Information on the Court of Justice of the European Communities

1978 – II

INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. II

1978

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C O N T E N T S

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1977 to 1978

(order of precedence)

H. KUTSCHER, President

M. SØRENSEN, President of Second Chamber

G. REISCHL, First Advocate General

G. BOSCO, President of First Chamber

A. M. DONNER, Judge

J. MERTENS DE WILMARS, Judge

P. PESCATORE, Judge

H. MAYRAS, Advocate General

J.-P. WARNER, Advocate General

LORD MACKENZIE STUART, Judge

A. O'KEEFFE, Judge

F. CAPOTORTI, Advocate General

A. TOUFFAIT, Judge

A. VAN HOUTTE, Registrar

COMPOSITION OF CHAMBERS

First Chamber

President: G. BOSCO

Judges: A. M. DONNER
J. MERTENS DE WILMARS
A. O'KEEFFE

Advocates General: H. MAYRAS
J.-P. WARNER

Second Chamber

President: M. SØRENSEN

Judges: P. PESCATORE
LORD MACKENZIE STUART
A. TOUFFAIT

Advocates General: G. REISCHL
F. CAPOTORTI

J U D G M E N T S

of the

COURT OF JUSTICE

of the

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 April 1978

Commission of the European Communities v Kingdom of the Netherlands

Case 95/77

Member States – Failure to apply a directive – Effect on the functioning of the common market – Absence thereof – Justification for failure to fulfil obligations under a directive – Not permissible
(EEC Treaty, Art. 169)

A Member State may not invoke, for the purpose of justifying a failure to fulfil obligations under a harmonizing directive, the argument that the failure to apply that directive has had no adverse effect on the functioning of the common market.

NOTE The Commission lodged an application to the Court under Article 169 of the EEC Treaty for a declaration that the Kingdom of the Netherlands, by not adopting within the prescribed period of 18 months the laws, regulations and administrative provisions necessary to comply with the provisions of Council Directive No. 71/347/EEC of 12 October 1971 on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain, has failed to fulfil an obligation under the Treaty.

Directive No. 71/347, which is one of a series of directives relating to measuring instruments laid down expressly by the General Programme for the elimination of technical barriers to trade which result from disparities between the provisions laid down by law, regulation or administrative action in Member States, aims more precisely to harmonize the legislation of the various Member States relating to the standard mass per storage volume of grain, in particular by giving a uniform definition of the EEC standard mass per storage volume. The exclusive and compulsory use of the EEC standard mass per storage volume will in fact have the effect of preventing any disputes in intra-Community trade about the method of measurement of grain.

The Netherlands did not deny the failures to fulfil obligations under the Treaty complained of, but put forward the argument that the failure to apply that directive had had no harmful effect on the functioning of the Common Market. The Court stated that that argument could not be accepted, in view of the objective pursued by the directive.

The Court therefore held that, by not bringing into force within the prescribed period the provisions necessary to comply with Council Directive No. 71/347/EEC of 12 October 1973 on the approximation of the laws of the Member States relating to the measuring of the standard mass per storage volume of grain, the Kingdom of the Netherlands has failed to fulfil an obligation under the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 April 1978

Commission of the European Communities v Italian Republic

Case 100/77

Member States - Failure to fulfil an obligation under the Treaty - Justification - Not permissible
(EEC Treaty, Art. 169)

A Member State cannot rely upon domestic difficulties or provisions of its national legal system, even its constitutional system, for the purpose of justifying a failure to comply with obligations and periods resulting from Community directives.

NOTE From 1971 to 1974 the Council and the Commission adopted ten directives on the approximation of the laws of the Member States in the field of measuring instruments. The Italian authorities did not adopt within the proper time the measures laid down by those directives and the prescribed periods expired between 29 January 1973 and 6 September 1975.

The Commission drew the attention of the Italian authorities to the need to adopt within the proper time the measures laid down by those directives and delivered reasoned opinions on 22 December 1974 and 4 June 1976 requesting the Italian Republic to adopt within a period of one month the measures necessary for the application of the directives in question.

On 22 January 1976, the Italian Government informed the Commission that draft laws relating to the transfer of the above-mentioned directives into Italian legislation had been brought before Parliament.

On 22 July 1976 it announced that the early end of the VIth Parliament had caused the draft laws presented to the Parliament to lapse and requested an extension of the period laid down in the reasoned opinion, giving an assurance that the problem in question would rapidly be settled. As the Commission had received no other information since that date it lodged on 28 July 1977 an application for a declaration that the Italian Government had failed to fulfil an obligation under the Treaty which resulted in a ruling by the Court that, by not bringing into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with the provisions of Council Directives Nos. 71/316/EEC, 71/317/EEC, 71/318/EEC, 71/347/EEC, 71/354/EEC, 73/360/EEC, 73/362/EEC, 74/148/EEC and those of Commission Directive No. 74/331/EEC, on the approximation of the laws of the Member States in the field of measuring instruments, the Italian Republic has failed to fulfil an obligation under the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 April 1978

Société Les Commissionnaires Réunis S.à.r.l. and

S.à.r.l. Les Fils de Henri Ramel v

Receveur des Douanes

Joined Cases 80 and 81/77

1. Customs duties - Charges having equivalent effect - Elimination - Fundamental principle - Exceptions - Express provision
(EEC Treaty, Arts. 12 to 17)

2. Agriculture - Transitional period - Expiry - Customs duties - Charges having equivalent effect - Prohibition - Derogation - Inadmissibility
(EEC Treaty, Arts. 12, 38 (2) and 39 to 46)

3. Agriculture - Common organization of the markets - Wine - Intra-Community trade - Customs duties - Charges having equivalent effect - Levying - Authorization granted to Member States - Article 31 (2) of Regulation No. 816/70 - Incompatibility with the EEC Treaty - Invalidity
(EEC Treaty, Arts. 13 (2) and 38 to 46; Regulation No. 816/70 of the Council, Art. 31 (2))

1. The elimination between Member States of customs duties and charges having equivalent effect constitutes a fundamental principle of the Common Market, applicable to all products and goods so that any exception, which moreover is to be strictly interpreted, must be clearly provided for.

2. Articles 35 to 46 of the Treaty contain no provision which either expressly or by necessary implication provides for or authorizes, after the end of the transitional period, the introduction of charges having an effect equivalent to customs duties in intra-Community trade in agricultural products.

3. Article 31 (2) of Regulation No. 817/70 in so far as it authorizes producer Member States to prescribe and levy, in intra-Community trade in the products covered by the organization of the market which that regulation sets up, charges having an effect equivalent to customs duties, is incompatible with Article 13, in particular paragraph (2) thereof, and with Articles 38 to 46 of the Treaty and is consequently invalid.

NOTE In respect of imports into France of wine from Italy between October 1975 and March 1976 the plaintiffs in the main proceedings paid to the French administration considerable sums by way of a charge on table wines and wines capable of becoming table wines introduced by Decree No. 75/846 of 11 September 1975. The decree was repealed on 31 March 1976 with effect from 1 April 1976. It had been the subject of an action brought by the Commission against France for failure to comply with its obligations but the action had been withdrawn on 21 April 1976 after the charge in question had been repealed. The plaintiffs in the main proceedings took the view that the levying of the charge was unlawful and brought proceedings against the Administration des Douanes (Customs Administration) before the Tribunal d'Instance (District Court) of Bourg-en-Bresse for repayment of the amounts wrongly paid and for damages.

The administration for its part relied on Article 31 (2) of Regulation No. 816/70 of the Council of 28 April 1970 and therefore the plaintiffs in the main proceedings raised before the Tribunal d'Instance questions concerning the interpretation and the validity of that provision in the following terms:

"(1) Does Article 31 (2) of Regulation No. 816/70 of the Council comply with the EEC Treaty, having regard to the fact that that provision authorizes measures which are contrary to the rules of the Treaty on the free movement of goods applicable after the end of the transitional period?

(2) If the foregoing question is answered in the affirmative, were the provisions of Article 31 of the said regulation still applicable on 11 September 1975?"

The Court of Justice made some general observations on the system of Regulation No. 816/70 and on the organization of the market in wine.

Regulation No. 816/70 which entered into force after the end of the transitional period introduced an organization of the market comprising a price and intervention system, controls on planting, aid for storage and distillation and, on the other hand, a system of trade with third countries including inter alia the issue of import and export licences and a safeguard clause allowing appropriate measures to be taken in order to avoid disturbances.

Under Article 31 (1) of Regulation No. 816/70 the organization also entails the prohibition on levying in the internal trade of the Community any charge having effect equivalent to a customs duty. Article 31 (2) of the regulation provides that, by way of derogation from the provisions of paragraph 1 producer Member States shall be authorized in order to avoid disturbances on their markets to take measures that may limit imports from another Member State.

1975 was marked by an exceptional influx of Italian wines, onto the French market in particular, because of the abundant harvests and the successive devaluations of the Italian lira.

On 11 September 1975 in reliance on Article 31 (2) of Regulation No. 816/70 the French Government issued a decree imposing the charge referred to above on imports of certain wines coming from Italy.

The Commission challenged the validity of that measure with Community law but withdrew its action against France for failure to comply with its obligations when, by decree of 31 March 1976, the contested decree of 11 September 1975 was repealed.

The plaintiffs in the main proceedings then brought before the national court actions for the refund of the charges which they had already paid.

The national court referred to the Court of Justice questions asking in substance whether Article 31 (2) of Regulation No. 816/70 is valid in so far as it authorizes producer Member States to introduce and impose, after the end of the transitional period and in the circumstances therein stated, charges having effect equivalent to customs duties in intra-Community trade on an agricultural product listed in Annex II to the Treaty, namely table wine.

In order to reply to this question it is necessary to interpret Article 38 (2) of the EEC Treaty whereby "save as otherwise provided in Articles 39 to 46 the rules laid down for the establishment of the Common Market shall apply to agricultural products".

In reliance on fundamental principles the Court of Justice recalled that under Article 2 of the EEC Treaty it is the task of the Community to promote throughout the Community development of economic activities, a raising of the standard of living and closer relations between the States belonging to it by establishing a common market and progressively approximating the economic policies of the Member States.

The elimination as between Member States of customs duties and charges having equivalent effect is a fundamental principle of the Common Market which extends to agriculture and trade in agricultural products.

For the exception laid down by Article 38 (2) to be applicable to the introduction of charges having an effect equivalent to customs duties in intra-Community trade after the end of the transitional period a provision must be found in Articles 39 to 46 which formally or by implication provides for or authorizes the introduction of such charges. Those articles however contain no such provision and, on the contrary, Article 40 for example prohibits any discrimination between producers and consumers within the Community.

It is clear from all these provisions and their relationship one to another that the wide powers, in particular the sectorial and regional powers conferred on the Community institutions for the management of the common agricultural policy, must, at any event as from the end of the transitional period, be used with due regard to the unity of the market and to the exclusion of any measure hindering the removal of customs duties and quantitative restrictions or charges or measures having equivalent effect between Member States.

In reply to the questions referred to it by the Tribunal d'Instance of Bourg-en-Bresse the Court of Justice ruled that Article 31 (2) of Regulation No. 816/70, in so far as it authorizes producer Member States to introduce and levy in intra-Community trade in the products coming under the common organization of the market established by that regulation, charges having an effect equivalent to customs duties, is incompatible with Article 13, in particular the second paragraph thereof, Article 38 and Article 46 of the Treaty and is consequently not valid.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 April 1978

Silvio Ragazzoni v

Caisse de Compensation pour Allocations Familiales "Assubel"

Case 134/77

Social security for migrant workers - Family allowances - Pursuit of a professional or trade activity by a worker in one Member State - Residence of members of family in another Member State - Pursuit of a professional or trade activity by the spouse of the worker in the country of residence - Rights to family benefits or allowances - Community rule against overlapping benefits - Conditions for the application

(Regulation No. 1408/71 of the Council, Arts. 73 and 76)

Pursuit of a professional or trade activity in the State in whose territory the members of the family are residing is not a sufficient condition for the suspension of the entitlement conferred by Article 73 since it is necessary in addition that the family benefits should be "payable" under the legislation of that Member State.

Consequently the suspension, under Article 76 of Regulation No. 1408/71, of the entitlement to family benefits or allowances in pursuance of Article 73 of that regulation is not applicable when the father works abroad in a Member State whilst the mother is employed in the country in which the other members of the family reside and has not acquired under the legislation of the said country of residence a right to family allowances either because only the father is acknowledged to have the status of head of household or because the conditions for awarding to the mother the right to payment of the allowances have not been fulfilled.

NOTE

The plaintiff in the main proceedings, an Italian national, is an employed person living in Belgium; his wife and three children live in Italy where his wife works as an employed person.

The social insurance fund "Assubel", the defendant in the main proceedings, refused to grant Ragazzoni's application for the payment of family allowances by virtue of his employment in Belgium in reliance on Article 76 of Regulation No. 1408/71 which lays down rules of priority in cases of overlapping entitlement to family benefits or family allowances.

Mr Ragazzoni observes that by virtue of Italian law his wife has no entitlement to family allowances in Italy in respect of his infant children because the Italian legislation concerning family allowances makes no provision for the transfer of the status of head of household to a mother who works when the husband is employed abroad.

Article 76 of Regulation No. 1408/71 relied on by "Assubel" provides that "entitlement to family benefits or family allowances under Articles 73 and 74 shall be suspended if, by reason of the pursuit of the professional or trade activity, family benefits or family allowances are also payable under the legislation of the Member State in whose territory the members of the family are residing". "Assubel" concludes that this provision lays down a binding rule and must be understood as establishing a Community rule of priority, applicable whenever a professional or trade activity is carried on on the territory of the Member State where the members of the family reside.

In answer to that view the Court of Justice points out that apart from the fact that Article 76 serves solely to restrict overlapping benefits it is necessary that the benefits should be "payable" under the legislation of the Member State. It is therefore necessary that the person concerned satisfies all the conditions laid down by the internal legislation of that State in order to be able to exercise that right.

In answer to the question referred to it by the Tribunal du Travail, Brussels, the Court of Justice ruled that the suspension, provided for in Article 76, of the right to family benefits or family allowances payable under the provisions of Article 73 of Regulation No. 1408/71 is not applicable where the father works abroad in another Member State while the mother works as an employed person in the country where the other members of the family reside and has not, under the legislation of the country of residence, acquired the right to family allowances either because the status of head of household may only be held by the father or because the conditions for the mother's right to payment of family benefits are not fulfilled.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

27 April 1978

Hellmut Stimming KG v

Commission of the European Communities

Case 90/77

1. Agriculture - Common organization of the markets - Amendment of rules - Principle of protection of legitimate expectation - Application - Conditions

2. Common Customs Tariff - Tariff heading - Amendment - Official ruling as to tariff classification - Expectations of interested parties - Taking account thereof - Obligation - Absence

1. When rules concerning agriculture are amended, protection of legitimate expectation is required inter alia where under the preceding system traders have already informed the competent authorities of their intention to carry out specific transactions over a period extending beyond the time of the introduction of the new system and have irrevocably committed themselves thereto, where appropriate by paying a deposit.

2. Official rulings as to tariff classification are issued for general purposes and are of a purely abstract nature, that is to say without any relation to specific transactions, and so do not oblige the Community authorities in any adjustments of the rules concerned which they might consider necessary to take account of any expectations which such documents might have engendered among interested parties.

NOTE On 15 February 1977 the applicant concluded a contract with the Romanian foreign trade agency "Prodexport" for the supply of 450 000 kg of marinated meat. The applicant considers that it has been adversely affected by the adoption of Regulation No. 425/77 of the Council of 14 February 1977 amending the regulation of 1968 on the common organization of the market in beef and veal and adapting the regulations of 1968 on the Common Customs Tariff.

The regulation in question amended the system of importation, in particular as regards the calculation of the levy.

Since the applicant was unable to induce the Commission to apply transitional measures in order to facilitate the implementation of the regulation it lodged the present application for damages and for a finding "that the defendant is required, in order to compensate for the damage which it has caused, to authorize the importation, free of the levy, of the quantity of marinated meat covered by the contract of 15 February 1977 and to adopt a decision requiring the Federal Republic of Germany to permit the quantity of marinated meat at issue to be put into free circulation and to exempt it from the levy".

The Court scrutinized the relevant provisions in order to establish whether a causal connexion exists between the alleged damage and the behaviour of the Commission.

On the basis of this scrutiny it was found that the amendments had already been indicated in advance in the previous provisions concerning precautionary measures in the relevant sector and that at the time of the amendment the applicant was already aware that any importation of the goods in question might be affected by the protective measures then in force and that that importation must be regarded as extremely hazardous.

The Court dismissed the application and ordered the applicant to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 May 1978

August Töpfer & Co. GmbH v

Commission of the European Communities

Case 112/77

1. Application for annulment - Natural or legal persons - Measure of direct and individual concern to them - Decision in the form of a regulation - Admissibility
(EEC Treaty, Second paragraph of Art. 173)

2. Agriculture - Common organization of the markets - Sugar - Export licences - Advance fixing of refund - Alteration of rates of exchange - Consequences for persons concerned - Option to cancel licences - Right to compensation for the disadvantage suffered
(Council Regulation No. 878/77, Art. 4 (2); Commission Regulations No. 937/77, Art. 2, and No. 1583/77)

3. Application for annulment - Submissions - Frustration of legitimate expectation - Admissibility
(EEC Treaty, Art. 173)

1. An application by natural or legal persons against a provision which, although contained in a regulation, amounts in substance to a decision because it is of just the same direct and individual concern to them as if it had been addressed to them is admissible.

2. Within the framework of the rules relating to the consequences of alterations in the rates of exchange to be applied in the agricultural sector, as regards export licences involving advance fixing of amounts to be paid or refunded the system for the payment of compensation is not by itself less favourable to the parties concerned than that of the right to cancel licences; although in some specific cases one of the two systems may prove to be more favourable to the party concerned, in general they each offer advantages and disadvantages which are of equal value to the trader.

3. The submission that there has been a breach of the principle of the protection of legitimate expectation is admissible in the context of proceedings instituted under Article 173 of the Treaty, since the principle in question forms part of the Community legal order with the result that any failure to comply with it is an "infringement of this Treaty or of any rule of law relating to its application" within the meaning of that article.

NOTE Facts: the applicant is a limited liability company whose object is large scale domestic and foreign trade in sugar. It holds a large number of export certificates issued before 26 April 1977 and on the basis of these certificates customs export formalities were completed after 15 July 1977. For the period after 15 July 1977 it holds decisions of the German customs authorities in respect of 11 761 590 kg of sugar exported under Commission Regulation No. 1583/77 of 14 July 1977 containing amendments as regards sugar exported under certain tendering arrangements.

The dispute turns on the application of the Community provisions concerning the consequences of alterations in the value of the unit of account used for the Common Agricultural Policy with regard to export certificates containing advance fixing of amounts to be paid or refunded.

The Court of Justice considered all the relevant provisions leading up to Regulation No. 1583/77, which is at issue in the present application; that regulation recites that "Whereas, with effect from 1 July 1977, the compensatory amounts in the sugar sector have been calculated on the basis of the intervention price plus the amount of the levy charged on sugar of Community origin under the system for compensating storage costs; whereas, as a result of this new method of calculation, it is necessary to adjust the amount of the compensation fixed by Article 2 of Regulation (EEC) No. 937/77" and it accordingly replaced, by Article 1 thereof, the amount of compensation of DM 2.33 by that of DM 1.87.

At that time the applicant held a considerable number of export certificates which entitled it to the compensation in question when exports were effected. Since the applicant received in respect of exports effected after 15 July 1977 compensation based on only DM 1.87 per 100 kg of white sugar instead of DM 2.33 it considered that the amendment laid down in the regulation in dispute was of direct and individual concern to it.

The Court rejected the applicant's argument concerning the infringement of the basic agricultural regulation and ruled that the contested regulation applies only to quantities of white sugar in respect of which the customs export formalities were completed after the entry into force of the regulation and that the latter accordingly does not constitute an amendment having retroactive effect.

The application was dismissed and the applicant was ordered to bear the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 May 1978

Firma Milac Gross- und Aussenhandel Arnold Nöll v

Hauptzollamt Saarbrücken

Case 131/77

1. Agriculture - Monetary compensatory amounts - Application - Products affected - Products whose price depends on the price of products covered by intervention arrangements - Dependence of prices (Regulation No. 974/71 of the Council, Art. 1 (2) (b))

2. Agriculture - Monetary compensatory amounts - Application to powdered whey - Article 1 of Regulation No. 539/75 of the Commission - Invalidity

1. The price of a product which is covered by the common organization of the markets depends within the meaning of Article 1 (2) (b) of Regulation No. 974/71 on the price of a product covered by intervention arrangements under the common organization of agricultural markets if the former price fluctuates appreciably owing to the incidence of the variations in the latter price.

2. Article 1 of Regulation (EEC) No. 539/75 of the Commission of 28 February 1975 is invalid in so far as it fixes compensatory amounts in respect of trade in powdered whey.

NOTE The main case turns on an application for the annulment of notices of assessment fixing monetary compensatory amounts levied as charges imposed under the common organization of the agricultural markets on the importation into France from Germany of 129 000 kg of powdered whey.

The plaintiff in the main action maintains that the imposition of monetary compensatory amounts on powdered whey is at variance with the provisions of Article 1 of Regulation No. 974/71 since that provision authorizes the imposition or granting of countervailing charges only on products whose price depends on the price of the products in respect of which intervention measures have been laid down within the framework of the common organization of the agricultural markets and which come under that common organization whilst the price of powdered whey does not in any way depend either on the price of milk or the price of skimmed milk powder, the only products with which the prices of powdered whey can be compared in accordance with the system in force. There can be no comparison of the price of powdered whey with milk since the milk in the powdered whey, a by-product of the manufacture of cheese and regarded as a waste product, is considered to be of no value.

It follows that the prices of powdered whey are formed exclusively by market forces and depend entirely on supply and demand.

This led the national court to submit to the Court of Justice questions of interpretation concerning the validity of Regulation No. 534/75.

The decisive issue in this case is whether the price of powdered whey depends on the price of skimmed milk powder. The Court held that it does not and consequently ruled that Article 1 of Regulation No. 539/75 of 28 February 1975 is invalid in so far as it fixes compensatory amounts in respect of trade in powdered whey.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 May 1978

Société pour l'Exportation des Sucres, S.A. v

Commission of the European Communities

Case 132/77

Agriculture - Short-term economic policy - Monetary compensatory amounts - Exemption from the burden - Clause to ensure natural justice - At the discretion of the Member States - Intervention by the Commission - Conditions
(Regulation No. 1608/74 of the Commission, Art. 4)

Regulation No. 1608/74, in principle, entrusted the administration of the system under the clause to ensure natural justice to the Member States and gave them a wide discretion, making them responsible for the decision, in each particular case, as to whether or not to avail themselves of the clause.

The Commission may intervene, in the circumstances provided for in Article 4 of the regulation, only in relation to specific contracts in respect of which the Member State in question intends to make use of the clause to ensure natural justice and informs the Commission of its intention. Only after such notification may the Commission, under Article 4 (2), consider the individual case in which it is intended to grant exemption and state any objection which it may have to the measure contemplated.

NOTE By application of 31 October 1977 under the second paragraph of Article 173 and the second paragraph of Article 215 of the EEC Treaty, the applicant claimed primarily "that the Commission decision adopted under Article 4 (2) of Regulation No. 1608/74 should be annulled, which provision excludes from the exemption from the French monetary compensatory amount certain contracts for the sole reason that they were concluded before May 1975", in other words at a date on which monetary compensatory amounts were applicable in France with regard to sugar.

The question of admissibility arose before the Court, both of the principal request concerning the application for annulment of the decision in question and the alternative request relating to the payment of damages for the loss suffered in this case.

So far as the principal request is concerned, Regulation No. 1608/74 established a system based on a discretionary measure authorizing the Member States to grant "on a discretionary basis" to persons committed to performing binding contracts exemption from the monetary compensatory amounts introduced after those contracts have been concluded. The benefit of the discretionary measure is granted or refused on the basis of an individual examination of each case, taking into account the damage suffered by the trader concerned.

It is not in dispute in this case that the French Government did not inform the Commission of its intention to exempt from the monetary compensatory amounts the contracts referred to in the present case.

It was therefore impossible for the Commission to intervene with regard to those contracts and it is therefore necessary to conclude, in so far as the application for annulment based on the second paragraph of Article 173 of the EEC Treaty is concerned, that this application is inadmissible because no measure adopted by the Commission in accordance with the above-mentioned article exists in the present case.

With regard to the alternative request, the refusal by the national authorities to grant the benefit of the exemption from the monetary compensatory amounts in the case of the contracts in question stemmed from an independent decision made by those authorities and it does not therefore seem that this case involves conduct on the part of the Commission which fulfils the conditions for instituting proceedings before the Court of Justice laid down in the second paragraph of Article 215 of the Treaty. The Court ruled that the application must be dismissed as inadmissible and ordered the applicant to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

23 May 1978

Hoffmann-La Roche & Co. AG and Hoffmann-La Roche AG v

Centrafarm Vertriebsgesellschaft Pharmazeutischer Erzeugnisse

Case 102/77

1. Free movement of goods - Industrial and commercial property - Rights - Protection - Scope
(EEC Treaty, Art. 36)

2. Free movement of goods - Industrial and commercial property - Trade-mark protected in various Member States - Product to which a trade-mark has lawfully been applied in one of those States - Repackaging and re-affixing of the mark by a third party - Import into another Member State - Prevention of marketing by proprietor of trade-mark right - Permissibility - Conditions
(EEC Treaty, Art. 36)

3. Competition - Dominant position on the market - Trade-mark - Exercise compatible with Article 36 of the Treaty - No infringement of Article 86
(EEC Treaty, Arts. 36 and 86)

1. It is clear from Article 36 of the EEC Treaty, in particular its second sentence, as well as from the context, that whilst the Treaty does not affect the existence of rights recognized by the laws of a Member State in matters of industrial and commercial property, yet the exercise of those rights may nevertheless, depending on the circumstances, be restricted by the prohibitions contained in the Treaty.

Inasmuch as it creates an exception to one of the fundamental principles of the common market, Article 36 in fact admits of derogations from the free movement of goods only to the extent to which such exceptions are justified for the purpose of safeguarding the rights which constitute the specific subject-matter of that property.

2. In order to answer the question whether that exclusive right involves the right to prevent the trade-mark being affixed by a third person after the product has been repackaged, regard must be had to the essential function of the trade-mark, which is to guarantee the identity of the origin of the trade-marked product to the consumer or ultimate user, by enabling him without any possibility of confusion to distinguish that product from products which have another origin.

This guarantee of origin means that the consumer or ultimate user can be certain that a trade-marked product which is sold to him has not been subject at a previous stage of marketing to interference by a third person, without the authorization of the proprietor of the trade-mark, such as to affect the original condition of the product.

The proprietor of a trade-mark right which is protected in two Member States at the same time is justified pursuant to the first sentence of Article 36 of the Treaty in preventing a product to which the trade-mark has lawfully been applied in one of those States from being marketed in the other Member State after it has been repacked in new packaging to which the trade-mark has been affixed by a third party.

However, such prevention of marketing constitutes a disguised restriction on trade between Member States within the meaning of the second sentence of Article 36 of the Treaty where;

It is established that the use of the trade-mark right by the proprietor, having regard to the marketing system which he has adopted, will contribute to the artificial partitioning of the markets between Member States;

It is shown that repackaging cannot adversely affect the original condition of the product;

The proprietor of the mark receives prior notice of the marketing of the repackaged product; and

It is stated on the new packaging by whom the product has been repackaged.

3. To the extent to which the exercise of a trade-mark right is lawful in accordance with the provisions of Article 36 of the Treaty, such exercise is not contrary to Article 86 of the Treaty on the sole ground that it is the act of an undertaking occupying a dominant position on the market if the trade-mark right has not been used as an instrument for the abuse of such a position.

NOTE The Landgericht Freiburg referred two questions to the Court concerning the effect of certain provisions of the Treaty, Articles 36 and 86, on the exercise of the rights of the proprietor of a trade-mark.

The dispute in the main action is between two pharmaceutical undertakings one of which, the plaintiff in the main action (Hoffmann-La Roche) which is the proprietor of a certain trade-mark (Valium-Roche) in several Member States, is seeking to restrain the other, the defendant in the main action (Centrafarm) which brought a product of that trade-mark which had been put into circulation in one Member State, from distributing it in another Member State after having re-packaged it and applied the proprietor's trade-mark to the new packaging.

Valium is marketed in Germany by Hoffmann-La Roche in small packages intended for individuals and in batches of five packages each containing 100 or 250 tablets for the use of hospitals, whereas the British subsidiary of the Hoffmann-La Roche group manufactures the same product and markets it in packages of 100 or 500 tablets at appreciably lower prices than those charged in Germany.

In Germany Centrafarm marketed Valium purchased in Great Britain in the original packages and repacked in batches of 1 000 tablets in new packages to which were applied the trade-mark of Hoffmann-La Roche with an indication that the product was marketed by Centrafarm.

The first question asked by the national court was worded as follows: "Is the proprietor of a trade-mark right protected for his benefit both in Member State A and in Member State B empowered under Article 36 of the EEC Treaty, in reliance on this right, to prevent a parallel importer from buying from the proprietor of the mark or with his consent in Member State A of the Community medicinal preparations which have been put on the market with his trade-mark lawfully applied thereto and packaged under this trade-mark, from providing them with new packaging, applying to such packaging the proprietor's trade-mark and importing the preparations distinguished in this manner into Member State B?"

Article 30 of the Treaty prohibits restrictive measures on imports and any measure having equivalent effect between Member States. Article 36 provides that these provisions nevertheless do not preclude prohibitions or restrictions on imports justified on grounds of the protection of industrial and commercial property. However inasmuch as it provides an exception to one of the fundamental principles of the Common Market, the principle of free movement of goods, Article 36 admits exceptions only to the extent to which such exceptions are justified for the purpose of safeguarding rights which constitute the specific subject-matter of that property. The specific subject-matter of a trade-mark is a guarantee to the proprietor of the exclusive right to use the trade-mark and to protect it against competitors seeking to abuse the reputation of the trade-mark by selling products to which that trade-mark has been wrongfully applied.

The essential function of a trade-mark is to guarantee to the consumer or final user the origin of the trade-marked product by allowing him to distinguish that product, without any possible confusion, from products coming from a different source. The proprietor's acknowledged right to resist any use of the trade-mark which might vitiate the guarantee of origin thus comes within the specific subject-matter of a trade-mark right. Accordingly Article 36 provides justification for acknowledging a right on the part of a proprietor to prevent an importer of a trade-marked product, after re-packaging such product, from applying the trade-mark to the new packaging without the proprietor's consent.

It must also be considered whether the exercise of such a right can constitute a "disguised restriction on trade between Member States". Such a restriction could result among other things from the proprietor of the trade-mark putting an identical product on the market in various Member States in different packaging, whilst using the rights pertaining to the trade-mark in order to prevent re-packaging by a third party, even if it was carried out under such circumstances that the identity of origin of the trade-marked product and the original condition of the product could not be affected thereby.

The answer must perforce vary according to the circumstances, in particular the nature of the product and the re-packaging process.

The Court answered the first question by ruling that

(a) The proprietor of a trade-mark right protected in two Member States at the same time is justified within the meaning of the first sentence of Article 36 of the EEC Treaty, in respect of a product to which the trade-mark has lawfully been applied in one of those States, in resisting the marketing in the other Member State of the product after it has been repacked in new packaging to which the trade-mark has been applied by a third party;

(b) However such resistance constitutes a disguised restriction on trade between Member States within the meaning of the second sentence of Article 36:

if it is established that the use of the trade-mark by the proprietor, having regard to his marketing system, would contribute to the artificial partitioning of the markets between Member States;

if it is shown that the re-packaging cannot affect the original condition of the product;

if the proprietor of the trade-mark right receives prior notice of the marketing of the re-packaged product; and

if it is stated on the new packaging by whom the product has been re-packaged.

A second question deals with the effect of the exercise of a trade-mark right in relation to the provisions of Article 86 of the Treaty.

The Court ruled that to the extent to which the exercise of a trade-mark right is lawful in accordance with the provisions of Article 36 of the Treaty, such exercise is not contrary to Article 86 of the Treaty on the sole ground that it is the act of an undertaking holding a dominant position on the market if the trade-mark right has not been used as an instrument for the abuse of such a position.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 May 1978

Hans-Otto Wagner GmbH v Hauptzollamt Hamburg-Jonas

Case 108/77

Agriculture - Common organization of the markets - Sugar - Trade with non-member countries - Monetary compensatory amounts - Export refund fixed in national currency - Application of a weighting - Not permissible
(Regulation No. 1380/75 of the Commission, Art. 4 (3); Regulation No. 2101/75 of the Commission)

Article 4 (3) of Regulation No. 1380/75, read in conjunction with Regulation No. 2101/75, must be interpreted as meaning that the export refund in the sugar sector, fixed in national currency for each exporter individually on the basis of a tender, is not to be multiplied by a monetary coefficient fixed by the Commission derived from the percentage used to calculate the monetary compensation.

NOTE The Finanzgericht Hamburg referred to the Court several questions on the interpretation and validity of Article 4 (3) of Regulation No. 1380/75 of the Commission laying down detailed rules for the application of monetary compensatory amounts in conjunction with Regulation No. 2101/75 of the Commission on a standing invitation to tender in order to determine a levy and/or refund on exports of white sugar.

Those questions were raised in the context of a dispute concerning the calculation of the export refunds granted to the German undertaking Wagner, the plaintiff in the main action, in connexion with the export to Bulgaria of 4 million kilogrammes of white sugar which had not been denatured.

For the purpose of granting the refunds, the Hauptzollamt Hamburg-Jonas based itself on the provisions of Article 4 (3) of Regulation No. 1380/75, application of which, in its view, has the effect that the proportion of the compensatory amount attributable to the export refunds should be reduced, since compensatory amounts are calculated on the basis of the intervention price which includes export refunds.

The question asked is whether Article 4 (3) of Regulation No. 1380/75 in conjunction with Regulation No. 2101/75 is to be interpreted as meaning that the export refund for sugar, determined in national currency for each exporter individually on the basis of an invitation to tender, shall be multiplied by the monetary coefficient fixed by the Commission, which is derived from the percentage used to calculate the monetary compensation.

The Court has answered by ruling that Article 4 (3) of Regulation No. 1380/75 in conjunction with Regulation No. 2101/75 is to be interpreted as meaning that the export refund for sugar, determined in national currency for each exporter individually on the basis of an invitation to tender, is not to be multiplied by the monetary coefficient fixed by the Commission, which is derived from the percentage used to calculate the monetary compensation.

As to the question raised concerning the validity of Article 4 (3) of Regulation No. 1380/75, the Court ruled that consideration of it has disclosed no factor of such a kind as to affect the validity of that provision.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 May 1978

Bayerische HNL Vermehrungsbetriebe GmbH & Co. KG and Others v Council and Commission

Joined Cases 83 and 94/76 and 4, 15 and 40/77

EEC - Non-contractual liability - Legislative measure involving choices of economic policy - Liability of the Community - Conditions - Absence thereof

(EEC Treaty, Art. 215, second paragraph and Council Regulation (EEC) No. 563/76)

The Community does not incur non-contractual liability for damage caused to individuals through the effects of a legislative measure which involves choices of economic policy unless a sufficiently serious breach of a rule of law for the protection of the individual has occurred. Therefore the finding that a legislative measure is null and void is insufficient by itself for the Community to incur liability.

Individuals may be required, in the sectors coming within the economic policy of the Community, to accept within reasonable limits certain harmful effects on their economic interests as a result of a legislative measure without being able to obtain compensation from public funds, even if that measure has been declared null and void.

In a legislative field such as the one in question, in which one of the chief features is the exercise of a wide discretion essential for the implementation of the Common Agricultural Policy, the Community does not therefore incur liability unless the institution concerned has manifestly and gravely disregarded the limits on the exercise of its powers.

This is not so in the case of a measure of economic policy such as that in the present case, in view of its special features;

It affected very wide categories of traders, in other words all buyers of compound feeding-stuffs containing protein;

Its effects on the price of feeding-stuffs as a factor in the production costs of those buyers were limited;

This price increase was particularly small in comparison with the price increases resulting, during the period of application of the regulation, from the variations in the world market prices of feeding-stuffs containing protein; the effects of the regulation on the profit-earning capacity of the undertakings did not ultimately exceed the bounds of the economic risks inherent in the activities of the agricultural sectors concerned.

NOTE The applicants ask that the European Economic Community, represented by the Council and the Commission, should be ordered to compensate them for the damage which they claim to have suffered as a result of Council Regulation No. 563/76 of 15 March 1976 on the compulsory purchase of skimmed-milk powder held by intervention agencies for use in feeding-stuffs.

It will be remembered that by three judgments of 5 July 1977 in Cases 114/76 Bela-Mühle, 116/76 Granaria BV and 119 and 120/76 Ölmühle, references for preliminary rulings, the Court declared Regulation No. 563/76 null and void.

The Court based that conclusion on the finding that the purchase of skimmed-milk powder prescribed by the regulation had been imposed at such a disproportionate price that it amounted to a discretionary distribution of the burden of costs between the various agricultural sectors and was not justified as being a measure necessary in order to attain the objective in view, namely, the disposal of stocks of skimmed-milk powder.

However, a ruling that a legislative measure, such as the regulation at issue, is null and void does not of itself suffice to give rise to non-contractual liability on the part of the Community under the second paragraph of Article 215 of the Treaty in respect of damage suffered by individuals.

It is the settled case-law of the Court that the Community does not incur liability by reason of a legislative measure involving choices of economic policy unless a sufficiently clear violation of a superior rule of law for the protection of the individual has occurred.

In determining the characteristics of such a violation, regard must be had to the principles which in the legal systems of the Member States govern the liability of public authorities for damage caused to individuals by legislative measures.

Those principles vary considerably from one Member State to another, but it can however be stated that it is only exceptionally and in unusual circumstances that public authorities can incur liability for legislative measures embodying options on economic policy.

This restrictive conception is explained by the consideration that the legislature must not be restricted in its activities by the prospect of actions for damages every time it is in a position to adopt legislative measures in the public interest which may harm the interests of individuals.

It follows from these considerations that, in fields within Community policy on economic matters, individuals may be required within reasonable limits to bear certain effects of a legislative measure which are harmful to their economic interests without being entitled to compensation from public funds, even if such legislation is held to be null and void.

The invalidity of the regulation at issue does not suffice to give rise to liability on the part of the Community under the second paragraph of Article 215 of the Treaty.

The Court dismissed the applications and ordered the applicants to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 May 1978

Firma A. Racke v

Hauptzollamt Mainz

Case 136/77

1. Complex economic situation - Evaluation - Administration - Discretion - Scope - Review by the Court - Bounds
(Regulations (EEC) Nos. 722/75 and 2021/75 of the Commission)

2. Agriculture - Monetary compensatory amounts - Not charges having an effect equivalent to customs duties

3. Regulation - Statement of reasons upon which it is based - Conditions
(EEC Treaty, Art. 190)

1. Where the evaluation of a complex economic situation is involved, the administration enjoys a wide measure of discretion. In reviewing the legality of the exercise of such discretion, the Court must confine itself to examining whether it contains a manifest error or constitutes a misuse of power or whether the authority did not clearly exceed the bounds of its discretion. It does not seem that the Commission exceeded the bounds of its discretion by adopting the provisions of Regulations (EEC) Nos. 722/75 and 2021/75 in question.

2. The monetary compensatory amounts are not levies introduced by some Member States unilaterally but Community measures adopted to deal with the difficulties resulting for the common agricultural policy from monetary instability; they are not therefore covered by the prohibitions on levying charges having an effect equivalent to customs duties.

3. Although the discontinuance of the monetary compensatory amounts in the case of certain Member States is the result of the fact that the conditions for their introduction are no longer fulfilled, their retention with regard to another Member State is the normal result of the continuing existence of the necessary conditions as far as that other State is concerned. In the absence of an express indication it may be accepted that the retention of the previous rules is based on the same grounds.

NOTE The Finanzgericht Rheinland-Pfalz referred two questions to the Court concerning the validity of Regulation No. 722/75 of the Commission amending Regulation No. 539/75 fixing the monetary compensatory amounts and certain rates for their application in so far as it excepts the import into Germany of wines falling within tariff subheading 22.05 C I of the Common Customs Tariff from the discontinuance of the monetary compensatory amounts.

These questions were raised in the context of an action brought by a German undertaking concerning the levying of monetary compensatory amounts in connexion with the importation of certain quantities of table wine from Yugoslavia and Hungary in September 1975.

Compensatory amounts for wines falling within tariff subheading 22.05 C I and II were discontinued in all Member States other than Germany as from 24 March 1975. Regulation No. 2021/75 of the Commission fixing the monetary compensatory amounts and certain rates for their application was then applicable. Part 6 of Annex I thereto, relating to wine, fixed compensatory amounts for Germany alone.

One of the first questions arising is whether the condition that the granting or charging of compensatory amounts should apply only where application of the monetary measures "would lead to disturbances in trade in agricultural products" was still satisfied in September 1975 as regards imports of wine into Germany. It is for the Commission, acting in accordance with the so-called Management Committee procedure, to decide whether there is a risk of disturbance.

In reviewing the legality of the exercise of this power, the Court must confine itself to considering whether such exercise is not vitiated by a patent error or by misuse of powers or whether the authority concerned has not patently exceeded the limits of its discretion.

The Commission set out the circumstances which in its view justified the retention in force of the compensatory amounts charged on imports of wine in the case of Germany, and it does not appear that in this instance the Commission has exceeded the limits of its discretion.

The question is whether the principle of non-discrimination laid down in Article 40 (3) of the Treaty has been infringed by the retention in force of monetary compensatory amounts on wine for Germany alone.

The answer is in the negative, because, the Federal Republic of Germany being the only Member State with a revalued currency which has domestic wine production, the difference between the solution adopted on the one hand for Germany and on the other for Member States with devalued currencies and Member States with revalued currencies but no domestic wine production can be considered to be objectively justified.

Finally, as to the question whether the charging of compensatory amounts on imports of wine from non-Member countries was contrary to the prohibition on charges having an effect equivalent to customs duties, it suffices to state that monetary compensatory amounts are not dues unilaterally decided on by the Member States but Community measures adopted to remedy the difficulties caused to the common agricultural policy by monetary instability. They cannot therefore be caught by the prohibitions on levying charges having an effect equivalent to customs duties.

Accordingly the Court ruled that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulations No. 722/75 and No. 2021/75 of the Commission in so far as the import into Germany of wines falling within tariff subheading 22.05 C I is excepted from the discontinuance of the monetary compensatory amounts.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 June 1978

Denkavit Futtermittel GmbH v

Finanzamt Warendorf

Case 139/77

Agriculture - Agricultural producer - Concept - Community definition - Absence - Duties of the competent authorities
(EEC Treaty, Art. 38 et seq.; Regulation (EEC) No. 2464/69 of the Council, Art. 1)

Although in certain respects Article 38 and the related provisions allow the scope of the agricultural provisions of the Treaty to be defined, in other respects, particularly as regards the type of undertakings subject to the provisions in question, the concept of agriculture is not precisely defined in the Treaty. Consequently, for the purposes of the agricultural rules derived from the Treaty, it is for the competent authorities where necessary to define the scope of such rules in relation to persons and in relation to subject-matter.

NOTE The Finanzgericht Münster referred to the Court of Justice a number of questions concerning the interpretation of the expression "agricultural producer" and of Articles 39 and 40 of the EEC Treaty and certain provisions of Regulation No. 2464/69 of the Council on measures to be taken in agriculture as a result of the revaluation of the German mark.

The plaintiff in the main proceedings engages in the production of feeding-stuffs for cattle and the fattening of calves with substitute milk fodder which it produces itself. It buys calves of about one week old and sells them for slaughter after fattening them for four months. Not having any agricultural land for fattening the calves it does not constitute an agricultural undertaking but an industrial or commercial undertaking within the meaning of German tax law.

In 1974 in application of the law relating to compensation arising out of the revaluation of the German mark the plaintiff company claimed aid of approximately DM 640 000 (that is to say 3% of its total turnover). The Finanzamt Warendorf, the defendant in the main proceedings, refused to grant that aid on the grounds that the Denkavit company was an industrial undertaking not an agricultural undertaking. In the context of that dispute the Finanzgericht Münster referred the matter to the Court of Justice of the European Communities for a preliminary ruling.

In order to reply to the questions raised it is necessary to consider the origin and content of the Community rules and the national legislation in question, in so far as this is set out in the file on the case.

On 24 October 1969 the Government of the Federal Republic of Germany revalued the Deutschmark by 8.5% in relation to its official parity. The German Government and the Community were then faced with the problem of the compensation of the loss of income resulting for German agriculture because European agricultural prices were expressed in the common unit of account which, following the revaluation, was devalued in terms of the national currency.

The Council promulgated Regulation No. 2464/69, in the terms of which "the revaluation of the German mark and the present unaltered value of the unit of account entail a reduction in agricultural prices expressed in German marks ... /as/ from 1 January 1970; ... German agriculture will thereby suffer a loss of income; ... such loss of income can be estimated at DM 1 700 000 000 a year; ... provision should be made for the Federal Republic of Germany to grant aid by way of compensation for such losses in the form of direct aid to agricultural producers".

By decision of 21 January 1974 the Council provisionally authorized the Federal Republic of Germany to grant to agricultural producers an aid in the form of compensation of up to 3% of the selling price payable to the producer on the sale of his products.

On the basis of the Community regulation in December 1969 the German legislature enacted the law relating to compensation arising out of the revaluation of the German mark, which authorized agricultural and forestry undertakings (within the meaning of the law relating to turnover tax) to reduce turnover tax by 3% of the basis of assessment.

Forestry and agricultural undertakings are defined as being those undertakings where the number of head of cattle produced or grazed per hectare of the area generally used in an agricultural undertaking does not exceed certain limits.

The first question asks whether the expression "agricultural producers" in Regulation (EEC) No. 2464/69 also includes commercial livestock breeders and keepers within the meaning of the German tax law. The second question raises the problem of whether provisions of Community law (inter alia Articles 39 and 40 of the EEC Treaty) forbid the Federal Republic of Germany to exclude from the grant of the aid in question certain classes of agricultural producers, in this case, commercial livestock breeders and keepers within the meaning of the German tax law.

In respect of the interpretation of the expression "agricultural producers" it should be pointed out that the concept of agriculture is not defined in a precise way in the Treaty and that consequently it is for the competent national authorities to determine, where it is necessary for the purposes of agricultural rules derived from the Treaty, the persons and subject-matter covered by those rules. Regulation No. 2464/69 makes no distinction between methods of production and the possibility is not excluded that the wide term "agricultural producers" used in the regulation may include production of agricultural products by whatever method. It should however be emphasized that the regulation in question does not oblige but merely empowers the Federal Republic of Germany to grant aids within the limits laid down by Community law and in particular by the regulation itself.

It must therefore be asked whether in excluding industrial producers from the scope of those aids the Federal Republic of Germany exceeded those limits. It is accordingly necessary to examine whether the differentiation for the purposes of the German tax law between agricultural producers and industrial producers is of a discriminatory nature within the meaning of Article 40 (3) of the Treaty. It is evident from the file on the case that agricultural producers, who use feeding-stuffs which for the most part are produced by their own undertakings, are in particular subject to the risks inherent in such cultivation while, on the other hand, industrial producers who purchase animal feeding-stuffs on the national or international market are not exposed to the same risks and are able, if their national currency is revalued, to obtain their feeding-stuffs abroad at advantageous prices.

Consequently the criterion adopted for the grant of aids, that is to say the relationship between the livestock and the agricultural area used, cannot be held to be discriminatory.

The Court of Justice ruled that neither the provisions of the EEC Treaty nor Article 1 of Regulation No. 2464/69 of the Council nor the provisions of the decision of the Council of 21 January 1974 forbade the Federal Republic of Germany to exclude industrial or commercial animal producers from the aids laid down by that regulation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 June 1978

British Beef Company Limited v

The Intervention Board for Agricultural Produce

Case 146/77

1. Agriculture - Monetary compensatory amounts - Right to grant or duty of payment thereof - Creation - Rules applicable

2. Agriculture - Monetary compensatory amounts - Maintenance for a week - Legitimate expectation - Absence thereof (Commission Regulation No. 2405/76)

1. The actual right to receive a monetary compensatory amount and the charge resulting from the levying of such an amount are only created by the performance of the import or export transaction as the case may be and only from the moment when that transaction takes place. It follows that in the absence of an express provision to the contrary the amounts to be paid or levied are those fixed by the rules in force at the moment of the import or export whatever may be the date on which the contract relating to the transaction in question was concluded.

2. Having regard to the recitals to and the provisions of Regulation No. 2405/76 and to the special circumstances existing at the time of its adoption it could not arouse in the minds of persons concerned a legitimate expectation, which the Commission was required to protect, of its maintenance for the whole of the week in question.

NOTE From the middle of September 1976 onwards the pound sterling lost value as against the "snake" currencies and consequently the Commission was obliged to increase the monetary compensatory amounts to be granted on imports into and charged on exports from the United Kingdom - which were already at a high level.

The Commission proposed to the Council the adoption of a regulation for a devaluation of the representative rate for the pound sterling which was intended to enter into force on 11 October 1976.

While awaiting the Council's decision the Commission adopted Regulation (EEC) No. 2405/76 which entered into force on 4 October 1976 and which maintained unchanged from the previous week the level of the monetary compensatory amounts for the pound sterling and the Irish pound.

The Council did not adopt the Commission's above-mentioned proposal. The Commission, therefore, enacted Regulation (EEC) No. 2424/76 of 5 October 1976 which increased the monetary compensatory amounts in the United Kingdom so as to adjust them to the recent devaluations of the pound sterling. This regulation entered into force on Wednesday 6 October 1976 but was applicable on request from Monday 4 October 1976.

British Beef Company Limited, the plaintiff in the main action, carries on the export of beef from the United Kingdom to other Member States and the Intervention Board for Agricultural Produce, the defendant in the main action, is the agency in the United Kingdom responsible for the implementation of the common agricultural policy. As the level of monetary compensatory amounts which it had to pay on its exports had been increased by Regulation No. 2424/76 British Beef brought an action against the Intervention Board claiming that on its true construction the said regulation does not apply to exports made by that company in execution of contracts entered into before the promulgation of the regulation. Alternatively it submitted that the regulation is invalid.

In the context of that dispute the High Court of Justice referred two questions to the Court of Justice for a preliminary ruling.

The first question inquires whether Regulation No. 2424/76 must be interpreted as meaning that it did not apply to exports effected in execution of contracts concluded prior to the date on which it was promulgated.

It should be noted on this subject that the actual right to receive a monetary compensatory amount and the charge resulting from the levying of such an amount are only created by the performance of the import or export transaction as the case may be and only from the moment when that transaction takes place. In reply to the first question the Court ruled that Regulation No. 2424/76 was applicable to exports effected in execution of contracts concluded prior to the date of its promulgation.

In the second question the Court was asked whether Regulation No. 2424/76 is valid in so far as it purports to apply to exports effected in execution of contracts in progress.

The plaintiff in the main action has pointed out in this respect that the regulation frustrated its legitimate expectation of the maintenance unchanged for the whole of the week in question of the monetary compensatory amounts fixed for the previous week and renewed by Regulation No. 2405/76. The Court stated that it is evident from the statement of the grounds on which the regulation was based that it was adopted as a precautionary measure and pending an urgent decision on the matter by the Council and that it could not arouse in the minds of persons concerned a legitimate expectation of its maintenance for the whole of the week in question. The persons concerned could not be unaware of the uncertainties which were typical of the situation.

In answer to the second question the Court ruled that consideration of the question raised has disclosed no factor of such a kind as to affect the validity of that regulation.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

15 June 1978

Gabrielle Defrenne v

Société Anonyme Belge de Navigation Aérienne Sabena

Case 149/77

1. Social policy - Men and women workers - Pay - Scope - Limits

(EEC Treaty, Art.119)

2. Community law - General principles of law - Fundamental personal rights - Observance ensured by the Court - Discrimination based on sex - Prohibition - Powers of the Community - Limits

1. Article 119 of the EEC Treaty, which is limited to the question of pay discrimination between men and women workers, constitutes a special rule, whose application is linked to precise factors. It cannot be interpreted as prescribing, in addition to equal pay, equality in respect of the other working conditions applicable to men and women.

The fact that the fixing of certain conditions of employment - such as a special age-limit - may have pecuniary consequences is not sufficient to bring such conditions within the field of application of Article 119, which is based on the close connexion which exists between the nature of the services provided and the amount of remuneration.

2. Fundamental personal human rights form part of the general principles of Community law, the observance of which the Court has a duty to ensure. The elimination of discrimination based on sex forms part of those fundamental rights. However, it is not for the Court to enforce the observance of that rule of non-discrimination in respect of relationships between employer and employee which are a matter exclusively for national law.

NOTE With great perseverance Miss G. Defrenne seeks recognition of her rights and those of female workers in general in seeking the application of Article 119 of the EEC Treaty which lays down that each Member State shall ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work.

The facts are notorious: in 1968 Miss Defrenne, a former air hostess whose employment was terminated in accordance with the terms of the contract when she reached the age of 40 years, brought before the Tribunal du Travail de Bruxelles an action claiming that Sabena should be ordered to compensate her for the threefold damage she had allegedly suffered in respect of remuneration, the allowance on termination of service and her pension rights by virtue of the discriminatory treatment between air hostesses and their male colleagues who carry out the same tasks as cabin staff. The Tribunal du Travail ruled that the action was altogether without foundation. On appeal, the Cour du Travail confirmed the judgment at first instance as regards the second and third heads of claim but requested a preliminary ruling from the Court of Justice as regards the question of pay. Following judgment in Case 43/75 of 8 April 1976 (/1976/ ECR 455) the Cour du Travail awarded the applicant the arrears of pay claimed by her.

Miss Defrenne lodged an appeal on a point of law against the judgment of the Cour du Travail in respect of the heads of claim which had been rejected and that court has in its turn referred the matter to the Court of Justice of the European Communities.

It should be recalled that in the same context Miss Defrenne brought an action before the Belgian Conseil d'État against the Belgian Royal Decree of 1969 relating to retirement pensions for aircrew in civil aviation. In the context of that dispute the matter was referred for a preliminary ruling to the Court of Justice, which delivered judgment on 25 May 1971 (Case 80/70, Defrenne v Belgium /1971/ ECR 445) following which the Belgian Conseil d'État dismissed the action brought by Miss Defrenne.

To return to the subject of the present case, the Cour de Cassation referred for preliminary ruling a question consisting of two parts:

The first part of the question asks whether the principle contained in Article 119 that men and women should receive equal pay for equal work must be interpreted as requiring in general terms equal working conditions for men and women, with the result that a clause bringing contracts of employment of female workers to an end when they reach the age of 40 years where no such term affects the contracts of male workers constitutes unlawful discrimination.

The Court ruled that viewed in the context of the system of social provisions of the Treaty (Article 117 et seq.) Article 119 is confined to the problem of discrimination as regards the pay of male and female workers and constitutes a special rule the application of which is dependent on particular circumstances. The scope of Article 119 cannot be extended to elements of the employment relationship other than those expressly mentioned therein. The fact that the determination of certain conditions of employment, such as the fixing of a particular age limit, may have financial consequences is not sufficient reason for including such conditions within the scope of Article 119.

Accordingly, the Court of Justice ruled in answer to the first part of the question that Article 119 cannot be interpreted as requiring, in addition to equal pay, equality as regards other working conditions for men and women.

The second part of the question asks whether, apart from the specific provisions of Article 119, Community law contains a general principle prohibiting discrimination on the basis of sex with regard to conditions of work and employment.

It is clearly beyond doubt that the elimination of discrimination on grounds of sex is one of the fundamental rights which the Court of Justice must enforce. However, at the time of the facts giving rise to the dispute the situation facing the Belgian courts falls under the existing provisions and principles of national and international law applicable in that Member State.

In answer to the second part of the question the Court of Justice ruled that at the time of the facts giving rise to the main action and in respect of employment subject to national law there existed no rule of Community law prohibiting discrimination between male and female workers as regards working conditions other than the rules relating to pay in Article 119 of the Treaty.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 June 1978

Tepea B.V. (formerly Theal N.V.) v

Commission of the European Communities

Case 28/77

1. Competition - Cartels - Undertaking situate in a non-member country - Application of Article 85 (1) - Conditions
(EEC Treaty, Art. 85 (1))

2. Competition - Cartels - Prohibition - Application - Criteria - Trade between Member States affected appreciably
(EEC Treaty, Art. 85 (1))

1. The fact that one of the undertakings which are parties to an agreement is situate in a non-member country does not prevent the application of Article 85 of the Treaty since the agreement is operative on the territory of the Common Market.

2. An agreement does not fall within the prohibition contained in Article 85 if it affects trade between Member States only to an extent which is not appreciable.

NOTE On 21 December 1976 the Commission adopted a decision concerning the undertakings Tepea and Watts, Article 1 of which stated that:

> Article 85 (1) of the Treaty had been infringed by an oral exclusive distribution agreement concluded between Theal (now Tepea) and Watts, including the granting of the exclusive right to use trade-marks registered in the Netherlands;
>
> Regulation No. 17 had been infringed by the supplying of incorrect and misleading information in the notification made by Theal on 24 January 1963.

The decision also dismissed the request for the application of Article 85 (3), and ordered the two undertakings thenceforward to refrain from any conduct whatsoever intended to prevent importation or resale of Watts products in the Netherlands, and it imposed fines.

Theal sought annulment of that decision and of the fines imposed by the Commission.

The antecedents and facts of the case may be summarized as follows:

In 1954 Watts, which manufactures and sells cleaning devices of its own invention for gramophone records, entered into verbal agreements with distributors, one per country, in the Netherlands, Belgium, Denmark, France, Ireland and Italy, giving those distributors the capacity of exclusive distributor in the national territory granted.

Watts supplied some 20 wholesalers in the United Kingdom exclusively and prohibited them from exporting its products.

Export prices had been identical or similar to internal market prices but in 1972 the former began to rise in relation to the latter, and the differences in prices were further increased in 1974 by monetary disparities, in particular between the currencies of Britain and the Netherlands, which prompted Netherlands traders to obtain their supplies directly from England rather than deal with the exclusive distributor in the Netherlands, Theal.

On 24 January 1963, Theal had notified to the Commission an exclusive distribution agreement relating to cleaning devices for gramophone records. It was specified in that notification that the agreement did not exclude freedom of competition within the Member State, since the agreement applied only to a single trade-mark. Since the number of competing trade-marks was large, the consumer retained complete purchasing freedom. Following the notification, the Commission informed Theal that since the agreement which had been notified did not make provision for absolute territorial protection, it could enjoy exemption under Regulation No. 67/67.

Application of Article 85 (1)

The applicant states that although an oral exclusive distribution agreement had existed between Watts and itself since 1956, at no time had an agreement relating to the use and registration of trade-marks been concluded by the two undertakings. The Commission criticized Theal among other things for not having notified it of the fact that the agreement concluded with Watts "included the granting of the exclusive right to use trade-marks registered in the Netherlands".

According to the Commission, the real purpose of the agreements for exclusive distribution and for the granting of the exclusive right to use the Watts trade-marks was to give Theal absolute territorial protection excluding any parallel imports of authentic products, and therefore those agreements come under the prohibition in Article 85 (1).

Theal could have registered a specifically English trade-name as a trade-mark in the Netherlands only with the authorization of its inventor.

It may be safely assumed that the two undertakings, Watts and Theal, were bound in 1956 by two oral agreements, one conferring on Theal the capacity of exclusive distributor of Watts products in the Netherlands and binding Watts to supply Theal exclusively in the Netherlands, the other consisting of the granting of the exclusive right to use the trade-marks attached to those products in the Netherlands. The effect of this system as a whole was to confer absolute territorial protection on Theal in the Netherlands and to enable Theal to resist any parallel imports from the United Kingdom or any other State into the Netherlands and thus prevent any competition, and hence to leave it completely free to fix prices for those products in the Netherlands without any threat of effective competition from products bearing the same trade-mark.

The territorial protection resulting from the admitted exclusive distribution agreement was thus supplemented by the skilful use of trade-mark law, and the combined effects of the two techniques ensured constant, absolute protection.

One of the conditions for an agreement to be incompatible with the common market and prohibited under Article 85 is that it "may affect trade between Member States", and it is established that the agreements between Theal and Watts were having that effect as from 1 January 1973.

There is a second condition for prohibition under Article 85: that the agreement at issue should have as its object or effect the restriction or distortion or competition within the common market; this condition is also fulfilled in this case.

Application of Article 15 (2) of Regulation No. 17

Under this provision, the Commission may impose fines where undertakings intentionally infringe the competition rules.

In fixing the amount of the fine, regard must be had both to the gravity and to the duration of the infringement. As to duration, the infringement came into being only as from 1 January 1973, the date of the accession of the United Kingdom to the Common Market, and as to gravity, it must be acknowledged that even though the conduct of Theal entailed obvious restrictions on competition, the products at issue represent only minor expenditure for consumers.

The fine of 10 000 units of account imposed by the Commission does not appear to be out of proportion.

Application of Article 15 (1) (a) of Regulation No. 17

This provision empowers the Commission to impose on undertakings fines of from 100 to 5 000 units of account where, intentionally or negligently, they supply incorrect or misleading information in a notification.

In view of the gravity of the infringement committed here, whereby the Commission was deceived for 11 years, the fine of 5 000 units of account imposed on Tepea appears entirely justified.

The Court ruled as follows:

1. The application is dismissed.

2. The applicant shall bear all the costs, including those of the interveners.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 June 1978

Simmenthal S.p.A. v

Amministrazione delle Finanze dello Stato (State Finance Administration)

Case 70/77

1. Questions referred for a preliminary ruling - Reference to the Court - Conditions - Defended proceedings - Assessment by the national court
(EEC Treaty, Art. 177)

2. Agriculture - Common organization of the markets - Beef and veal - Products imported from third countries - Veterinary and public health inspections - Charges - Customs duties - Charges having equivalent effect - Prohibition
(Regulation No. 14/64 of the Council, Art. 12 (2); Regulation No. 805/68 of the Council, Art. 20 (2))

3. Agriculture - Common organization of the markets - Beef and veal - Customs duties - Charges having equivalent effect - Prohibition - Entry into force
(Regulation No. 14/64 of the Council, Art. 12; Regulation No. 805/68 of the Council, Art. 20 (2))

4. Customs duties - Charges having equivalent effect - Trade with third countries - Treatment applicable

5. Agriculture - Common organization of the markets - Trade with third countries - Customs duties - Charges having equivalent effect - Prohibition - Derogations - Permissibility - Conditions

6. Agriculture - Common organization of the markets - Beef and veal - Animals and fresh meat from third countries - Health inspections provided for by Directive No. 72/462 - Charges - Permissibility - Derogations from the prohibition on charges having equivalent effect - Taking effect thereof - Condition - Adoption by the Community authorities of measures in implementation of the directive
(Regulation No. 805/68 of the Council, Art. 20 (2); Council Directive No. 72/462, Arts. 12, 23, 24 to 26)

7. Agriculture - Common organization of the markets - Beef and veal - Fresh meat from third countries - Health inspections organized in accordance with Article 9 of Directive No. 64/433 - Charges - Permissibility - Derogation from the prohibition on charges having equivalent effect - Non-discrimination between the arrangements with regard to intra-Community trade and those with regard to trade with third countries
(Regulation No. 14/64 of the Council, Art. 12 (2) and Regulation No. 805/68 of the Council, Art. 20 (2); Council Directive No. 64/433, Art. 9)

1. Although Article 177 does not make the reference to the Court subject to whether the proceedings during which the national court draws up the reference for a preliminary ruling were defended, it may where necessary prove to be in the interests of the proper administration of justice that a question should be referred for a preliminary ruling only after both sides have been heard. However, it is for the national court alone to assess whether that is necessary.

2. Pecuniary charges, whatever their amount, imposed by reason of veterinary or public health inspections of bovine animals and meat imported from third countries are to be regarded as charges having an effect equivalent to customs duties unless they relate to a general system of internal taxation applied systematically in accordance with the same criteria and at the same stage of marketing to domestic products and imported products alike.

3. The provisions of Article 12 (1) and (2) of Regulation No. 14/64 took effect on 1 November 1964, and those of Article 20 (2) of Regulation No. 805/68 on 29 July 1968.

4. In so far as trade with third countries is concerned, the question whether it is necessary to abolish, maintain, amend or introduce charges having equivalent effect must be related both to the requirements of the common commercial policy and to the requirements, consequent upon the introduction of the Common Customs Tariff, of harmonization of conditions of importation from third countries.

5. The Council may provide, in the regulations on the common organization of the markets, for exceptions or derogations from the prohibition on the levying of charges having equivalent effect in trade with third countries, provided however that the intrinsic effect of those charges on the relevant trade with third countries is uniform in all the Member States.

6. Although, as regards expenditure on health inspection of imports of animals and fresh meat from third countries, Articles 12 (8), 23 (4) and 26 of Directive No. 72/462 provide for derogations from the prohibition on the levying of charges having equivalent effect which is laid down in Article 20 of Regulation No. 805/68, those derogations can take effect only after the Member States have been given the opportunity to organize as prescribed in the directive the inspections referred to in Articles 12, 23, 24 and 25 thereof.

7. As regards veterinary and public health inspections of fresh meat from third countries, Article 9 of Directive No. 64/433 in conjunction with Article 20 (2) of Regulation No. 805/68 derogates from the prohibition on the imposition of health inspection charges to the extent necessary to ensure non-discriminatory treatment, on the one hand, of traders who put fresh meat on the market in intra-Community trade and thereby become liable to pay health inspection charges in the exporting Member State and, on the other hand, of those who import from third countries, provided that those charges do not exceed the actual cost of the inspections.

NOTE In November 1971 and January 1973 Simmenthal, the plaintiff in the main action, imported into Italy two consignments of frozen beef and veal from Uruguay. In application of Italian laws and regulations the imports underwent a public health inspection in return for the payment of inspection dues.

The Pretore di Alessandria, which took the view that those inspection dues constitute charges having an effect equivalent to customs duties, the levying of which is incompatible with Article 12 (2) of Regulation No. 14/64/EEC and Article 20 (2) of Regulation No. 805/68 which both prohibit, save as otherwise provided in those regulations, the levying of any customs duty or charge having an effect equivalent to a customs duty on imports into the Community from a third country of meat of domestic bovine animals, fresh, chilled or frozen, was prompted to refer to the Court of Justice a series of questions for a preliminary ruling.

The first question asked whether the provisions of Regulation No. 14/64/EEC and Regulation No. 805/68 must be interpreted as meaning that any pecuniary charge whatever imposed in a Member State at the time of a veterinary and public health inspection and levied at the frontier on bovine animals and meat imported from third countries constitutes a charge having an effect equivalent to a customs duty.

The Court replied by ruling that: "Pecuniary charges, whatever their amount, imposed by reason of veterinary or public health inspections of animals and beef and veal imported from third countries are to be regarded as charges having an effect equivalent to customs duties within the meaning of Article 12 (2) of Regulation No. 14/64 and Article 20 (2) of Regulation No. 805/68, unless they relate to a general system of internal dues applied systematically in accordance with the same criteria and at the same stage of marketing to domestic products and imported products alike".

With regard to the second question relating to the date from which the prohibition against the levying of pecuniary charges came into force, the Court referred to its decision in Case 84/71, the Marimex case, which fixed those dates as 1 November 1964 (Regulation No. 14/64) and 29 July 1968 (Regulation No. 805/68).

The third and fourth questions asked whether Council Directive No. 72/462/EEC of 12 December 1972 authorizes the Member States to "reintroduce veterinary and health inspection duties" and if so with effect from what date and, if the answer is in the affirmative, whether that directive and in particular the above-mentioned articles thereof must therefore be considered as valid.

It was necessary to examine first whether the Council and, if necessary, the Commission may, in the regulations which they adopt, provide for exceptions or derogations of that nature.

The Court ruled that, as regards trade with third countries, the question whether it is necessary to abolish, maintain, amend or introduce charges having an effect equivalent to customs duties must be related both to the requirements of the common commercial policy and to the requirement of harmonization of the conditions of importation from third countries which results from the introduction of the Common Customs Tariff.

It follows that, as regards trade with third countries, the prohibition is not absolute and that the Council and possibly the Commission may make exceptions or derogations from that prohibition.

However, for those derogations to be effective the inspections whose costs they must cover must be organized in accordance with the directive and applied by the States concerned. The Court replied to the third and fourth questions by ruling that:

"(a) The Council does not infringe any provision of Community law by providing in the regulations which it adopts, in particular in Article 12 (2) of Regulation No. 14/64 and Article 20 (2) of Regulation No. 805/68, power to make exceptions or derogations - to be drawn up in the forms determined by the Council - from the prohibition on levying charges having equivalent effect in trade with third countries, provided however that the charges have as such uniform effect in all the Member States on the relevant trade with third countries.

(b) Although as regards the cost of veterinary and health inspection of imports of animals and fresh meat from third countries Articles 12 (8), 23 (4) and 26 of Directive No. 72/462 provide for derogations from the prohibition on the levying of charges having equivalent effect which is laid down in Article 20 of Regulation No. 805/68, those derogations can take effect only after the Member States have been enabled to organize as prescribed in the directive the inspections referred to in Articles 12, 23, 24 and 25 thereof".

Although the fifth and sixth questions had become purposeless, in order to provide the national court with an appropriate reply enabling it to apply Community law in the dispute before it the Court of Justice examined whether it was necessary to recognize on the basis of other provisions of Community law an exception or derogation such as provided in Regulation No. 14/64 and Regulation No. 805/68.

The Court ruled that:

"As regards animal health inspections and public health inspections of fresh meat from third countries, Article 9 of Council Directive No. 64/433 in conjunction with Article 12 (2) of Regulation No. 14/64 and Article 20 (2) of Regulation No. 805/68 derogates from the prohibition on levying veterinary and health inspection dues to the extent necessary to ensure non-discriminatory treatment, on the one hand, of traders who put fresh meat on the market in intra-Community trade and thereby become liable to pay veterinary and health inspection dues in the Member State of origin and, on the other hand, of those who import from third countries, provided that those dues do not exceed the actual cost of the inspections".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 June 1978

Patrick Christopher Kenny v

Insurance Officer

Case 1/78

1. Social security for migrant workers - Discrimination on ground of nationality - Prohibition - Direct effect
(EEC Treaty, Arts. 7 and 48; Regulation No. 1408/71 of the Council, Art. 3 (1))

2. Community law - Principle of non-discrimination on ground of nationality - Disparities in treatment resulting from divergences between laws of Member States - Exclusion
(EEC Treaty, Arts. 7 and 48)

3. Social security for migrant workers - Sickness insurance - Cash benefits - Loss or suspension of right - Ground - Facts occurring in territory of competent State - Analogous facts occurring in another Member State - Treatment as equivalent - Permissibility - Conditions
(EEC Treaty, Arts. 7 and 48; Regulation No. 1408/71 of the Council, Art. 3 (1), Art. 19 (1) (b) and Art. 22 (1) (a) (ii))

1. Within the scope of application of Regulation No. 1408/71 the first paragraph of Article 7 of the Treaty, as implemented by Article 48 of the Treaty and Article 3 (1) of that regulation, is directly applicable in Member States.

2. By prohibiting every Member State from applying its law differently on the ground of nationality, within the field of application of the Treaty, Articles 7 and 48 are not concerned with any disparities in treatment which may result, between Member States, from divergences existing between the laws of the various Member States, so long as the latter affect all persons subject to them in accordance with objective criteria and without regard to their nationality.

3. Articles 7 and 48 of the Treaty and Article 3 (1) of Regulation No. 1408/71 do not prohibit the treatment by the institutions of Member States of corresponding facts occurring in another Member State as equivalent to facts which, if they occur in the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and that those facts are not described in such a way that they lead in fact to discrimination against nationals of the other Member States.

NOTE Mr Kenny, the plaintiff in the main action, a national of the Republic of Ireland who is however resident in Great Britain, was subject in Great Britain to the provisions of the National Insurance Act and entitled inter alia to receive cash benefits there for sickness or incapacity for work.

In June 1973 he went to Ireland and was imprisoned. Whilst in prison he became ill and received treatment in a hospital which did not belong to the prison. On his return to Great Britain he claimed cash sickness benefits for the period while he was in hospital.

The Insurance Officer, the defendant in the main action, refused to grant that request, relying upon section 49 of the National Insurance Act according to which a person "undergoing imprisonment or detention in legal custody" is disqualified for receiving a benefit for the period of imprisonment or detention. This case led the National Insurance Commissioner to refer to the Court of Justice a series of questions for a preliminary ruling. The first question asked whether within the scope of application of Regulation (EEC) No. 1408/71 Article 7 of the EEC Treaty, which prohibits any discrimination on grounds of nationality, is directly applicable in Member States.

The Court replied by ruling that the first paragraph of Article 7 of the Treaty, as implemented by Article 48 of the Treaty and by Article 3 (1) of Regulation No. 1408/71, is directly applicable in Member States.

The second and third questions asked whether the competent institution of a Member State which is required to pay cash benefits to a worker of another Member State in accordance with the legislation which it administers is entitled to treat facts occurring in the territory of another Member State as equivalent to corresponding facts occurring in its own State being facts which, had they occurred in its own State, would have disqualified the worker concerned in part or in whole from receiving the benefits and whether it may withhold benefit accordingly and whether the answer to the second question would be different if the worker concerned were a national of the Member State of the competent institution.

The Court replied by ruling that:

"Articles 7 and 48 of the Treaty and Article 3 (1) of Regulation No. 1408/71 do not prohibit - though they do not require - the treatment by the institutions of Member States of corresponding facts occurring in another Member State as equivalent to facts which, if they occur on the national territory, constitute a ground for the loss or suspension of the right to cash benefits; the decision on this matter is for the national authorities, provided that it applies without regard to nationality and that those facts are not described in such a way that they lead in fact to discrimination against nationals of the other Member States.

The reply given to the second question applies also and to the same extent to cases in which the worker concerned is a national of the Member State to which the competent institution belongs".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 June 1978

British Petroleum Maatschappij Nederland BV and Others v

Commission of the European Communities

Case 77/77

1. Application for annulment - Decision stating that there has been a breach of the rules on competition - Pecuniary sanctions - Absence - Interest in taking proceedings
(EEC Treaty, Arts. 85 and 86 and second para. of Art. 173)

2. Conjunctural policy - Supply difficulties - Community measures - Absence - Dominant position - Abuse - Prohibition - Commission's duty to supervise
(EEC Treaty, Arts. 86 and 103)

3. Competition - Dominant position - Market in the product in question - Supply difficulties - Reductions in deliveries to customers - Different rate of reduction - Abuse - Absence - Application of similar rate - Duty - Legal basis
(EEC Treaty, Arts. 86 and 103)

1. The absence of pecuniary sanctions in a decision applying Articles 85 and 86 of the Treaty does not preclude the addressee from having an interest in obtaining a review by the Court of Justice of the legality of that decision and thus commencing an action for annulment under Article 173 of the Treaty.

2. The absence of rules based on Article 103 of the Treaty, which would make it possible to adopt suitable conjunctural measures, cannot release the Commission from its duty to ensure in all circumstances, both in normal and special market conditions, when the competitive position of traders is particularly threatened, that the prohibition in Article 86 of the Treaty is scrupulously observed.

3. The fact that a supplier in a dominant position applies to deliveries to one of his occasional customers in a period of shortage a rate of reduction different from that which he applies to his customers who have long-term contracts with him cannot amount to an abuse of a dominant position.

In such a case a duty to apply a similar rate of reduction for all customers could only flow from measures adopted within the framework of the Treaty, in particular Article 103, or, in default of that, by the national authorities.

NOTE The application is directed against a Commission decision of 19 April 1977 addressed to individuals taken as a result of a procedure in application of Articles 85 and 86 of the EEC Treaty initiated in January 1974 against several companies engaged in the production and distribution of petroleum products in the Netherlands.

Article 1 of the decision complained that the three applicant companies (British Petroleum Maatschappij B.V. and its two subsidiaries) had abused a dominant position within the meaning of Article 86 of the EEC Treaty by reducing during a period of shortage their deliveries of motor spirit intended for a customer established in the Netherlands by a considerably higher percentage than that applied to other customers. The customer referred to is Aardolie Belangen Gemeenschap B.V. which is a purchasing co-operative of the 19 members of the Avia group. The period referred to by the contested decision is that of the crisis in the supply of petroleum products which originated in the limitation of production which occurred in November 1973. It was rendered particularly acute in the Netherlands by the embargo imposed on it in December 1973.

Whilst complaining that British Petroleum had infringed the provisions of Article 86 of the Treaty, the Commission however considered that the intervention of the Rijksbureau voor Aardolie Produkten (National Agency for Petroleum Products) may have created doubts on the part of the petrol companies as to the obligations which they owed their customers and, more generally, considered that the confusion which reigned on the Dutch petroleum market because of the uncertainty as to how the crisis might develop made it difficult to assess the reductions in delivery that were needed. In view of these factors, the contested decision concluded that it would not be appropriate in that case to impose a fine upon British Petroleum. The applicants maintained that the fact that no fine was imposed by the contested decision cannot call in question the existence of their interest in requesting the Court to acknowledge that the complaint made in that decision which, if upheld, could in addition justify the lodging of an action for damages against British Petroleum before the national courts, is unfounded.

In this case it was necessary to examine what issues of fact and law were referred to by the Commission to distinguish more especially the individual conduct of British Petroleum during the crisis enabling that conduct to be considered as abusive under Article 86 of the Treaty.

The contested decision complained that British Petroleum exploited its dominant position by reducing its deliveries to Aardolie Belangen Gemeenschap B.V. more substantially than to other customers and thus put that company at an unquestionable disadvantage.

It is an established fact that on 21 November 1972 British Petroleum terminated the agreement with Aardolie Belangen Gemeenschap B.V. which had existed since 1968 and thus ended its business relationship with that company with regard to its supply of motor spirit. This termination by British Petroleum of its business relations with Aardolie Belangen Gemeenschap B.V. came within the reorganization of British Petroleum's business departments which was necessary because of the nationalization of large parts of its production business and the taking of participation in oil extraction by the producer States, in other words it was explained by considerations extraneous to its relationship with Aardolie Belangen Gemeenschap B.V.

It follows that during the crisis and from as early as November 1972 Aardolie Belangen Gemeenschap B.V.'s situation vis-à-vis British Petroleum as regards the supply of motor spirit was no longer that of a contractual customer but that of an occasional customer, so that it was impossible to complain that British Petroleum gave it during the crisis treatment less favourable than that reserved to its regular customers.

The duty of the supplier to apply during a shortage a similar degree of reduction in deliveries to all its customers without regard to the undertakings entered into with its regular customers can only stem from measures adopted within the context of the Treaty, in particular of Article 103 thereof or, in the absence thereof, by the national authorities. In the absence of Community measures, the Netherlands authorities set up the Rijksbureau voor Aardolie Produkten in order to deal with the difficulties encountered by purchasers of petroleum products.

For this purpose, the Rijksbureau voor Aardolie Produkten set up from the beginning a special programme of distribution so as to supply the needs of Aardolie Belangen Gemeenschap B.V. without however compelling the large petroleum companies, including British Petroleum, to apply a similar rate of reduction in its deliveries to all customers. Because of the measures adopted by the Rijksbureau voor Aardolie Produkten, Aardolie Belangen Gemeenschap B.V. was able during the shortage to have access to other large petroleum companies for its supplies of motor spirit and it is an established fact that because of that support and the supply facilities offered by the market in addition to the supplies from British Petroleum Aardolie Belangen Gemeenschap B.V. was able during the crisis to obtain supplies which, although limited because of the general shortage of products, enabled it however to overcome the difficulties experienced in the crisis.

The Court ruled as follows:

1. The Commission Decision of 19 April 1977 (77/327/EEC), published in the Official Journal of the European Communities 1977, No. L 117 of 9 May 1977, is annulled.

2. The defendant is ordered to pay the costs.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 June 1978

Statens Kontrol med Ædle Metaller
(National Authority for the Control of Precious Metals) v
Preben Larsen and Others

Case 142/77

1. Customs duties on exports - Charges having equivalent effect - Concept - Charge for the control of articles of precious metal - Classification
(EEC Treaty, Art. 16)

2. Tax provisions - Internal taxation - Products intended for export - Rule against discrimination - Application
(EEC Treaty, Art. 95)

3. Tax provisions - Internal taxation - Products placed on the market in several Member States - Double taxation - Effects - Abolition - Harmonization of legislation
(EEC Treaty, Arts. 95, 99 and 100)

1. A levy which is imposed on undertakings manufacturing, importing or dealing in articles of precious metal to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a charge having an effect equivalent to a customs duty on exports as long as it applies in accordance with the same criteria to all undertakings which are subject to such supervision whatever the origin or destination of the products.

2. Article 95, considered within the context of the tax provisions laid down in the Treaty, must be interpreted as also prohibiting any tax discrimination against products intended for export to other Member States.

3. The EEC Treaty does not contain any rules intended to prohibit the effects of double taxation with regard to products placed on the market in various Member States of the Community. The abolition of such effects, which is desirable in the interests of the freedom of movement of goods, can however only result from the harmonization of the national systems under Article 99 or possibly Article 100 of the Treaty.

NOTE

København's Byret (Copenhagen City Court) has referred to the Court of Justice four questions for a preliminary ruling on the interpretation of the concepts of charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 and of internal taxation within the meaning of the first paragraph of Article 95 of the EEC Treaty, having regard to the Danish legislation on the control of articles of precious metal.

These questions were raised within the context of a dispute between the Statens Kontrol med Ædle Metaller and two goldsmiths with regard to payment of the charge introduced to cover expenses connected with the supervision of undertakings which manufacture, import or deal in precious metals.

The goldsmiths in question put forward the argument that the levying of such a charge is contrary to the EEC Treaty and the court therefore referred to the Court of Justice four questions for a preliminary ruling worded as follows:

1. Does a levy which is imposed upon undertakings manufacturing, importing or dealing in articles of precious metal in order to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals constitute a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the EEC Treaty when it is imposed upon all undertakings which are subject to such supervision in accordance with provisions whereby one and the same article is only subject to charge on one occasion in Denmark irrespective of whether it is again subject to charge abroad?

2. Where manufacture is effected for other persons but the manufacturer does not apply his own mark is the answer to Question 1 affected by the fact that such consumption of precious metal is not included in the calculation of the chargeable value when such goods are manufactured for a Danish owner of a mark since the latter includes such precious metals in the account of his chargeable consumption whilst the consumption must be included when manufacture is for a foreign undertaking which is not subject to the charge in Denmark since such consumption would not otherwise be included in the basis for the Danish levy, still irrespective of whether it is again subject to charge abroad?

3. In this connexion is it relevant that the precious metal which is made up in Denmark is supplied to the Danish manufacturer by the foreign customer in question to whom the finished product is re-exported?

4. If such a levy is not regarded as constituting a charge having an effect equivalent to a customs duty on exports is it to be regarded as internal taxation (on the imported quantity of gold) contrary to the first paragraph of Article 95 of the EEC Treaty?

With regard to the first three questions on the interpretation of Article 16 it seems that the system of taxation in question aims to cover all consumption of precious metals by Danish undertakings and that for this purpose all quantities of metal imported, dealt in on the actual territory of Denmark or exported are included in the chargeable consumption of those undertakings according to the same criteria and without distinction as to origin or destination. It is therefore a system of internal taxation.

The Court replied by ruling that: "A fee which is imposed on undertakings manufacturing, importing or dealing in articles of precious metal to meet the costs of the supervision of such undertakings by the authorities and which is calculated on the basis of the undertakings' consumption of precious metals is not in the nature of a customs duty on exports as long as it applies in accordance with the same criteria to all undertakings which are subject to such supervision whatever the origin or destination of the products".

The fourth question concerning the scope of Article 95 called for examination of the problem whether the prohibition on discrimination laid down in Article 95 of the Treaty is also applicable where internal taxation is imposed on a product intended for export and, if the answer is in the affirmative, whether a system of taxation such as that applied in Denmark with regard to the control of articles of precious metal is compatible with that prohibition on discrimination. The wording of Article 95 refers only to the discriminatory application of systems of internal taxation to products imported from other Member States.

In this field the Treaty aims to guarantee generally the neutrality of systems of internal taxation with regard to intra-Community trade whenever a commercial transaction going beyond the frontiers of a Member State at the same time constitutes the chargeable event giving rise to the levying of a charge within the context of such a system.

The Court ruled that:

"It follows from Article 95 of the EEC Treaty, considered within the context of the tax provisions contained in the Treaty, that a system of internal taxation, including a system intended to finance the supervision of the production and marketing of articles of precious metal, must be applied without discrimination, whatever the origin or the destination of the products.

A system of taxation so arranged that the consumption of precious metal exported and for that reason exempted from the application of a mark is included in the chargeable consumption of the undertakings on the same conditions as the consumption marketed on the national territory and subject as such to the duty of marking must not be considered as being discriminatory.

The fact that the precious metal worked in a Member State is supplied to the manufacturer by a foreign customer to whom the finished product is re-exported does not alter this appraisal as long as that transaction is, as regards tax, subject to the same charges as all other similar transactions coming within the application of the same legal provisions, whatever the procedure for taxation.

In the present state of Community law, the fact that an article of precious metal manufactured in one Member State and exported to another Member State is subject in the second Member State to a further control and to a charge in respect thereof does not prohibit the first Member State from including the consumption of metal exported in the basis of assessment of the fee payable for the control of the quality of the metal carried out by that State".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

29 June 1978

Procureur du Roi v P. Dechmann

Case 154/77

1. References for preliminary rulings - 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 - Selling price to the consumer - Maximum profit margin - Unilateral fixing by a Member State - Permissibility - Conditions
(Regulation No. 121/67/EEC of the Council)

1. Although, within the framework of proceedings brought under Article 177 of the 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 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 the 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.

3. Regulation No. 121/67/EEC must be interpreted as not preventing the unilateral fixing by a Member State of a maximum profit margin for retail sale of pigmeat, calculated essentially on purchase prices as charged at prior stages of marketing and varying according to the trend of such prices, provided that the margin is fixed at a level which does not impede intra-Community trade.

NOTE The question referred to the Court of Justice by the Tribunal de Première Instance (court of first instance), Neufchâteau, relates to the interpretation of Regulation No. 121/67 of the Council on the common organization of the market in pigmeat, with a view in particular to defining its scope in relation to national measures affecting prices.

The Belgian Law of 30 July 1971 on economic regulation and prices provides that the selling prices of pigmeat charged to the consumer by retailers may not exceed the amounts resulting from the weighted average purchase price as increased by a maximum gross profit of Bfrs 22. This law also fixes the methods for calculating the maximum gross profit and the weighted average purchase price. The national court before whom the case was brought asked the Court of Justice whether the Belgian legislation in this field involved an infringement of the Community regulations.

The Court of Justice stated the principle of its jurisdiction, which is to supply the national court with all criteria derived from Community law enabling that court to give a decision on the compatibility of those provisions with the Community rule in question, and ruled that:

"Regulation No. 121/67 must be interpreted as not preventing the unilateral fixing by a Member State of a maximum profit margin for retail sale of pigmeat, calculated essentially on purchase prices as charged at prior stages of marketing and varying in proportion to the trend of such prices, provided that the margin is fixed at a level which does not impede intra-Community trade".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

4 July 1978

Milchfutter & Co. KG v

Hauptzollamt Gronau

Case 5/78

1. Common Customs Tariff - Agricultural products - Classification - Tariff headings - Application in different ways according to the nature of the charges to be paid - Not permissible

2. Agriculture - Common organization of the markets - Compound feeding-stuffs - Tariff classification - Milk product content - Method of calculation laid down for the fixing of the levies - Application for the purposes of determining the monetary compensatory amounts
(Regulation No. 823/68 of the Council, Art. 11 (1); Common Customs Tariff, tariff subheadings 23.07 B I a 3 and 23.07 B I a 4)

3. Agriculture - Common organization of the markets - Monetary compensatory amounts - Products concerned - Tariff classification made by the exporting Member State - Not binding on importing Member State

1. In the absence of any express provision, the headings of the Common Customs Tariff cannot be applied in different ways to the same product depending on whether they are used for the classification thereof in connexion with the levying of customs duties, the application of the system of the common organizations of the market or the application of the system of monetary compensatory amounts.

2. The method of calculating the "milk product" content which results from the application of Article 11 (1) of Regulation No. 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products is decisive with regard to the amount of the monetary compensatory amounts which must be charged on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff.

3. Within the context of the system of monetary compensatory amounts, the tariff classification made by the exporting Member State is not binding, in the absence of provisions of Community law in that respect, on the authorities of the importing Member State.

NOTE The Finanzgericht (Finance Court) Münster referred a series of questions to the Court of Justice for a preliminary ruling on the interpretation of the Council regulations determining the groups of products and the special provisions for calculating levies on milk and milk products and laying down the method for determining the lactose content of compound feeding-stuffs imported from third countries, in connexion with the application of tariff subheading 23.07 B I (a).

The questions referred are the following:

1. Is the "milk product content" which results from the application of Article 11 (1) of Regulation (EEC) No. 823/68 of the Council of 28 June 1968 (Official Journal, English Special Edition 1968 (I), p. 199) and of Article 1 of Regulation (EEC) No. 1216/68 of the Commission of 9 August 1968 (Official Journal, English Special Edition 1968 (II), p. 421) decisive with regard to the amount of the monetary compensatory amounts which it was necessary to charge during the period from January to March 1975 on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany?

2. If Question 1 is answered in the negative:
Is the "actual" milk product content decisive?

3. If Question 2 is answered in the affirmative, does it follow from Community law which method is to be used for determining the actual milk product content?

4. Within the context of the system of monetary compensatory amounts, is the classification for customs purposes made by the exporting Member State of the European Communities binding upon the importing Member State?

The Court answered the first three of the questions referred by ruling that: "The method of calculating the 'milk product' content which results from the application of Article 11 (1) of Regulation No. 823/68 of the Council of 28 June 1968 determining the groups of products and the special provisions for calculating levies on milk and milk products is decisive with regard to the amount of the monetary compensatory amounts which must be charged on compound feeding-stuffs coming under tariff subheadings 23.07 B I a 3 or 23.07 B I a 4 of the Common Customs Tariff which were imported from the Netherlands into the Federal Republic of Germany during the period from January to March 1975".

The answer to the fourth question is the following: "Within the context of the system of monetary compensatory amounts, the classification for customs purposes made by the exporting Member State of the European Communities was not binding upon the importing Member State at the time of the dispute".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 July 1978

City of Frankfurt-am-Main v

Firma Max Neumann

Case 137/77

Common agricultural policy - Approximation of legislation on public health and veterinary inspections - Imports from third countries - Health inspections - Charges - Directive No. 72/462 - Application by analogy - Not permissible
(Council Directive No. 72/462/EEC, Arts. 12, 23, 24 and 26)

Council Directive No. 72/462/EEC, which places a duty on Member States to carry out health inspections upon the importation of bovine animals and swine and fresh meat from third countries and provides that the resulting expenses must be paid by the traders concerned, cannot be applied by analogy to the importation of other products (in this case, game).

NOTE At the beginning of 1975 Firma Max Neumann, the plaintiff at first instance and respondent in the main action, imported red deer, roe deer and wild boar from third countries into the Federal Republic of Germany.

The City authority of Frankfurt-am-Main claimed the payment from that undertaking of charges for health inspections carried out on that game, and the respondent in the main action refuses to pay them because it regards them as charges having an effect equivalent to customs duties on imports introduced after the entry into force of the Common Customs Tariff on 1 July 1968 and hence incompatible with Community law.

On the other hand, the defendant at first instance and appellant in the main action maintains that the levying of the charges in question is in accordance with Community law, because Council Directive 72/462 on health and veterinary inspection problems upon importation of bovine animals and swine and fresh meat of the following species: bovine animals, swine, sheep and goats and solipeds, authorizes Member States to levy charges for health inspections carried out upon imports, and because that authorization must be extended by analogy to charges for health inspections carried out upon the importation of other meat.

This case prompted the Bundesverwaltungsgericht (Federal Administrative Court) to refer two questions to the Court of Justice for a preliminary ruling.

The first asks whether the provisions of Council Directive 72/462 are applicable by analogy to the importation of game with the result that the Member States are entitled or obliged to carry out health inspections and may impose charges for such inspections.

The second question is whether national charges may still be increased to the extent of the general rise in costs after the introduction of the Common Customs Tariff on 1 July 1968.

The Court points out that these questions concern the importation of meat assuming that it does not come under a common organization of agricultural markets. However, it must be noted that Regulation No. 827/68 of the Council refers to game and that game comes under the prohibition on levying any charge having an effect equivalent to a customs duty.

The first question

Council Directive 72/462 provides for the organization of a uniform health inspection the detailed rules for which may be established by the Council, the Commission or the Member States, as the case may be.

That directive provides that Member States have a duty to carry out a health inspection upon importation of animals and that the expenditure shall be chargeable to the consignor, the consignee or their agents, without repayment by the State.

The provisions do not prohibit this attribution of expenditure from being made by means of the imposition of charges, provided that they do not exceed the actual cost of the inspection. This is a derogation from the prohibition on levying charges having equivalent effect.

In view of the fact that Directive 72/462 does not mention game, the national court raised the question whether that derogation was applicable by analogy.

In its analysis, the Court found that since the conditions laid down by Directive 72/462 itself for health inspection charges to be imposed by way of derogation from the prohibition on the levying of charges having equivalent effect had not been fulfilled, at the present stage of its implementation that directive could not justify the imposing of the said charges.

Directive 72/462 is not a particular application of a general principle of Community law whereby any inspection at the external frontiers of the Community may justify the imposing of charges fixed by Member States, but is only an application of the derogation made possible by Article 2 (2) of Regulation No. 827/68 from the prohibition laid down in that article on the levying of charges having effect equivalent to customs duties in trade in the products concerned.

In the light of these general considerations, the second question is no longer relevant.

The Court ruled that:

"Article 12 (1), (7) and (8) and Articles 23, 24 and 26 of Council Directive 72/462 of 12 December 1972 are not applicable by analogy".

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 July 1978

Firma Hermann Ludwig v

The Free and Hanseatic City of Hamburg

Case 138/77

Common agricultural policy - Approximation of legislation on public health and veterinary inspections - Imports from third countires - Health inspections - Charges - Directive No. 72/462 - Application by analogy - Not permissible
(Council Directive No. 72/462/EEC, Arts. 12, 23, 24 and 26)

Council Directive No. 72/462/EEC, which places a duty on Member States to carry out health inspections upon the importation of bovine animals and swine and fresh meat from third countries and provides that the resulting expenses must be paid by the traders concerned, cannot be applied by analogy to the importation of other products (in this case, preserved meat).

NOTE (Question identical to that asked in Case 137/77 - see above).

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

6 July 1978

Directeur Régional de la Sécurité Sociale de Nancy v

Paulin Gillard and

Caisse Régionale d'Assurance Maladie du Nord-Est

Case 9/78

1. Social security for migrant workers - Community rules - Substantive field of application - Benefits covered and benefits excluded - Distinction
(Regulation No. 1408/71 of the Council, Art. 4 (1) and (4))

2. Social security for migrant workers - Community rules - Substantive field of application - Benefits excluded - Old-age benefits for former prisoners of war
(Regulation No. 1408/71 of the Council, Art. 4 (4))

1. The fact that a provision creating benefits for victims of war or its consequences is inserted in national social security legislation is not by itself decisive in determining that the benefit referred to in the above-mentioned provision is a social security benefit within the meaning of Regulation No. 1408/71, as the distinction between benefits which are excluded from the field of application of that regulation and benefits which come within it rests entirely on the factors relating to each benefit, in particular its purposes and the conditions for its grant.

2. Article 4 (4) of Regulation No. 1408/71 must be interpreted as meaning that the regulation does not apply to benefits for former prisoners of war consisting in the grant, to workers who prove that they underwent a long period of captivity, of an advanced old-age pension, the essential purpose of such benefits being to provide for former prisoners of war testimony of national gratitude for the hardships endured between 1939 and 1945 on behalf of France and its Allies and thus granting them, by the provision of a social benefit, a quid pro quo for the services rendered to those States.

NOTE Born in 1915, Mr Gillard, a Belgian national residing in Belgium, was employed in France. From 1940 to 1945, that is for more than 60 months, he was a prisoner of war in Germany in the uniform of his country.

When he reached the age of 60 he obtained an early old-age pension at the normal rate of 25% of the average annual salary. As the holder of a former prisoner-of-war's card issued in Belgium, and in reliance on the equal treatment for workers who are nationals of the Member State concerned and workers who are nationals of another Member State, Mr Gillard applied for an old-age pension at the rate of 50% under French law. The Caisse Régionale (Regional Insurance Fund) for Nancy refused that application, stating that the benefit applied for could be granted only to insured persons who could prove the duration of their imprisonment and their military service in time of war in the French or Allied Forces "by producing their military record book or a certificate issued by the responsible military authority, by the Ministry or by the Office National des Anciens Combattants (National Ex-Service Men's Department)".

In support of its refusal of the application, the social security institution argued in particular that the benefit granted to former prisoners of war under French law is one of the "benefit schemes for victims of war or its consequences" referred to in Article 4 (4) of Regulation No. 1408/71 and therefore does not come within the area of application of that regulation. This prompted the national court to ask the Court of Justice whether Article 4 (4) of Regulation No. 1408/71, pursuant to which that regulation is not to apply to "benefit schemes for victims of war or its consequences", must be interpreted as meaning that benefits which are not strictly in the nature of compensation and are payable to those workers who were victims of the war only in so far as it detrimentally affected their acquisition of old-age pension rights or similar rights, such as the old-age benefits instituted by the French Law of 21 November 1973, are also excluded.

The distinction between benefits excluded from the area of application of Regulation No. 1408/71 and benefits which come within it is based essentially on the factors of which each benefit is made up, particularly its intended purpose and the conditions for its being granted. It appears from the case file that the essential purpose of the benefit granted under the French provisions is to offer former prisoners of war who can prove a long period of imprisonment a token of national gratitude for the hardship suffered between 1939 and 1945 for France and its Allies.

In answer to the question referred to it by the Cour d'Appel, Nancy, the Court ruled that Article 4 (4) of Regulation No. 1408/71 must be interpreted as meaning that the regulation does not apply to social security benefits instituted in favour of former prisoners of war, such as the benefit provided for by the French Law of 21 November 1973.

ANALYTICAL TABLE OF THE CASE-LAW OF THE COURT OF JUSTICE

Speech welcoming those taking part in the "Sixième Colloque des Conseils d'État et des Juridictions Administratives Suprèmes des Pays Membres des C.E.", delivered on 27 April 1978 in Luxembourg

Ladies and Gentlemen,

It is both an honour and a pleasure for me warmly to welcome you to the Court of Justice of the Community, on behalf of all Members of the Court, as those taking part in the "Colloque des Conseils d'État et des Juridictions Administratives Suprèmes des Pays Membres".

This is the sixth occasion on which you have met together for such a discussion on important topics of administrative law. This proves how useful and fruitful you consider a continuous exchange of views to be between representatives of those courts which, in the Member States of the Communities, each decide as the court of last instance disputes relating to administrative law.

We appreciate your efforts. For many years the Court of Justice itself has also invited to Luxembourg, three times a year, judges from all Member States and from almost all branches of the legal system so as to give them an opportunity to discuss legal questions of common interest and to make personal contacts.

We are, moreover, convinced by our own experience of the need for your efforts. Although very different powers have been given to this Court, experience has nevertheless shown that questions of administrative law are of outstanding importance in its decision-making.

Unfortunately the written law of the Community not infrequently lets us down. A legal system which is essentially orientated towards the regulation of economic and social situations cannot be applied and interpreted without reference to general legal principles which it is necessary to find and develop by means of case-law. Thus it continually occurs that the deliberations of this Court assume the character of a colloquium of comparative law on one or other principle of administrative law. As experts on the legal systems of all the Member States are gathered within this Court, we are in the fortunate position of being able to carry out this study of comparative law and this search for the best solution internally, so to speak. Our Documentation Branch often helps us in this respect by an exhaustive inventory of the relevant national rules and case-law.

In this connexion it is of interest that, according to the name which it has given itself, your association evidently assumes that there are administrative courts or that there is at least a system of administrative law in all nine Member States. In addition, I should like to point out that your courts or subordinate tribunals refer to this Court a continually increasing number of cases from the field of administrative law, broadly understood. In this respect the principle that without complaint there is no redress certainly applies or, paraphrased, if no national court refers a case to this Court we cannot settle any questions as to the interpretation or validity of Community law. However in this respect the geographical distribution and the distribution of the orders for reference according to branches of the legal systems puzzle us. As an example, I should like to quote a special field of administrative law, that is, the Common Customs Tariff and the general system of customs law as well as tax and fiscal law in so far as these fields are governed or influenced by provisions

of Community law. We receive from some Member States many questions for preliminary rulings relating to these subjects. On the other hand, there seens to be perfect harmony in other Member States between the undertakings concerned on the one hand and the customs and tax authorities on the other, so that a dispute before the courts very seldom or never arises and for this reason alone the competent administrative courts refer no questions to this Court for preliminary rulings. The reasons for these disparities are evidently diverse: the size of the population, the intensity of foreign trade relationships, the system and development of the legal protection given by the administrative courts, the mentality of the citizens and the authorities, to mention but a few factors, might be relevant in this connexion. As far as I can see, there has been no detailed examination of these problems; such an examination would be useful and informative.

Ladies and gentlemen, it is true that Luxembourg is, according to a decision made by the representatives of the governments in 1965, only the provisional seat of the Court of Justice. However, this modern building which has been fitted with all the necessary technical equipment and was specifically designed for the purposes of the Court of Justice is built of solid Luxembourg steel; it serves as proof of the accuracy of the principle that nothing is as permanent

as the temporary. We hope that you will soon feel at home here with us. We shall endeavour to help to provide the material pre-requisites for this.

We wish you a successful meeting and a pleasant stay in Luxembourg.

GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I - Information on current cases (for general use)

1. Hearings of the Court

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

2. Judgments and opinions of the Advocates General

Offset copies of these documents may be ordered from the Internal Services Division of the Court of Justice, P.O. Box 1406, Luxembourg, subject to availability and at a standard price of Bfrs 100 per document. They will not be available after publication of that part of the Reports of Cases before the Court which contains the judgment or Advocate General's opinion requested.
Interested persons who have a subscription to the Reports of Cases before the Court can take out a subscription to the offset texts in one or more Community languages. The price of that subscription for 1978 will be the same as the price of the Reports, Bfrs 1 500 per language. For subscriptions in subsequent years, the price will be altered according to changes in costs.

II - Technical information and documentation

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

1. Reports of Cases Before the Court

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

The volumes for the years 1954 to 1972 have been published in Dutch, French, German and Italian; the volumes for 1973 onwards have also been published in English and in Danish. An English edition of the volumes for the years 1962 to 1972 is available; the volumes for the years 1954 to 1961 will be available at the end of 1978. The Danish edition of the volumes for the years 1954 to 1972 is being completed. It includes a selection of judgments, opinions and summaries from the most important cases; the volume for the years 1954 to 1964, the volume for the years 1965 to 1968 and the volumes for the years 1969, 1970 and 1971 are already available.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and five supplements, the last of which appeared in December 1974; has been stopped.

3. Bibliography of European Judicial Decisions

Concerning judicial decisions relating to the Treaties establishing the European Communities.

4. Selected instruments relating to the organization, jurisdiction and procedure of the Court

1975 edition.

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

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES,
Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

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Other Countries:	Office for Official Publications of the European Communities, Case Postale 1003, LUXEMBOURG

B - Publications issued by the Information Office of the Court of Justice

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

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

2. Information on the Court of Justice

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

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

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

4. General booklet of information on the Court of Justice

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

5. European Law Report

Since 1972 the London Times has carried articles under the heading "European Law Reports" covering the more important cases in which the Court has given judgment.

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

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

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

The German and French editions are available from:

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

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

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

III - Visits

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

Visitors may attend public hearings of the Court or of the Chambers to the extent permitted by the seating capacity. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. The Information Office of the Court of Justice must be informed of each group visit.

Public holidays in Luxembourg

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

New Year's Day	1 January
Carnival Monday	variable
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Luxembourg National Holiday	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Hallows' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

* * *

IV - Summary of types of procedure before the Court of Justice

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

A - References for preliminary rulings

The national court or tribunal submits to the Court of Justice questions relating to the validity or interpretation of a provision of Community law by means of a formal judicial document (decision, judgment

or order) containing the wording of the question(s) which it wishes to refer to the Court of Justice. This document is sent by the Registry of the national court to the Registry of the Court of Justice, accompanied in appropriate cases by a file intended to inform the Court of Justice of the background and scope of the questions referred.

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

After the Advocate General has delivered his opinion, the judgment 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 a person who is authorized and has expressed willingness to accept service.

The application should also be accompanied by the following documents:

The decision the annulment of which is sought, or, in the case of proceedings against an implied decision, by documentary evidence of the date on which the request to the institution in question was lodged;

A certificate that the lawyer is entitled to practise before a court of a Member State;

Where an applicant is a legal person governed by private law, the instrument or instruments constituting and regulating it, and proof that the authority granted to the applicant's lawyer has been properly conferred on him by someone authorized for the purpose.

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

The application is notified to 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.

* * *

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OFFICE FOR OFFICIAL PUBLICATIONS
OF THE EUROPEAN COMMUNITIES

Boîte postale 1003 — Luxembourg

Catalogue number: DY-AA-78-002-EN-C