field, which co-operation, as a general rule, does not involve any liability on the part of the Community towards individuals. The review of administrative action taken by Member States in applying Community law is a matter for the national courts in the first instance, without prejudice to the opportunity open to those courts to refer questions for a preliminary ruling under Article 177 of the Treaty.

As the application must therefore also be dismissed as inadmissible in so far as it is based on Article 178 and the second paragraph of Article 215, the Court declared and adjudged that the application is dismissed as inadmissible and the applicants were ordered to pay the costs.

ANALYTICAL TABLE

GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

A. INFORMATION ON CURRENT CASES (for general use)

1. Calendar of the sittings of the Court

The calendar of public sittings is drawn up each week. It may be altered and is therefore for information only.

This calendar may be obtained free of charge on request from the Court Registry.

2. Judgments or orders of the Court and opinions of Advocates General

Orders for offset copies, provided some are still available, may be made to the Internal Services Branch of the Court of Justice of the European Communities, Boîte Postale 1406, Luxembourg, on payment of a fixed charge of Bfr 100 for each document. Copies may no longer be available once the issue of the European Court Reports containing the required judgment or opinion of an Advocate General has been published.

Anyone showing he is already a subscriber to the Reports of Cases Before the Court may pay a subscription to receive offset copies in one or more of the Community languages.

The annual subscription will be the same as that for European Court Reports, namely Bfr 2 000 for each language.

Anyone who wishes to have a complete set of the Court's cases is invited to become a regular subscriber to the Reports of Cases Before the Court (see below).

B. TECHNICAL INFORMATION AND DOCUMENTATION

I. Official publications

1. Reports of Cases Before the Court

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

The volumes for 1954 to 1979 are published in Dutch, English, French, German and Italian.

The Danish edition of the volumes for 1954 to 1972 comprises a selection of judgments, opinions and summaries from the most important cases.

All judgments, opinions and summaries for the period 1973 to 1979 are published in their entirety in Danish.

The Reports of Cases Before the Court are on sale at the following addresses:

BELGIUM	Ets. Emile Bruylant, 67 Rue de la Régence, 1000 Bruxelles
DENMARK	J.H. Schultz - Boghandel, Møntergade 19, 1116 København K
FEDERAL REPUBLIC OF GERMANY	Carl Heymann's Verlag, 18-32 Gereonstrasse, 5000 Köln 1
FRANCE	Editions A. Pedone, 13 Rue Soufflot, 75005 Paris
IRELAND	Stationery Office, Beggar's Bush, Dublin 4
ITALY	CEDAM - Casa Editrice Dott. A. Milani, 5 Via Jappelli, 35100 Padova (M 64194)
LUXEMBOURG	Office for Official Publications of the European Communities, Boîte Postale 1003, Luxembourg
NETHERLANDS	N.V. Martinus Nijhoff, 9 Lange Voorhout, 's-Gravenhage
UNITED KINGDOM	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton, Hants, GU 34 2PJ
OTHER COUNTRIES	Office for Official Publications of the European Communities, Boîte Postale 1003, Luxembourg

2. Selected Instruments Relating to the Organization, Jurisdiction and Procedure of the Court

Orders, indicating the language required, should be addressed to the Office for Official Publications of the European Communities, Boîte Postale 1003, Luxembourg.

C. LEGAL INFORMATION AND DOCUMENTATION

I. Publications by the Information Office of the Court of Justice of the European Communities

Applications to subscribe to the following four publications may be sent to the Information Office, specifying the language required. They are supplied free of charge (Boîte Postale 1406, Luxembourg, Grand Duchy of Luxembourg).

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

Weekly information sheet on the legal proceedings of the Court containing a short summary of judgments delivered and a brief description of the opinions, the oral procedure and the cases brought during the previous week.

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

Quarterly bulletin containing the summaries and a brief résumé of the judgments delivered by the Court of Justice of the European Communities.

3. Annual Synopsis of the work of the Court

Annual publication giving a synopsis of the work of the Court of Justice of the European Communities in the area of case-law as well as of other activities (study courses for judges, visits, study groups, etc.). This publication contains much statistical information.

4. General information brochure on the Court of Justice of the European Communities

This brochure provides information on the organization, jurisdiction and composition of the Court of Justice of the European Communities.

The above four publications are published in each official language of the Communities. The general information brochure is also available in Irish and Spanish.

II. Publications by the Documentation Branch of the Court of Justice

1. Synopsis of Case-Law on the EEC Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (the "Brussels Convention")

This publication, three parts of which have now appeared, is published by the Documentation Branch of the Court. It contains summaries of decisions by national courts on the Brussels Convention and summaries of judgments delivered by the Court of Justice in interpretation of the Convention. In future the Synopsis will appear in a new form. In fact it will form the D Series of the future Source Index of Community case-law to be published by the Court.

Orders for the first three issues of the Synopsis should be addressed to the Documentation Branch of the Court of Justice, Boîte Postale 1406, Luxembourg.

2. Répértoire de la Jurisprudence Européenne - Europäische Rechtsprechung (published by H.J. Eversen and H. Sperl), has been discontinued.

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

The German and French versions are on sale at: Carl Heymann's Verlag, 18-32 Gereonstrasse, D-5000 Köln 1 (Federal Republic of Germany).

Compendium of Case-law relating to the European Communities (published by H.J. Eversen, H. Sperl and J. Usher)

In addition to the complete collection in French and German (1954 to 1976) an English version is now available for 1973 to 1976. The volume of the English series are on sale at: Elsevier - North Holland - Excerpta Medica, P.O. Box 211, Amsterdam (Netherlands).

3. Bibliographical Bulletin of Community case-law

This Bulletin is the continuation of the Bibliography of European Case-law of which Supplement No. 6 appeared in 1976. The layout of the Bulletin is the same as that of the Bibliography. Footnotes therefore refer to the Bibliography.

It is on sale at the address shown at B 1 above (Reports of Cases Before the Court).

D. 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 Council, 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 are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Council, the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State, or through university teachers who have a right of audience under Article 36 of the Rules of Procedure.

After the Advocate General has delivered his opinion, the judgment is given by the Court of Justice and 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 (P.O. Box 1406, Luxembourg), by registered post.

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

The application must contain:

The name and permanent residence of the applicant;
The name of the party against whom the application is made;
The subject-matter of the dispute and the grounds on which the application is based;
The form of order sought by the applicant;
The nature of any evidence offered;
An address for service in the place where the Court of Justice has its seat, with an indication of the name of the 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 the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

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 hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

E. ORGANIZATION OF PUBLIC SITTINGS OF THE COURT

As a general rule sessions of the Court are held on Tuesdays, Wednesdays and Thursdays except during the Court's vacations - that is, from 22 December to 8 January, the week preceding and two weeks following Easter, and from 15 July to 15 September. There are three separate weeks during which the Court also does not sit : the week commencing on Carnival Monday, the week following Whitsun and the first week in November.

The full list of public holidays in Luxembourg set out below should also be noted. Visitors may attend public hearings of the Court or of the Chambers so far as the seating capacity will permit. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. Documentation will be handed out half an hour before the public sitting to visiting groups who have notified the Court of their intention to attend the sitting at least one month in advance.

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
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Robert Schuman Memorial Day	9 May
Luxembourg National Day	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

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

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