Information on the Court of Justice of the European Communities

1980 – II

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

II

1980

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for the judicial year 1979 to 1980

(from 8 October 1979)

Order of precedence

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J.-P. WARNER, First Advocate General
A. O'KEEFFE, President of the First Chamber
A. TOUFFAIT, President of the Second Chamber
J. MERTENS DE WILMARS, Judge
P. PESCATORE, Judge
H. MAYRAS, Advocate General
Lord A.J. MACKENZIE STUART, Judge
G. REISCHL, Advocate General
F. CAPOTORTI, Advocate General
G. BOSCO, Judge
T. KOOPMANS, Judge
O. DUE, Judge
A. VAN HOUTTE, Registrar

First Chamber	Second Chamber	Third Chamber[1]
A. O'KEEFFE, President	A. TOUFFAIT, President	H. KUTSCHER, President
G. BOSCO, Judge	P. PESCATORE, Judge	J. MERTENS DE WILMARS, Judge
T. KOOPMANS, Judge	O. DUE, Judge	Lord A.J. MACKENZIE STUART, Judge

1 - Following an amendment to the Rules of Procedure which entered into force on 8 October 1979 a third chamber has been created of which the President of the Court, H. Kutscher, is President.

J U D G M E N T S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

Judgment of 24 April 1980

Case 65/79

Procureur de la République Francaise v René Chatain

(Opinion delivered by Mr Advocate General Capotorti on 13 February 1980)

1. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Invoice price - Reduction by the national authorities - Not permissible.

(Regulation No. 803/68 of the Council; Regulation No. 375/69 of the Commission).

2. Common Customs Tariff - Value for customs purposes - Normal price of goods - Determination - Scope - Duty of national administrative authorities to accept for other purposes the valuation for customs purposes - None - Suppression of illegal transfers of capital - Application of national financial or fiscal legislation.

(Regulation No. 803/68 of the Council; Regulation No. 375/69 of the Commission).

3. International agreements - Agreement between the EEC and the Swiss Confederation - Quantitative restrictions - Measures having an equivalent effect - Prohibition - Infringement - None - Application of penal sanctions to an importer who has strictly observed the Community rules relating to value for customs purposes.

(Agreement between the EEC and the Swiss Confederation, Art. 13; Regulation No. 375/69 of the Commission).

1. Apart from a possible exception resulting from either the very structure of the Common Customs Tariff or Community rules pursuing special objectives other than those contemplated by the Common Customs Tariff, the adjustments to the value for customs purposes which are referred to in Regulations No. 803/68 and No. 375/69 are upward adjustments designed both to prevent deflection of trade or activities and distortion of competition which would be the consequence of an undervaluation of imported goods and also to ensure for the Community the full collection of customs duties.

The reduction by the competent authorities of a Member State of the invoice price of goods imported from a non-member country does not accord with the aims of the rules relating to the determination of the value of the goods for customs purposes.

2. The determination of the value for customs purposes in accordance with Regulations No. 803/68 and No. 375/69 cannot have the effect of requiring the fiscal and financial authorities of the Member States to accept that valuation for purposes other than the application of the Common Customs Tariff.

Thus if it were established that an undertaking which forms part of a company or a group of companies of which the centre of management is outside the Member State concerned adopted, in its relations with that centre of management or with other undertakings belonging to the same group, prices, the application of which might imply an illegal transfer of capital or profits, it would be for the Member State concerned to take appropriate measures, with a view to proving, and where necessary suppressing, such activities, under its own financial or fiscal legislation and not by applying Community rules relating to valuation for customs purposes.

3. Where an importer has accurately and fully completed the form of questionnaire annexed to Regulation No. 375/69 and it is not disputed that the goods have actually been delivered to the purchaser in the quality and quantity stated in the invoice and the seller has received the whole of the invoice price and it is not alleged against him that he has not answered more detailed inquiries which the customs authorities may have put to him, he has not failed to fulfil any duties imposed on him by the Community rules on the valuation of goods for customs purposes or by Article 13 of the Agreement between the EEC and the Swiss Confederation of 22 July 1972. On the other hand, the consequences in other respects - such as those relating to the financial or fiscal laws other than customs laws - which are not governed by the Community rules are a matter for the legal order of the Member State concerned.

NOTE

The facts

Sandoz-Suisse A.G. sells chemical products to its subsidiary Sandoz-France S.à r.l.

These sales are effected under the terms of an exclusive licence to manufacture granted by Sandoz-Suisse to Sandoz-France on 6 May 1935, which provides that the starting materials for the manufacture under licence of the products will be "bought from Sandoz-Suisse in preference to others", after prior agreement on the prices and conditions of sale in respect of each individual transaction.

When the customs authorities were carrying out an inspection of the premises of Sandoz-France they found that Mr. Chatain, the manager of the French subsidiary, had made a customs declaration in respect of goods purchased from the parent company Sandoz-Suisse giving a value above the normal price.

These purchases were spread over the period from 4 January 1971 to 9 November 1973 and amounted to FF 89 929 024 whereas the value taken by the customs authorities was only FF 53 142 943. Following this finding the customs inspectorate drew up on 20 February 1974 an official report of the facts on the strength of which it filed a complaint with the Procureur de la République du Tribunal de Grande Instance, Nanterre, concerning:

A false declaration of value for customs purposes on importation since Sandoz-France claimed to have bought the products at prices which had clearly been overvalued;

The illegal transfer of capital abroad, since Sandoz-France by paying a higher price had repatriated its profits to Switzerland without paying tax on those profits in France.

The Juge d'Instruction of the Tribunal de Grande Instance, Nanterre, charged Mr. Chatain with "importing prohibited goods without any customs declarations", and "illegally transferring capital abroad".

Sandoz-France contested these two charges on the basis of the following arguments:

As far as the false customs declaration is concerned:

(1) Regulation (EEC) No. 803/68 of the Council on the valuation of goods for customs purposes does not allow adjustments downwards, that is to say any reductions of the contract price;

(2) Regulation (EEC) No. 375/69 of the Commission on the declaration of particulars relating to the value of goods for customs purposes limits the importer's obligations in relation to the custom declaration to be made;

(3) In this case there is no incorrect invoice.

As far as concerns the infringement of exchange control rules:

The French authorities are wrong to apply Community rules on the valuation of goods for customs purposes since the aim of the latter is entirely different from that of the exchange control rules.

The decision

The French court, taking account of the fact that the matter is governed by Regulations Nos. 803/68 and 375/69 and also by the agreement between the EEC and the Swiss Confederation, considered that it was advisable to obtain an interpretation of these texts and referred 11 questions to the Court for a preliminary ruling.

The two questions which are relevant, Question 1 and 11, and on the answer to which the reply to the other question depends, raises the question whether a Member State may reduce the value for customs purposes declared by the importer. This problem must be resolved in the light of the objectives of the system and of the provisions of these regulations.

Regulation No. 803/68, on the valuation of goods for customs purposes, seeks to attain a dual economic and fiscal objective. The sixth recital in the preamble thereto states "...the value for customs purposes must be determined in a uniform manner in Member States, so that the level of the protection given by the Common Customs Tariff is the same throughout the Community and any deflection of trade and activities and any distortion of competition which might arise from differences between national provisions is thereby prevented". The seventh recital in the preamble states "... any deflection of customs receipts should be avoided and where appropriate eliminated" Consequently the primary aim of the regulation is to prevent goods being undervalued for the purpose of applying the Common Customs Tariff.

This conclusion is apparent as far as concerns the protection of customs revenue.

As provided for in Article 1 of Regulation No. 803/68 the value of goods for customs purposes is to be determined "for the purpose of applying the Common Customs Tariff".

The meaning of "the value of goods for customs purposes" and the provisions which are used to define it must therefore be understood with this specific function in mind. The value of imported goods for customs purposes is the "normal price", that is to say, the price which they would fetch on a sale in the open market between a buyer and a seller independent of each other. The regulation provides for a number of adjustments to the price thus defined. The aim of all the adjustments is to prevent prices being undervalued.

The purpose of Regulation (EEC) No. 375/69 of the Commission is to define the obligations of importers and also the powers of the customs authorities. The effect of this regulation is that the importer is bound to declare to the customs authorities, in good faith, particulars which may be useful for the determination of the value of the goods for customs purposes, checks at a later date falling within the field of action of the authorities.

The form of questionnaire referred to in Article 1 of Regulation No. 375/69 gives the particulars which the importer has to supply:

(a) The invoice price as the basis of calculation;

(b) Other items which go to make up the value for customs purposes which are the vendor's responsibility;

(c) Items which do not go to make up the value for customs purposes but are included in the invoice price and are the importer's responsibility;

(d) A rate of adjustment which applies only to the price and which is provided for only in the form of an increase.

Consequently it may be said that the value for customs purposes is made up primarily of the invoice price which may only be adjusted upwards and of extrinsic items capable of being increased or decreased which the customs may add to or subtract from the invoice price.

Consideration of the objectives as well as the machinery of the two regulations shows that they only fulfil a specific function in the context of the customs union.

Adjustments to the value of goods for customs purposes contemplated by the regulations which have been quoted are adjustments upwards intended to prevent deflection of trade or business activity and distortion of competition which would result from imported goods being undervalued and also to ensure that customs receipts are collected for the community in full.

If it were established that an undertaking forming part of a company or a group of companies whose central management is outside the Member State concerned, charges, in its dealings with that central management or with other undertakings belonging to the same group, prices, the application of which might involve an illegal transfer of capital or profits, it would be for the Member State concerned to take suitable steps, with a view to establishing the existence of and, if necessary, suppressing such dealings, under its own financial or fiscal legislation and not by applying Community rules relating to the valuation of goods for customs purposes.

The Court in answer to Question 1 + 11 has ruled that:

> "Regulation No. 803/68 of the Council of 27 June 1968 on the valuation of goods for customs purposes, in particular Articles 1 to 10 of that regulation, and Regulation No. 375/69 of 27 February 1969 must be interpreted as meaning that the reduction by the competent authorities of a Member State of the invoice price of goods imported from a non-member country does not accord with the aims of the rules on the valuation of goods for customs purposes. However, the determination of the value for customs purposes in accordance with these regulations cannot have the effect of requiring the fiscal and financial authorities of the Member States to accept that valuation for purposes other than the application of the Common Customs Tariff."

It follows from the answer to Questions 1 and 11 that Questions 2 to 8 inclusive and 10, which were referred to the Court only in the event of the answer to the first and eleventh questions being in the affirmative, no longer have any purpose.

An answer to Question 9 relating to the agreement between the EEC and the Swiss Confederation of 22 July 1972 was however still required.

The aim of the first part of Question 9 is to ascertain whether a reduction by the competent authority of a Member State of the value declared or of the value resulting from the particulars furnished by the importer is or is not a measure having an effect equivalent to a quantitative restriction, which is prohibited by the agreement between the EEC and the Swiss Confederation. (It must be noted that, according to Article 13 (2) of that agreement, measures having an effect equivalent to quantitative restrictions are to be abolished only as from 1 January 1975 at the latest. It will consequently be for the national court to decide whether the acts alleged against the accused are covered by the agreement in question).

The question is in substance the same as that raised by Questions 1 and 11: consequently the Court in answer thereto ruled that "The same answer applies as regards Article 13 of the Agreement between the EEC and the Swiss Confederation of 22 July 1972".

The second part of Question 9 asks whether, by virtue of Article 13 of the agreement between the EEC and the Swiss Confederation, a Member State may punish an importer who has duly fulfilled his obligations by furnishing accurately and in full the information required by Regulation No. 375/69 with heavy fines and imprisonment.

In answer to this latter question the Court ruled that:

> "Where an importer has accurately and fully completed the questionnaire annexed to Regulation No. 375/69 and it is not disputed that goods have actually been delivered to the purchaser in the quality and quantity stated in the invoice and the seller has received the whole of the invoice price and it is not alleged against him that he has not answered more detailed inquiries which the customs authorities may have put to him, he has not infringed any of the requirements imposed on him by the Community rules on the valuation of goods for customs purposes and by Article 13 of the agreement between the EEC and the Swiss Confederation. On the other hand, the consequences in other respects - such as those relating to the financial or tax laws other than customs laws - which are not governed by the Community institutions are a matter for the legal order of the Member State concerned.

Judgment of 24 April 1980

Case 72/79

Commission of the European Communities v Italian Republic

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

1. Agriculture - Common organization of the markets - Aids granted by States - Prohibition -Appraisal of the compatibility of an aid with the rules of the common organization - Procedure to be followed

   (EEC Treaty, Arts. 93 and 169)

2. Agriculture - Common organization of the markets - Sugar - System of compensation for storage costs - Flat-rate refund for whole Community - Exhaustive nature - Appraisal by the Council alone of the justification for any amendments

   (Regulation No. 3330/74 of the Council, Art. 8)

3. Agriculture - Common organization of the markets - Sugar - System of compensation for storage costs - Material scope - Sugar carried forward to following marketing year - Exclusion

   (Regulation No. 3330/74 of the Council, Arts. 8 and 31 (2))

1. The Council is entitled to lay down, within the context of the regulations establishing the common organization of the markets in agricultural products, provisions prohibiting wholly or partially certain forms of national aids for the production or marketing of the products in question and infringement of such a prohibition may be dealt with within the specific framework of such an organization. In fact the existence of the special procedure laid down in Article 93 of the EEC Treaty for appraising the compatibility of national systems of aid with the Common Market cannot affect the necessity for Member States to observe the rules on the common organization of the market or prevent the compatibility of such systems with such rules from being appraised in accordance with the procedure laid down by Article 169 of the Treaty.

2. The system of compensation for storage costs for sugar laid down by Regulation No. 3330/74 was conceived in order to attain the objectives of that regulation which include inter alia the stabilization of the market in sugar. By establishing a uniform flat-rate refund for the whole Community, the amount of which is fixed annually by the Community institutions, the regulation however states that these objectives must be attained in the same way in all Member States. It follows that Article 8 of the regulation lays down exhaustively the provisions applicable to the reimbursement of storage costs and it is for the Council alone to appraise whether the special economic circumstances obtaining in one of the Member States justify adjustments to the Community system.

3. Article 31 (2) of Regulation No. 3330/74, according to which storage costs incurred by sugar undertakings for sugar carried forward to the following marketing year are not to be reimbursed on the flat-rate basis laid down by Article 8 of the regulation must be understood as prohibiting the Member States from reimbursing such storage costs.

NOTE

The Commission by an application registered on 2 May 1979 sought a declaration pursuant to Article 169 of the EEC Treaty to the effect that the Italian Republic has failed to fulfil its obligations under the Treaty by twice infringing Regulation (EEC) No. 3330/74 of the Council on the common organization of the market in sugar during the 1976/77 and 1977/78 sugar years; on the one hand by having adopted and applied a measure for a supplementary refund of the costs of storing sugar produced in Italy (infringement of Article 8), and, on the other hand, by having adopted and applied a measure for the partial refund of storage costs for sugar carried forward to the following sugar marketing year (infringement of Article 31 (2)).

Article 8 provides that, subject to Article 31 (2), storage costs for white sugar, raw sugar etc. shall be reimbursed at a flat rate by the Member States and that the amount of the reimbursement shall be the same for the entire Community. Article 31 (1) provides that, in certain cases, undertakings may carry forward to the following sugar year part of their production which is outside the basic quota. Article 31 (2) adds that the quantity carried forward must be kept in store and that storage costs shall not be refunded under Article 8.

The Italian Government by a decision of the Comite Interministériel des Prix [Interdepartmental Price Committee] of 4 October 1976 awarded the sugar processing industry a carry-over payment equivalent to the difference between the finance charges which the industry has to bear for the cost of storing sugar produced in Italy and the amount of the reimbursement fixed by Community rules.

The same decision provided that the Sugar Equalization Fund was to pay the sugar refineries concerned for the costs of storing the aggregate quantities of sugar carried over to the following marketing years, an amount equivalent to 60% of the monthly amount of the Community refund fixed solely for those cases where there is no carry-over.

The Italian Government in its defence relating to the alleged infringement of Article 8 of the regulation draws attention to the objective of the regulation which is the stabilization of the market. The grant by the Italian authorities of a supplementary carry-over payment has the same objective in view and, far from being in breach of the Community rules, contributes to their proper functioning. As far as concerns the reimbursement of the costs of storing sugar carried over the Italian Government submits that this partial indemnification is not effected by the Italian State but by the Sugar Equalization Fund in its capacity as manager of a fund made up of private finance.

The Court concedes that the stabilization of the sugar market is one of the objectives of the regulation in question. Nevertheless by introducing a uniform flat rate refund for the whole of the Community the regulation indicates that this objective must be attained in the same way in all the Member States. Consequently Article 8 of the regulation specifies exhaustively the arrangements applicable to the reimbursement of storage costs. As far as concerns the partial refund in respect of sugar carried over the activities of the Sugar Equalization Fund, the measures adopted by Price Committee and the Minister for Agriculture are so closely connected with each other that it is necessary to find that they form part of a set of measures which aim at supporting the Italian sugar industry and the responsibilitiy for which rests with the Italian Government.

The Court therefore held that:

> "The Italian Republic, by granting sugar manufacturers, for the 1976/77 and 1977/1978 marketing years, a carry-over allowance for the storage costs of sugar produced in Italy, in addition to the reimbursement provided for under the applicable Community provisions, has failed to fulfil an obligation under the Treaty;
>
> The Italian Republic, by granting sugar manufacturers, for the 1976/77 and 1977/78 marketing years, a partial reimbursement of the storage costs of sugar carried forward to the following marketing year, has failed to fulfil an obligation under the Treaty."

Judgment of 24 April 1980

Case 110/79

Una Coonan v Insurance Officer

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

1. Freedom of movement for persons - Workers - Regulation (EEC) No. 1612/68 of the Council - Purpose - Creation of rights by virtue of insurance periods completed in another Member State - Exclusion

(Regulation (EEC) No. 1612/68 of the Council)

2. Social security for migrant workers - Affiliation to a social security scheme - Conditions - Application of national law - Legislation making affiliation conditional on the completion of insurance periods - Insurance periods completed in another Member State treated as equivalent to those completed on national territory - Duty of the Member States - None

(Regulation (EEC) No. 1408/71 of the Council, Arts. 1 (a) and 3)

1. The principal aim of Regulation No. 1612/68 is to ensure that in each Member State workers from the other Member States receive treatment which is not discriminatory by comparison with that of national workers by providing for the systematic application of the rule of national treatment as far as all conditions of employment and work are concerned. It is not the purpose of that regulation to create rights by virtue of insurance periods completed in another Member State if such rights, in the case of the nationals of the host State, do not derive from national provisions.

2. Articles 1 (a) and 3 of Regulation No. 1408/71 must be interpreted as meaning that it is for the legislature of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme provided always that in this connexion there is no discrimination between nationals of the host State and nationals of the other Member States.

Consequently if national legislation makes affiliation to a social security scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national social security scheme Regulation No. 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which were completed previously on national territory.

NOTE

The National Insurance Officer referred to the Court for a preliminary ruling various questions on the interpretation of Article 7 (2) of Regulation (EEC) No. 1612/68 of the Council on freedom of movement for workers within the Community and of certain provisions of Regulation (EEC) No. 1408/71 of the Council on the application of social security schemes to employed persons and their families moving within the Community.

Those questions have been referred to the Court in connexion with a dispute between Mrs. Coonan, an Irish national, and a local social security officer in the United Kingdom on the question whether, and, if so, under what conditions, a national of a Member State - in this case Ireland - who, after being employed in that Member State, came to the United Kingdom and worked there before he had reached pensionable age in his country of origin but after he had reached pensionable age in the United Kingdom, is entitled in that second Member State to the cash sickness benefits provided for workers under its social security legislation.

The legislation in force in the United Kingdom does not grant him such entitlement. In fact if a worker continues to be employed as such beyond pensionable age, under that legislation he is entitled thereafter to cash sickness benefits only if he would have been entitled to a particular kind of retirement pension under national legislation in the event of his ceasing to work.

Since that entitlement to a retirement pension can derive only from affiliation to a national social security scheme during the period prior to retirement it necessarily follows that a person, whether of United Kingdom or foreign nationality, who, before reaching pensionable age, has never completed qualifying periods in that Member State or who has completed only an insufficient number of qualifying periods in that State to be entitled to a retirement pension, does not fulfil that condition. If that person continues to work in the United Kingdom he cannot therefore claim, in the event of illness, to receive the cash sickness benefits which the legislation awards to workers.

That situation could be remedied only if affiliation in another Member State before pensionable age in the United Kingdom were treated as equivalent to affiliation in the latter Member State. The issue between the parties to the dispute amounts in substance to the question whether or not Community law, and in particular Regulation No. 1612/68 or Regulation No. 1408/71, provides for such equivalence.

The first question asks whether a worker in the situation described above can claim to be affiliated to the relevant social security scheme in respect of sickness either by virtue of

(a) Article 7 (2) of Regulation (EEC) No. 1612/68; or

(b) Article 3 of Regulation (EEC) No. 1408/71; or

(c) some other provision of the EEC legislation".

The principal aim of Regulation (EEC) No. 1612/68 of 15 October 1968 is to ensure that in each Member State workers from the other Member States receive treatment which is not discriminatory by comparison with that of national workers as far as all conditions of

employment and work are concerned and it is not its purpose to create rights by virtue of insurance periods completed in another Member State if such rights, in the case of the nationals of the host State, do not derive from national provisions. There are therefore no grounds for having recourse to this regulation in a case such as this.

As far as concerns Regulation No. 1408/71 the effect of Articles 1 (a) and 3 when read together is that if national legislation makes affiliation to a social security scheme or to a particular branch under that scheme conditional in certain circumstances on prior affiliation by the person concerned to the national social security scheme Regulation No. 1408/71 does not compel Member States to treat as equivalent insurance periods completed in another Member State and those which were completed previously on national territory.

The second question asks in substance whether the fact that a person has for a time been affiliated by mistake to a social security scheme entitles that person to the benefits provided for by the relevant legislation, where the error has come to light at the very time when those benefits are being claimed, while the purpose of the third question is to establish whether the fact that a person in the claimant's position has been compulsorily affiliated to the industrial injuries scheme through the competent institution ipso facto entails his affiliation through the competent institution in respect of the other social security benefits.

The outcome of the considerations relating to the first question is that the answers to be given to the second and third questions are also governed by national law, provided only that no distinction is made between nationals of the host State and those of the other Member States.

The Court therefore ruled that:

"1. Articles 1 (a) and 3 of Regulation (EEC) No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community must be interpreted as meaning that it is for the legislature of each Member State to lay down the conditions creating the right or the obligation to become affiliated to a social security scheme or to a particular branch under such a scheme provided always that in this connexion there is no discrimination between nationals of the host State and nationals of the other Member States;

2. No provision of Regulation No. 1408/71 forbids Member States to determine the effects of an erroneous affiliation. Nor is there anything to prevent Member States from providing for different social security schemes involving special conditions for affiliation according to the nature of the risks to be covered or the benefits to be provided."

Judgment of 6 May 1980

Case 102/79

Commission of the European Communities v Kingdom of Belgium

(Opinion delivered by Mr Advocate General Reischl on 27 March 1980)

1. Acts of the institutions - Directives - Implementation by Member States - Requirements of legal clarity and certainty - Implementation by means of administrative practices - Insufficiency

(EEC Treaty, Art. 189)

2. Acts of the institutions - Directives - Right of parties concerned to rely on directives in the absence of adequate measures of implementation - Effect not freeing Member States from their obligation to implement directives

(EEC Treaty, Art. 189)

3. Member States - Obligations - Implementation of directives - Failure to fulfil obligations - Justification - Inadmissibility

(EEC Treaty, Art. 169)

1. It is essential that each Member State should implement directives in a way which fully meets the requirements of clarity and certainty in legal situations which directives seek for the benefit of traders established in other Member States. Mere administrative practices, which by their nature can be changed as and when the authorities please and which are not publicized widely enough, cannot be regarded as a proper fulfilment of the obligation imposed by Article 189 of the EEC Treaty on Member States to which the directives are addressed.

2. The effect of the third paragraph of Article 189 of the EEC Treaty is that Community directives must be implemented by appropriate implementing measures carried out by the Member States. Only in specific circumstances, in particular where a Member State has failed to take the implementing measures required or has adopted measures which do not conform to a directive, has the Court of Justice recognized the right of persons affected thereby to rely in law on a directive as against a defaulting Member State. This minimum guarantee arising from the binding nature of the obligation imposed on the Member States by the effect of the directives under the third paragraph of Article 189 cannot justify a Member State's absolving itself from taking in due time implementing measures sufficient to meet the purpose of each directive.

3. 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 time-limits contained in Community directives.

NOTE

The Commission brought an action for a declaration that the Kingdom of Belgium has failed to fulfil its obligations under the Treaty by not taking, within the prescribed periods, the measures necessary to comply with a first series of directives adopted in the framework of Council Directive No. 70/156 of 6 February 1970 on the approximation of the laws of the Member States relating to the type-approval of motor vehicles and to a second series adopted under Council Directive No. 74/150 of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of agricultural tractors.

The directives in question lay down the periods within which they are to be implemented, generally 18 months, which expire between 24 September 1971 and 22 November 1976. It is not contested that Belgium has not taken measures intended to implement the directives within those periods.

Notwithstanding the arguments of the Belgian Government concerning the "optional" nature of the directives, the Court held that the Kingdom of Belgium has failed to fulfil its obligations under the Treaty establishing the European Economic Community by not putting into force within the prescribed periods the measures necessary to ensure the application of the following directives:

Directive No. 70/221/EEC of 20 March 1970 on the approximation of the laws of the Member States relating to liquid fuel tanks and rear protective devices for motor vehicles and their trailers;

Directive No. 70/387/EEC of 27 July 1970 on the approximation of the laws of the Member States relating to the doors of motor vehicles and their trailers;

Directive No. 74/60/EEC of 17 December 1973 on the approximation of the laws of the Member States relating to the interior fittings of motor vehicles (interior parts of the passenger compartment other than the interior rear-view mirrors, layout of controls, the roof or sliding roof, the backrest and rear part of the seats);

Directive No. 74/483/EEC of 17 September 1974 on the approximation of the laws of the Member States relating to the external projections of motor vehicles;

Directive No. 74/150/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to the type-approval of wheeled agricultural or forestry tractors;

Directive No. 74/151/EEC of 4 March 1974 on the approximation of the laws of the Member States relating to certain parts and characteristics of wheeled agricultural or forestry tractors;

Directive No. 74/152/EEC also of 4 March 1974 on the approximation of the laws of the Member States relating to the maximum design speed of and load platforms for wheeled agricultural or forestry tractors;

Directive No. 74/346/EEC of 25 June 1974 on the approximation of the laws of the Member States relating to rear-view mirrors;

Directive No. 74/347/EEC of 25 June 1974 relating to the field of vison and windscreen wipers for tractors;

Directive No. 75/321/EEC of 20 May 1975 relating to steering equipment;

Directive No. 75/322/EEC also of 20 May 1975 relating to the suppression of radio interference produced by spark-ignition engines fitted to tractors;

Directive No. 75/323/EEC also of 20 May 1975 relating to the power connexion fitted on tractors for lighting and light-signalling devices on tools, machinery or trailers intended for agriculture or forestry.

The Court ordered the Kingdom of Belgium to pay the costs.

Judgment of 6 May 1980

Case 152/79

Kevin Lee v Minister for Agriculture

(Opinion delivered by Mr Advocate General Warner on 20 March 1980)

1. Agriculture - Common agricultural policy - Reform of structures - Modernization of farms - System of aids - Object - Development of farms for agricultural purposes - Provision of a water supply with a view to the construction of dwelling-houses - Exclusion

(Council Directive No. 72/159/EEC, Arts. 13 and 14)

2. Agriculture - Common agricultural policy - Reform of structures - Modernization of farms - Directive No. 72/159 - Judicial remedies in respect of national decisions taken in implementation thereof - Application of national law

(Council Directive No. 72/159/EEC)

1. Council Directive No. 72/159 on the modernization of farms, and Articles 13 and 14 thereof in particular, is concerned exclusively with the development of farms for agricultural purposes and may not apply to the provision of a water supply carried out with a view to the construction of dwelling-houses.

2. Directive No. 72/159 must be understood as obliging or, as the case may be, authorizing Member States to establish or maintain schemes which satisfy, generally, the criteria laid down by the Community in regard to the reform of agricultural structures but which, for the rest, are constituted in accordance with the national law of each Member State.

From that it follows that the said directive contains no specific obligations regarding the provision of judicial remedies in respect of administrative decisions taken in the framework of the national provisions laid down in implementation of it, that matter remaining subject to the national law of each Member State.

NOTE

Kevin Lee is a part-time farmer in Ireland. He applied to the Minister for Agriculture for a grant of 420 Irish pounds under the Farm Modernization Scheme and Directive No. 72/159 for work done for the installation of a water supply.

The Minister for Agriculture awarded Mr Lee the sum of only £15 on the ground that the works carried out by him did not relate exclusively to farm development or modernization but related essentially to the provision of a water supply to a number of building sites intended for the construction of dwelling-houses.

Mr Lee brought an action against the Minister for Agriculture before the Circuit Court of the County of Sligo.

The Minister for Agriculture contended that that court did not have jurisdiction to entertain the claim since the Irish Farm Modernization Scheme provides that the decision of the Minister on any matter relating to the scheme or to any works thereunder shall be final.

Mr Lee appealed. The High Court on Circuit considered that interpretation of Directive No. 72/159, and in particular of Articles 13 and 14 thereof, was required in order for the court to be able to examine the compatibility with the directive of the provisions of the Irish rules adopted in implementation thereof.

The first question asks whether the directive, and in particular Articles 13 and 14 thereof, relates exclusively to farm development for agricultural purposes or whether it also provides for development of land for the erection of dwelling-houses for occupation by persons other than those actively engaged in farming the land.

An analysis of the directive shows that it relates only to development of land for agricultural purposes within the framework of a reform of agricultural structure and may not apply to the provision of a water supply carried out with a view to the construction of dwelling-houses.

The second question asks whether the Irish law which provides that "the decision of the Minister on any matter relating to the scheme or to any works thereunder shall be final" is contrary to Directive No. 72/159. The question must be read as asking which obligations the directive imposes on Member States as regards the remedies open to those who have claimed the benefit of the advantages which it provides.

In the terms of Article 189 of the Treaty a directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the Member State the choice of form and methods. It is appropriate to examine the provisions and objectives of the directive in order to decide whether the result which it is intended to achieve includes making judicial remedies available against administrative decisions relating to the grant or refusal of the advantages contemplated by the directive.

It is apparent from the provisions of the directive that it is for the Member States themselves, acting on the basis of common concepts, to implement the measures envisaged by the Community and to determine themselves, on the basis of conditions laid down by the Community, the extent to which such measures should be intensified in or concentrated on certain regions.

In these circumstances, and in the absence of any contrary indication in its provisions, the directive must be understood as obliging or, as the case may be, authorizing Member States to establish or maintain schemes which satisfy, generally, the criteria laid down by the Community in regard to the reform of agricultural structures but which, for the rest, are constituted in accordance with the national law of each Member State.

In answer to the questions referred to it by the High Court on Circuit, County of Sligo, the Court ruled that Council Directive No. 72/159 of 17 April 1972, and in particular Articles 13 and 14 thereof, relates exclusively to farm development for agricultural purposes.

The implementation of Directive No. 72/159 entails, for the Member States to which it is addressed, no specific obligations to make judicial remedies available to persons claiming the benefit of the advantages envisaged by the directive.

Judgment of 6 May 1980

Case 784/79

Porta-Leasing GmbH v Prestige International SA

(Opinion delivered by Mr Advocate General Reischl on 20 March 1980)

Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments - Prorogation of jurisdiction - Agreements conferring jurisdiction - Validity with respect to a person domiciled in Luxembourg - Special requirements as to form - Express and specific agreement - Concept

(Convention of 27 September 1968, Protocol, Art. I, second paragraph)

The second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that a clause conferring jurisdiction within the meaning of that provision may not be considered to have been expressly and specifically agreed to by a person domiciled in Luxembourg unless that clause, besides being in writing as required by Article 17 of the Convention, is mentioned in a provision specially and exclusively meant for this purpose and which has been specifically signed by the party domiciled in Luxembourg; in this respect the signing of the contract as a whole does not in itself suffice. It is not however necessary for that clause to be mentioned in a document separate from the one which constitutes the written instrument of the contract.

NOTE

The Oberlandesgericht /Higher Regional Court/ Koblenz asked the Court to give a preliminary ruling on the interpretation of the second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (Brussels Convention).

The question arose out of a dispute between an undertaking engaged in leasing, the appellant in the main action, whose registered office is at Trier, Federal Republic of Germany, and one of its customers, the respondent in the main action, whose registered office is in the Grand Duchy of Luxembourg. The contracts made between the parties were in the form of standard contract forms, drawn up in advance, and contained a clause conferring jurisdiction on the courts of the place where the appellant in the main action has its registered office. When sued by the German undertaking in the Landgericht /Regional Court/ Trier the Luxembourg company disputed the grounds for conferring jurisdiction on the German court relying on the second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968.

The second paragraph of Article I provides that "An agreement conferring jurisdiction, within the meaning of Article 17 (of the Convention), shall be valid with respect to a person domiciled in Luxembourg only if that person has expressly and specifically so agreed".

The national court asked the following question:

> "Does an agreement conferring jurisdiction which is contained in a standard form contract concluded with and signed by a person resident in Luxembourg but to which his attention has not specifically been brought satisfy the requirements as to validity contained in the second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters?"

In order to resolve this question the provisions which are to be interpreted should be put in perspective with regard to Article 17 of the Convention. Under Article 17 an agreement conferring jurisdiction between the parties shall be either by an agreement in writing or by an oral agreement evidenced in writing.

By expressly providing that an agreement conferring jurisdiction shall be valid with respect to a person domiciled in Luxembourg only if that person has "expressly and specifically so agreed" the second paragraph of Article I of the Protocol imposes particular, more stringent conditions than those contained in Article 17 of the Convention.

This interpretation accords with the purpose of the second paragraph of Article I of the Protocol. Indeed, in view of the fact that many contracts entered into by persons residing in the Grand Duchy of Luxembourg are international contracts, the authors of the Convention of 27 September 1968 thought that it was absolutely necessary to make agreements conferring jurisdiction which are likely to be used against persons domiciled in Luxembourg subject to more stringent conditions than those contained in Article 17 of the Convention. This aim can be achieved completely only if the clause in question has been accepted both expressly and specifically by the person domiciled in Luxembourg.

The Court held that:

The second paragraph of Article I of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters must be interpreted as meaning that a clause conferring jurisdiction within the meaning of that provision may not be considered to have been expressly and specifically agreed upon by a person domiciled in Luxembourg unless that clause, in addition to the requirement of writing in Article 17 of the Convention, is mentioned in a provision which is specifically and exclusively devoted thereto and which has been specifically signed by the party domiciled in Luxembourg; in this respect the signing of the whole of the contract does not in itself suffice. It is not, however, necessary for that clause to be mentioned in a document separate from that constituted by the written instrument of the contract.

Judgment of 21 May 1980

Case 73/79

Commission of the European Communities v Italian Republic

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

1. Tax provisions - Internal taxation - Discriminatory taxation coming under a system of aids - Cumulative application of Articles 93, 92 and 95 of the Treaty

   (EEC Treaty, Arts. 92, 93 and 95)

2. Tax provisions - Internal taxation - Discriminatory taxation coming under a system of aids - Application for a declaration of failure to fulfil obligations under Article 169 - Parallel initiation of procedure under Article 93 of the Treaty - Application not devoid of purpose

   (EEC Treaty, Arts. 92, 93, 95 and 169)

3. Agriculture - Common organization of the markets - Sugar - National adaptation aids - Method of financing - Compatibility with Community law - Conditions

   (Regulation No. 3330/74 of the Council, Art. 38)

4. Tax provisions - Internal taxation - Discrimination - Criteria for appraisal - Purpose to which revenue from the charge is put - Financing aids for the sole benefit of domestic products - Not permissible

   (EEC Treaty, Art. 95)

5. Tax provisions - Internal taxation - Concept - Passing financial burdens on to the consumer - No effect

   (EEC Treaty, Art. 95)

1. A measure carried out by means of discriminatory taxation, which may be considered at the same time as forming part of an aid within the meaning of Article 92 of the EEC Treaty, is governed both by the provisions of the first paragraph of Article 95 and by those applicable to aids granted by States. It follows that discriminatory tax practices are not exempted from the application of Article 95 by reason of the fact that they may at the same time be described as a means of financing a State aid.

2. If the Commission charges a Member State with practices which constitute an infringement of Article 95 of the EEC Treaty and if on that basis it has initiated the procedure under Article 169 that procedure does not lose its purpose because the Commission takes the view that the same practices form part of a system of aids incompatible with the Common Market and initiates the procedure provided for in Article 93.

3. Authorization under Article 38 of Regulation (EEC) No. 3330/74 to grant the aids provided for therein cannot be taken to mean that any method of financing such aids, whatever its character or conditions, is compatible with Community law. On the contrary, the financing of the aid granted, the national authorities remain in particular subject to the obligations arising under the EEC Treaty.

4. In an interpretation of the concept "internal taxation" for the purposes of Article 95 of the EEC Treaty it may be necessary to take into account the purpose to which the revenue from the charge is put. In fact, if the revenue from such a charge is intended to finance activities for the special advantage of the taxed domestic products it may follow that the charge imposed on the basis of the same criteria on domestic and imported products nevertheless constitutes discriminatory taxation in so far as the fiscal burden on domestic products is neutralized by the advantages which the charge is used to finance whilst the charge on the imported products constitutes a net burden.

   It follows that internal taxation is of such a nature as indirectly to impose a heavier burden on products from other Member States than on domestic products if it is used exclusively or principally to finance aids for the sole benefit of domestic products.

5. The fact that the financial burdens arising from the imposition of a charge are passed on to the consumers does not alter the legal nature of the charge in question as regards Article 95 of the EEC Treaty.

The Commission instituted proceedings before the Court of Justice for a declaration that the Italian Republic, by imposing a special, differentiated charge on domestic sugar and sugar imported from other Member States, has failed to fulfil its obligation under Article 95 of the Treaty.

The file shows that the internal taxation in question, known as the "sovrapprezzo", is a tax on white sugar released for home use in Italy. It entails the imposition of a uniform amount per kilogramme of white sugar on both domestic products and those from other Member States. The revenue from the "sovrapprezzo" is chiefly devoted to the financing of adaptation aids for which sugar manufacturers and beet producers in Italy qualify under the relevant Community provisions.

The Commission considers that the charging of the "sovrapprezzo" constitutes a breach of the first paragraph of Article 95 in that it is intended to finance aids granted in respect of domestic products to the exclusion of products from other Member States. Although the tax is applied to domestic sugar and imported sugar on the basis of the same criteria its effect on domestic sugar is partially neutralized by the grant of the aids thereby financed.

The Italian Government concedes that the revenue from the "sovrapprezzo" is chiefly but not exclusively intended to finance adaptation aids authorized by the Community provisions, but it explains that since 1976 the Sugar Equalization Fund has only partially offset the amount of tax by the amount of aid for Italian producers.

The Italian Government claims that the application is inadmissible and it furthermore disputes that the system set up by it constitutes a breach of Article 95 of the Treaty.

Admissibility

According to the Italian Government it is possible to consider the lawfulness of the arrangements for the financing of an aid only within the framework of the procedure specifically laid down for that purpose in Article 93 of the Treaty. Thus the national measures referred to by the Commission cannot be appraised within the framework of an application based on Article 169 of the Treaty but only under the procedure in accordance with Article 93.

The Court rules that there is nothing to prevent a measure made possible by a discriminatory charge, which may at the same time be considered as forming part of an aid for the purposes of Article 92, from being subject to the provisions of the first paragraph of Article 95 as well as those concerning aids granted by States. Accordingly, practices involving tax discrimination cannot be exempted from the scope of Article 95 on the basis of the fact that they may also be classified as a means of financing a State aid and accordingly they may form the subject-matter of separate proceedings under Article 169.

The Court therefore considers that the application is admissible.

Infringement of Article 95 of the Treaty

The first paragraph of Article 95 of the Treaty prohibits Member States from imposing, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

The Italian Government claims that the "sovrapprezzo" has an identical effect on sugar produced in Italy and on imported sugar and that the discrimination with which the Commission charges it consists in the amount of the aid granted in favour of domestic sugar.

The Court rules that the "sovrapprezzo" is in fact applied identically to domestic products and imported products. Nevertheless in relation to the words "internal taxation" for the purposes of Article 95 it may be necessary to have regard to the destination of the revenue from such taxation. In fact if the revenue from such taxation is intended to finance activities which provide special advantages for the domestic products which are taxed it may be that the charge imposed according to the same criteria nevertheless constitutes discriminatory taxation in so far as the taxation on domestic products is offset by the advantages which it finances, whilst the taxation on imported products constitutes an outright burden.

Although the "sovrapprezzo" is applied at the same rate to sugar produced in Italy and sugar coming from other Member States it must be considered as a charge which does not have a uniform incidence on such products since it constitutes an unequal burden for domestic products which benefit from it and for imported products which are liable to it but do not benefit from it.

The Court declares and rules that by imposing internal taxation on sugar which places an unequal burden upon sugar produced in Italy and sugar imported from other Member States the Italian Republic has failed to fulfil an obligation incumbent on it under Article 95 of the Treaty.

Judgment of 21 May 1980

Case 125/79

Bernard Denilauler v S.N.C. Couchet Frères

(opinion delivered by Mr Advocate General Mayras on 26 March 1980)

1. Convention on Jurisdiction and the Enforcement of Judgments - Provisions of Title II (Jurisdiction) and Title III (Recognition and Enforcement) - Observance of rights of the defence - Consequences - Decisions with which the Convention is concerned - Decisions capable of being the subject of an inquiry in adversary proceedings in the State of origin

   (Convention of 27 September 1968, Titles II and III)

2. Convention on Jurisdiction and the Enforcement of Judgments - Recognition and enforcement of judgments - Decisions authorizing provisional or protective measures - Exclusion from the procedure provided for by Title III - Conditions

   (Convention of 27 September 1968, Title III)

1. All the provisions of the Convention, both those contained in Title II on jurisdiction and those contained in Title III on recognition and enforcement, express the intention to ensure that, within the scope of the objectives of the Convention, proceedings leading to the delivery of judicial decisions take place in such a way that the rights of the defence are observed. It is because of the guarantees given to the defendant in the original proceedings that the Convention, in Title III, is very liberal in regard to recognition and enforcement. In the light of these considerations it is clear that the Convention is fundamentally concerned with judicial decisions which, before the recognition and enforcement of them are sought in a State other than the State of origin, have been, or have been capable of being, the subject in that State of origin and under various procedures, of an inquiry in adversary proceedings.

2. The conditions imposed by Title III of the Convention on the recognition and the enforcement of judicial decisions are not fulfilled in the case of provisional or protective measures which are ordered or authorized by a court without the party against whom they are directed having been summoned to appear and which are intended to be enforced without prior service on that party. It follows that this type of judicial decision is not covered by the system of recognition and enforcement provided for by Title III of the Convention.

NOTE

In 1978 proceedings were instituted by a creditor, Couchet Frères, against a debtor, Denilauler, before the Tribunal de Grande Instance /Regional Court/, Montbrison, France.

In 1979, pursuant to the French Code de Procédure Civile /Code of Civil Procedure/, the President of that court issued an order, stated to be enforceable, on the ex parte application of the creditor authorizing the latter to attach the account of the debtor with a bank in Frankfurt-am-Main in relation to a debt estimated at FF 130 000. Under French law an attachment order granted to the creditor may be enforced without the order being first notified to the debtor.

The questions referred to the Court of Justice were submitted in the course of proceedings before the German courts seeking enforcement of the French order.

The questions submitted by the German court are intended first of all to establish whether decisions of judicial authorities in a Contracting State ordering provisional protective measures where the party against whom they are directed has not been summoned to appear and learns of those measures only after they have been executed may be recognized and enforced in another Contracting State without first having been served on the opposite party (Questions 1 and 2). The questions are secondly intended to clarify the defence on which the opposite party may rely in submitting the appeal provided for in Article 36 of the Convention against the authorization of enforcement (Questions 3 and 4).

In order to reply to the first two questions the Court analysed the Brussels Convention.

The provisions of the Convention taken as a whole, both those of Title II concerning jurisdiction and those of Title III on recognition and enforcement, show that it was intended to ensure that within the framework of the objectives of the Convention procedures for arriving at court decisions observe the rights of the defence.

Consideration of the purpose allotted within the system of the Convention as a whole to Article 24, which is particularly devoted to provisional and protective measures, indicates that special arrangements were envisaged for measures of that nature.

Although it is true that procedures of the type in question authorizing provisional and protective measures are known to the legal systems of all the Contracting States and may accordingly, where certain conditions are fulfilled, be considered not to constitute a breach of the rights of the defence, it must nevertheless be emphasized that the granting of measures of that nature requires particular care on the part of the court and detailed knowledge of the actual circumstances in which the measure will produce its effect.

It is undoubtedly the court in the locality, or at all events in the Contracting State, where the property forming the subject-matter of the measures requested is situated which is best placed to assess the circumstances which may lead to the grant or refusal of the measures requested.

The Convention took account of those requirements when it provided in Article 24 that such provisional or protective measures as may be available under the law of a Contracting State may be applied for before the judicial authorities of that State even if under the Convention the courts of another Contracting State have jurisdiction as to the substance of the matter.

The Court replies to the two first questions by ruling that decisions of a court authorizing provisional or protective measures which are taken without the party to whom they are addressed having been summoned to appear and are intended to be enforced without being notified in advance are not covered by the arrangements regarding recognition and enforcement laid down in Title III of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

Having regard to the reply given to the first two questions the third and fourth questions are devoid of purpose.

Judgment of 22 May 1980

Case 131/79

Regina v Secretary of State for Home Affairs, ex parte Mario Santillo

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

1. Free movement of persons - Derogations - Decisions relating to aliens control - Procedure for examination and opinion by the competent authority - Article 9 of Directive No. 64/221 - Direct effect

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

2. Free movement of persons - Derogations - Decisions relating to aliens control - Procedure for examination and opinion by the competent authority - Competent authority - Concept - Designation - Discretion of Member States

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

3. Free movement of persons - Derogations - Decision relating to aliens control - Deportation order - Prior opinion of the competent authority - Recommendation for deportation by a criminal court - Assimilation to an opinion - Conditions

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

4. Free movement of persons - Derogations - Decisions relating to aliens control - Deportation order - Prior opinion of the competent authority - Validity - Conditions - Proximity in time to deportation order

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

5. Free movement of persons - Derogations - Decisions relating to aliens control - Deportation order - Prior opinion of competent authority - Reasons

(Council Directive No. 64/221, Arts. 6 and 9)

1. Article 9 of Directive No. 64/221 imposes obligations on Member States which may be relied upon by the persons concerned before national courts.

2. Directive No. 64/221 leaves a margin of discretion to Member States in regard to the definition of the "competent authority" referred to in Article 9 (1). Any public authority independent of the administrative authority called upon to adopt one of the measures referred to by the directive, which is so constituted that the person concerned enjoys the right of representation and of defence before it, may be considered as such an authority.

3. A recommendation for deportation made under British legislation by a criminal court at the time of conviction may constitute an opinion under Article 9 of Directive No. 64/221 provided that the other conditions of Article 9 are satisfied. The criminal court must take account in particular of the provisions of Article 3 of the directive inasmuch as the mere existence of criminal convictions may not automatically constitute grounds for deportation measures.

4. The opinion of the competent authority referred to in Article 9 (1) of Directive No. 64/221 must be sufficiently proximate in time to the decision ordering expulsion to provide an assurance that there are no new factors to be taken into consideration. A lapse of time amounting to several years between the recommendation for deportation on the one hand and the decision by the administration on the other is liable to deprive the recommendation of its function as an opinion within the meaning of Article 9. It is indeed essential that the social danger resulting from a foreigner's presence should be assessed at the very time when the decision ordering expulsion is made against him as the facts to be taken into account, particularly those concerning his conduct, are likely to change in the course of time.

5. Both the administrative authority qualified to make the deportation order and the person concerned should be in a position to take cognizance of the reasons which led the "competent authority" to give the opinion referred to in Article 9 (1) of Directive No. 64/221 - save where grounds touching the security of the State referred to in Article 6 of the directive make this undesirable.

NOTE

The High Court of Justice, Queen's Bench Division, Divisional Court, referred several questions to the Court of Justice concerning the interpretation of Council Directive No. 64/221/EEC of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health.

The facts are as follows. Mr. Santillo is an Italian national who has been working in the United Kingdom since 1967. On 13 December 1973 he was convicted before the Central Criminal Court of buggery and rape and other offences against prostitutes. On 21 January 1974 he was sentenced to a total of eight years' imprisonment and when giving judgment the Central Criminal Court made a recommendation for deportation under the Immigration Act.

On 10 October 1974 the Court of Appeal (Criminal Division) refused Mr. Santillo leave to appeal against the prison sentence and the recommendation for deportation. On 28 September 1978 the Secretary of State made a deportation order against him expelling him from the United Kingdom as soon as his prison sentence was completed.

On 10 April 1979 the applicant applied to the High Court to set aside the deportation order on the ground that, having been made more than four years after the recommendation for deportation by the Central Criminal Court, it infringed his individual rights for failure to comply with the provisions of Article 9 (1) of Directive No. 64/221.

Article 48 of the Treaty ensures freedom of movement for workers within the Community. This comprises the right of nationals of Member States, subject to restrictions justified on grounds of public policy, public security or public health, to move freely and to stay in the territory of Member States.

Directive No. 64/221 is designed to ensure that "in each Member State nationals of other Member States should have adequate legal remedies available to them in respect of the decisions of the administration" in the sphere of public policy, public security and public health.

These were the circumstances in which the High Court of England and Wales, Queen's Bench Division, came to refer the following questions to the Court of Justice for a preliminary ruling:

"1 Whether Article 9 (1) of Council Directive No. 64/221 of 25 February 1964 confers on individuals rights which are enforceable by them in the national courts of a Member State and which the national courts must protect.

2 (a) What is the meaning of the phrase 'an opinion has been obtained from a competent authority of the host country' within Article 9 (1) of Council Directive No. 64/221 of 25 February 1964 ('an opinion') ?; and

(b) in particular, can a recommendation for deportation made by a criminal court on passing sentence ('a recommendation') constitute 'an opinion'?

3 If the answer to Question 2 (b) is Yes:

(a) Must 'a recommendation' be fully reasoned?

(b) In what (if any) circumstances does the lapse of time between the making of 'a recommendation' and the taking of the decision ordering the expulsion preclude 'a recommendation' from constituting 'an opinion'?

(c) In particular does the lapse of time involved in serving a sentence of imprisonment have the effect that 'a recommendation' ceases to be 'an opinion'?"

In reply to the questions the Court ruled that:

1 Article 9 of Council Directive No. 64/221/EEC of 25 February 1964 imposes obligations on Member States which may be relied upon by the persons concerned before national courts.

2 (a) The directive leaves a margin of discretion to Member States in regard to the definition of the "competent authority". Any public authority independent of the administrative authority called upon to adopt one of the measures referred to by the directive, which is so constituted that the person concerned enjoys the right of representation and of defence before it, may be considered as such an authority.

(b) A recommendation for deportation made under British legislation by a criminal court at the time of conviction may constitute an opinion under Article 9 of the directive provided that the other conditions of Article 9 are satisfied. The criminal court must take account in particular of the provisions of Article 3 of the directive inasmuch as the mere existence of criminal convictions may not automatically constitute grounds for deportation measures.

3 (a) The opinion of the competent authority must be sufficiently proximate in time to the decision ordering expulsion to ensure that there are no new factors to be taken into consideration, and both the administration and the person concerned should be in a position to take cognizance of the reasons which led the"competent authority" to give its opinion - save where grounds touching the security of the State referred to in Article 6 of the directive make this undesirable.

(b) A lapse of time amounting to several years between the recommendation for deportation and the decision by the administration is liable to deprive the recommendation of its function as an opinion within the meaning of Article 9. It is indeed essential that the social danger resulting from a foreigner's presence should be assessed at the very time when the decision ordering expulsion is made against him as the facts to be taken into account, particularly those concerning his conduct, are likely to change in the course of time.

Judgment of 22 May 1980

Case 143/79

Margaret Walsh v National Insurance Officer

(Opinion delivered by Mr Advocate General Capotorti on 27 March 1980)

1. Social security for migrant workers - Worker - Concept - Definition vis-à-vis legislation - Effect - Purpose

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

2. Social security for migrant workers - Worker - Concept - Person no longer paying contributions but entitled to benefits by virtue of contributions paid - Inclusion

   (Regulations Nos. 1408/71 and 574/72 of the Council)

3. Social security for migrant workers - Legislation of Member States within meaning of Article 8 of Regulation No. 574/72 -Concept

   (Regulation No. 574/72 of the Council, Art. 8)

4. Social security for migrant workers - Claims, declarations or appeals submitted in another Member State - Admissibility - Determination by institution or court of the competent Member State

   (Regulation No. 1408/71 of the Council, Art. 86)

5. Social security of migrant workers - Benefits - Rules against overlapping - Maternity benefit - Article 8 of Regulation No. 574/72 - Scope

   (Regulation No. 574/72 of the Council, Art. 8)

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

2. A person who is entitled under the legislation of a Member State to benefits covered by Regulation No. 1408/71 by virtue of contributions previously paid compulsorily does not lose his status as a "worker" within the meaning of Regulations Nos. 1408/71 and 574/72 by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was not bound to do so.

3. The phrase "legislations of two or more Member States", which occurs in Article 8 of Regulation No. 574/72, must be understood as also including the provisions of Community regulations.

4. Article 86 of Regulation No. 1408/71 must be interpreted as meaning that where a claim, declaration or appeal is submitted to an authority, institution or court of a Member State other than that under the legislation of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the Member State under the legislation of which the benefit must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.

5. Article 8 of Regulation No. 574/72 applies only to the extent to which a claim by the person concerned may in fact be satisfied by the application of the legislation of two or more Member States and only in regard to the period for which the claimant may claim benefits under the legislation specified by that article.

   On the other hand that provision does not preclude a person who has exhausted the maximum entitlement awarded by the State of the confinement from benefiting for an additional period from benefits awarded by other legislation to which she has been subject and which, for reasons of the welfare of the mother and child, allows a longer period of leave from work. Indeed, such a result could not be regarded as coming within the category of "unjustified overlapping" which the provision in question seeks to prevent.

NOTE The National Insurance Commissioner in London submitted six questions on the interpretation and validity of certain provisions of Regulations (EEC) Nos. 1408/71 of 14 June 1971 and 574/72 of 21 March 1972, both of the Council, on the application of social security schemes to employed persons and their families moving within the Community.

Those questions were submitted in the course of proceedings concerning maternity allowances payable to a person, Mrs Walsh, who worked both in the United Kingdom and the Republic of Ireland and who, after giving birth to a child in Ireland on 31 July 1975, returned to live in the United Kingdom on 21 August 1975.

Although Mrs Walsh appears to have qualified for maternity allowance in Ireland she failed to claim it there.

On the other hand, after her return to the United Kingdom she claimed from the British Insurance Officer on 30 October 1975 the maternity allowance payable under United Kingdom legislation. Although Mrs Walsh fulfilled the conditions regarding contributions for entitlement to the allowance at a reduced rate the insurance officer dismissed her claim on the ground that she had failed to submit it within the requisite time and that she was unable to justify that delay.

In the course of that dispute Mrs Walsh applied to the National Insurance Commissioner who, since he considered that the case concerned the interpretation of Community law, submitted a series of questions to the Court of Justice which replied with the following ruling:

1. Regulation No. 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community and Regulation No. 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation No. 1408/71 must be interpreted as meaning that a person who is entitled under the legislation of a Member State to benefits covered by Regulation No. 1408/71 by virtue of contributions previously paid compulsorily does not lose his status as a "worker" within the meaning of the said two regulations by reason only of the fact that at the time when the contingency occurred he was no longer paying contributions and was not bound to do so.

2. The phrase "legislation of two or more Member States", which occurs in Article 8 of Regulation No. 574/72, must be understood as also including the provisions of Community regulations.

3. Article 86 of Regulation No. 1408/71 must be interpreted as meaning that where a claim, declaration or appeal is submitted to an authority, institution or court of a Member State other than that under the legislation of which the benefit must be awarded, that authority, institution or court has no power to determine the admissibility of the claim, declaration or appeal in question. That power belongs exclusively to the authority, institution or court of the Member State under the legislation of which the benefit must be awarded and to which the claim, declaration or appeal must in all circumstances be forwarded.

4. Article 8 of Regulation No. 574/72 must be interpreted as applying only to the extent to which a claim by the person concerned may in fact be satisfied by the application of the legislation of two or more Member States and only in regard to the period for which the claimant may claim benefits under the legislation specified by that article.

5. Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Article 8 of Regulation No. 574/72.

Judgment of 3 June 1980

Case 135/79

Gedelfi Grosseinkauf GmbH & Co. KG v Hauptzollamt Hamburg-Jonas

(Opinion delivered by Mr Advocate General Warner on 24 April 1980)

Agriculture - Common organization of the markets - Products processed from fruit and vegetables - Levy on importation of orange juice - Application only to products processed with added sugar - Criteria - Fixed value of 30 units of account or less per 100 kg net weight - Conversion rate for unit of account corresponding to the par value communicated to the IMF - Consequences - Exemption from levy in some Member States - Charging of the levy in other Member States - Not permissible

(Council Regulation No. 516/77, Arts. 2, 13 (1) and Annex I; Regulation No. 950/68 of the Council as amended by Regulation No. 2500/77, General Rule C.3)

The combined provisions of Article 2 of Regulation No. 516/77 and of Annex I thereto which impose a levy on orange juice of a value not exceeding 30 units of account per 100 kg net weight must be interpreted with due regard for the essential aims of that regulation, that is to say, the establishment of a single trading system at the frontiers of the Community and the charging of the levy only on products processed with added sugar, orange juice of a value exceeding 30 units of account per 100 kg being assumed in fact to have such a high natural sugar content that there is no reason to charge a levy on it in respect of added sugar.

If therefore the regulation lays down that fixed limit of value and, for converting the unit of account into national currency, refers to the exchange rate corresponding to the par value communicated to and recognized by the International Monetary Fund, it is only in order to facilitate the controls and the customs checks carried out at the frontiers of the Community. Consequently the combined provisions of Article 2 of the regulation and of Annex I thereto should be interpreted as meaning that a levy is not chargeable in respect of added sugar on the importation into a Member State of orange juice the value of which in units of account obtained on the application of the conversion rule referred to above is 30 or less if it is established that the same orange juice is exempt from the levy in other Member States.

NOTE

The dispute giving rise to the judgment making the reference concerns the legality of a notice of assessment issued by the Hauptzollamt /Principal Customs Office/ Hamburg-Jonas and is based on provisions of Community law on the common organization of the market in products processed from fruit and vegetables.

In January 1978 Gedelfi Grosseinkauf GmbH & Co. KG imported into Germany four consignments of orange juice from Israel. It declared these goods as coming under tariff subheading 20.07 B II (a) (orange juice of a specific gravity of 1.33 or less at 15°C, of a value exceeding 30 units of account per 100 kilograms net weight).

When the Hauptzollamt examined the customs declaration it came to the conclusion that the goods should be classified under tariff subheading 20.07 B II (b) I (aa), orange juice, unfermented, not containing spirit, of a value of 30 units of account or less per 100 kilograms net weight, with an added sugar content exceeding 30% by weight.

The rate of customs duty is the same for both tariff subheadings but the importation of products classified under the latter heading referred to is subject in addition to a levy.

It is apparent from the relevant regulations that orange juice of a value exceeding 30 units of account per 100 kilograms which falls under tariff subheading 20.07 B II (a) 1 is considered to have such a high natural sugar content that there is no reason to impose a levy on it by virtue of the added sugar.

In regard to the conversion of units of account into Deutschmarks the parties agree that the amount of 30 units of account adopted in order to make a distinction between the two tariff subheadings in question was equivalent to DM 109.80, one unit of account equalling DM 3.66.

For the calculation relating to the orange juice imported in this case, the Hauptzollamt considered in its notice of re-assessment that the factors determining this value were expressed in American dollars.

Since the exchange rate was DM 2.10 to 1 dollar the value of the imported orange juice was DM 103.64 per 100 kilograms net weight, in other words, less than the amount of DM 109.80 laid down as the equivalent of 30 units of account.

The importer did not contest that the method of calculation thus followed was in accordance with the relevant Community provisions. However, it contended that if the importations had been made into another Member State on the same date, this method of calculation would have resulted in the orange juice's being valued as exceeding 30 units of account so that the importation of the same goods into another Member State would have been exempt from the levy.

After acknowledging that this situation in fact exists, the judgment making the reference holds that the unequal taxation between the various Member States is in breach of the prohibition on discrimination laid down in Article 40 of the Treaty and is furthermore in breach of the general principle of equality.

This case led the Finanzgericht /Finance Court/ Hamburg to refer the following question to the Court:

"1. Is Article 2 in conjunction with Annex I to Council Regulation (EEC) No. 516/77 of 14 March 1977 and Article 1 of Commission Regulation (EEC) No. 2857/77 of 21 December 1977 invalid in so far as it provides for a levy on products coming within tariff subheading 20.07 B II (b) 1 of the Common Customs Tariff the value of which, on the basis of the rate of exchange laid down in Rule 3 under Head C of the General Rules contained in Section I of Part I of the annex to Regulation (EEC) No. 950/68 of the Council on the Common Customs Tariff in the version of Council Regulation (EEC) No. 2500/77 of 7 November 1977, is 30 units of account or less per 100 kilograms net weight when the products are imported into the Federal Republic of Germany, if the value of the same products would be more than 30 units of account when imported into the other Member States, assuming the same import price on the basis of the dollar, so that it would not be necessary to charge a levy in the other Member States?"

The establishment of a single trade system at the Community frontiers must be regarded as one of the essential objectives of Regulation No. 516/77. Consequently the provisions of this regulation and those needed to apply it must be interpreted with due regard for this objective.

The levy laid down by Regulation No. 516/77 is imposed by virtue of the added sugar in order to harmonize the trading system for orange prices with that laid down with regard to sugar. The provisions of this regulation are therefore intended to impose a levy only on products processed by the addition of sugar.

It must be recognized that if, under a single system of trade with third countries, the importation of orange juice into certain Member States does not give rise to the charging of the levy laid down in Regulation No. 516/77 because those products are taken to contain no added sugar, those same products cannot be deemed to contain added sugar and therefore be charged for this reason when imported in to other Member States.

This conclusion is all the more necessary since it does not enable accidental monetary fluctuations to give rise to a tariff classification by the customs authorities of a Member State different from the one applied by the customs authorities in other Member States.

The Court replied by ruling that Article 2 of Council Regulation No. 516/77 in conjunction with Annex I to this regulation must be interpreted as meaning that there is no ground for charging a levy by virtue of the added sugar when orange juice is imported into a Member State if it is shown that the same orange juice is exempt from the levy in other Member States.

The examination of the question referred to the Court did not disclose the existence of any factor likely to affect the validity of Article 2 of Regulation No. 516/77 thus interpreted.

Judgment of 12 June 1980

Case 88/79

Ministere Public v Siegfried Grunert

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

1. Approximation of laws - Preservatives or antioxidants authorized for use in foodstuffs intended for human consumption - Duties of the Member States - Scope

(Council Directives Nos. 64/54 and 70/357)

2. Measures of the Institutions - Directives - Direct effect - Directives concerning the preservatives or antioxidants authorized for use in foodstuffs intended for human consumption

(Council Directives Nos. 64/54 and 70/357)

1. Directives Nos. 64/54 and 70/357 concerning the preservatives or antioxidants authorized for use in foodstuffs intended for human consumption require Member States not to authorize the use in foodstuffs intended for human consumption of preservatives or antioxidants which are not included in the lists annexed to those directives. On the other hand, at the present stage in the approximation of national laws in this field, Member States are not bound to authorize the use in foodstuffs of all the preservatives or antioxidants appearing on those lists. However, the freedom thus left to the Member States must not have the effect of totally excluding the use in the foodstuffs in question of any of those substances, or of preventing all marketing thereof.

2. In so far as Directives Nos. 64/54 and 70/357 do not allow Member States to prohibit absolutely the use in foodstuffs intended for human consumption of any of the preservatives or antioxidants included in the lists appearing in the annexes thereto, or to prevent all marketing of such a substance, the provisions thereof may be relied upon before national courts.

NOTE

The Tribunal de Grande Instance /Regional Court/, Strasbourg, referred to the Court for a preliminary ruling two questions on the interpretation of Council directives, one directive being on the approximation of the laws of the Member States concerning the preservatives authorized for use in foodstuffs intended for human consumption and the other on the approximation of the laws of the Member States concerning the antioxidants authorized for use in foodstuffs intended for human consumption.

Criminal proceedings were instituted before the Tribunal against a company's managing director who was charged with having offered for sale and sold a product liable to adulterate foodstuffs for human consumption, namely, a preservative containing lactic acid and citric acid.

The judgment making the reference states that French law prohibits the addition to foodstuffs of any substances which have not been previously expressly authorized and that national rules authorize neither lactic nor citric acid.

The Tribunal took into consideration the fact that the Community directives lay down a list of the only preservatives which are permitted in the Member States for safeguarding foodstuffs intended for human consumption and that that list includes lactic acid and citric acid.

In its first question the Tribunal asks the Court to state whether Member States are bound to authorize under their national legislation all the preservatives which may be used in foodstuffs intended for human consumption and which are listed in Directives Nos. 70/357 and 64/54 or whether they must merely prohibit the use of all substances which are not included in those lists.

The Court answered that question by ruling that Council Directives No. 64/54 of 5 November 1963 and No. 70/357 of 13 July 1970 prohibit Member States from authorizing the use in foodstuffs intended for human consumption of preservatives or antioxidants which are not included in the lists annexed to those directives. However, the discretion of the Member States to prohibit or to authorize the use of such substances must not have the effect of totally excluding the use in foodstuffs intended for human consumption of any of the preservatives of anti-oxidants included in those lists or of preventing the marketing of such a product.

In its second question the Tribunal asks the Court to state whether a national of a Member State may rely upon the provisions of Directives No. 64/54 and No. 70/357 where the applicable national laws are contrary to those directives.

The Court ruled,in answer to that question, that in so far as Directives No. 64/54 and No. 70/357 do not allow Member States to prohibit all use in foodstuffs intended for human consumption of any of the preservatives or antioxidants included in the list appearing in the annexes or to prevent the marketing of such a product, the provisions thereof may be relied upon in the national court.

Judgment of 12 June 1980

Joined Cases 119 and 126/79

Lippische Hauptgenossenschaft eG and Westfälische Central-Genossenschaft eG
v Bundesanstalt für Landwirtschaftliche Marktordnung

(Opinion Delivered by Mr Advocate General Capotorti on 8 May 1980)

1. Agriculture - Common organization of the markets - Cereals - Denaturing premium for common wheat - Grant - Common rules - National intervention agencies responsible for management - Supervisory function

(Regulations Nos. 956/68, 2086/68 and 1403/69 of the Commission)

2. Agriculture - Common organization of the markets - Cereals - Denaturing premium for common wheat - Repayment of premiums paid in error - Limitation period - Application of national law - Conditions

1. According to the general conception underlying the common organization of agricultural markets the granting of denaturing premiums provided for in Regulations Nos. 956/68, 2086/68 and 1403/69 on the denaturing of common wheat is subject to a set of common rules which are applicable uniformly throughout the Community. However, management of that intervention mechanism is the task of the national intervention agencies, which are required to perform all the supervisory duties necessary in order to ensure that denaturing premiums are granted only in accordance with the conditions laid down by the Community rules and that any infringement of the rules of Community law by those operating on the market is appropriately penalized.

2. The question within what period a national intervention agency may claim from recipients repayment of premiums wrongly paid in respect of the denaturing of common wheat must, at the present stage in the development of Community law, be decided in accordance with the national law of the intervention agency responsible for the relevant sector of the market.

Community law does not prevent the application of provisions or principles of national law the effect of which may be to restrict the period during which such repayment may be claimed, provided always that that question is settled in accordance with the same rules as those which apply to the performance of similar supervisory duties carried out by the national administrative authorities in the spheres in which they have sole responsibility.

NOTE

The Verwaltungsgericht [Administrative Court] Frankfurt am Main, referred to the Court three questions concerning the interpretation of three regulations of the Commission (Nos. 956/68, 2086/68 and 1403/69) on the denaturing of common wheat in the context of actions brought against decisions taken by the German intervention agency on the refunding of denaturing premiums which had been paid when not due.

During the periods lasting from 1968 to 1970 and 1974 respectively, the plaintiffs in the main proceedings carried out denaturing procedures and on the basis thereof they obtained the denaturing premiums provided for by the above-mentioned regulations. Following investigations carried out in respect of the recipient undertakings the intervention agency established that a number of the denaturing procedures had not been carried out in accordance with the rules laid down by the Community regulations and by decisions adopted in 1976 and 1977 it ordered the repayment of the denaturing premiums which had been wrongly paid.

The plaintiffs do not dispute, as such, the manner of the denaturing procedures. However, the plaintiffs' submission before the Verwaltungsgericht is that, because of the relatively long period of time which has elapsed between payment of the disputed premiums and the decisions adopted by the German administrative authorities, recovery of the premiums is no longer permissible both on grounds of prescription and on grounds of certain general principles such as the principle of the protection of legitimate expectation or the principle of proportionality. They consider that, since recovery of payments granted by virtue of Community law is involved, the rules and principles for the resolution of the issue which has arisen must be sought in Community law itself. In that regard, they point, on the one hand, to the five-year limitation rule laid down by Article 43 of the Protocol on the Statute of the Court in regard to matters concerning liability on the part of the Community, as well as to various specific limitation periods provided for in certain instruments of secondary Community law and, on the other hand, to the tendency in the laws of the various Member States to make debts owed to the administration subject to limitation periods which are, as a general rule, shorter than the limitation period under civil law.

In its answer to the questions raised by that argument the Court states that it was for the German intervention agency to supervise denaturing procedures, to carry out the appropriate investigations and to require the repayment of any premium which had been improperly paid and that, at its present stage of development, Community law does not include any specific provisions relating to the exercise by the appropriate national authorities of that supervisory duty. As regards, in particular, the periods of prescription or time-bar which may follow from the application of certain general principles of administrative law relating to the recovery of payments wrongly made, Community law contains no relevant provision. The limitation period in Article 43 of the Protocol on the Statute of the Court applies exclusively to actions directed against the Community in respect of its non-contractual liability and, as such, is not in point in this case. The same observation may be made in regard to the other provisions referred to by the plaintiffs.

It being therefore for the national authorities to decide, in accordance with the rules and principles of their national law, a case of such a kind as that brought before the Verwaltungsgericht, the Court ruled that the question of the period within which it is open to a national intervention agency to claim repayment of denaturing premiums provided for by Commission Regulations No. 956/68 of 12 July 1968, No. 2086/68 of 20 December 1968 and No. 1403/69 of 18 July 1969 on the denaturing of common wheat, which have been unduly paid to the recipients must, at the present stage of development of Community law, be decided in accordance with the national law of the intervention agency responsible for the relevant sector of the market and that Community law does not prevent the application of provisions or principles of national law the effect of which may be to restrict the period during which repayment may be claimed provided, however, that such a question be resolved in accordance with the same rules as those which apply to the performance of analogous supervisory duties carried out by the national administrative authorities in fields for which they have sole responsibility.

Judgment of 12 June 1980

Case 130/79

Express Dairy Foods v Intervention Board for Agricultural Produce

(Opinion delivered by Mr Advocate General Capotorti on 6 May 1980)

1. Agriculture - Monetary compensatory amounts - Application to powdered whey - Commission regulations adopted between 1 February 1973 and 11 August 1977 - Invalidity

2. European Communities - Own resources - Compensatory amounts charged on the basis of invalid Community regulations - Recovery - Application of national law - Conditions and limits - Taking into consideration the fact that a charge may have been passed on - Award of interest

(Council Decision of 21 April 1970, Art. 6; Regulation No. 2/71 of the Council, Art. 1)

1. The Commission regulations adopted between 1 February 1973 and 11 August 1977, fixing monetary compensatory amounts and certain rates necessary for their application, must be regarded as invalid in so far as they fix monetary compensatory amounts in respect of trade in powdered whey and are therefore to that extent contrary to Article 1 (2) (b) of Regulation No. 974/71 of the Council.

2. Disputes relating to the recovery of sums levied on behalf of the Community come within the jurisdiction of national courts and must be settled by those courts in application of their national law as regards both procedure and substance to the extent to which Community law has not made other provision in the matter. However, the application of national legislation must be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national, and in so far as procedural rules cannot have the result of making impossible in practice the exercise of rights conferred by Community law.

In these circumstances and in the absence of Community provisions it is for the national authorities to decide as to the recovery of sums unduly charged on the basis of Community regulations which have been declared invalid and to settle in terms of the national law applicable all ancillary questions such as, on the one hand, whether the fact that it may have been possible for the charge improperly imposed to be passed on to other traders or to consumers should be taken into account, and, on the other hand, the payment of interest, in particular the rate of interest and the date from which interest must be calculated.

NOTE

The High Court of Justice submitted three questions relating to the validity of all regulations adopted by the Commission between 1 February 1973 and 11 August 1977 fixing monetary compensatory amounts applicable to trade in powdered whey, to the effect of a declaration of invalidity of a regulation delivered by the Court in proceedings for a preliminary ruling and to the obligation to make repayment of sums unduly charged by the competent authorities of a Member State together, where appropriate, with the obligation to pay interest.

Those questions have been submitted in the context of a dispute between Express Dairy Foods Ltd. and the British intervention agency, the Intervention Board for Agricultural Produce ("The Board"). Between 1 February 1973 and 7 August 1977 Express Dairy Foods exported considerable quantities of powdered whey and was obliged by virtue of Commission regulations in force at the time of those exports to pay to the Board by way of monetary compensatory amounts a total of £267 355.40. That sum was calculated on the basis of various Commission regulations fixing, in regard to the period in question, the monetary compensatory amounts applicable to trade in powdered whey. However, by its judgment of 13 May 1978 in Case 131/77 Milac, the Court declared invalid one of those regulations fixing the monetary compensatory amounts applicable to trade in powdered whey between 3 March and 4 August 1975.

To the claim of Express Dairy Foods for reimbursement from the Board of the sums paid by way of compensatory amounts the Board objected that it was bound to collect the monetary compensatory amounts payable under all the regulations which had not been made invalid and to apply an invalidated regulation up to the date of its being declared invalid by the Court.

The first question is worded as follows:

"Whether in the light of the decision of the Court of Justice in Case 131/77, all Commission regulations made between 1 February 1973 and 11 August 1977 are invalid, in so far as they purport to fix compensatory amounts in respect of trade in powdered whey?"

It appears from the reasons on which the judgment in Case 131/77 was based that Article 1 of Regulation No. 539/75, in so far as it fixed monetary compensatory amounts in respect of trade in powdered whey, was declared invalid following upon a finding that the price of skimmed milk powder had no decisive influence on the market price of powdered whey.

But Regulation No. 974/71 of the Council of 12 May 1971 authorizes the introduction of such amounts only for products the price of which depends on the price of products which are covered by intervention arrangements. It is not disputed that that requirement was disregarded by all the regulations in dispute.

The Court answers this first question by ruling that the Commission regulations adopted between 1 February 1973 and 11 August 1977 must be regarded as invalid in so far as they fix monetary compensatory amounts in respect of trade in powdered whey.

The second question is framed as follows:

"Whether, when a Commission regulation authorizing or requiring collection of monetary compensatory amounts has been declared by the Court of Justice in proceedings under Article 177 of the EEC Treaty to be invalid, the competent authorities of the Member States are bound under Community law to refund any, and if so, what, sums collected under the authority of that regulation"?

The national authorities must ensure on behalf of the Community and in accordance with the provisions of Community law that a number of dues, including compensatory amounts, are collected.

Disputes relating to the recovery of sums levied on behalf of the Community therefore come within the jurisdiction of national courts and must be settled by those courts in application of their national law as regards both procedure and substance to the extent to which Community law has not made other provision in the matter.

But in the absence of Community rules, the necessary reference to national laws is nevertheless subject to limits, the need for which has been acknowledged inasmuch as the application of national legislation must be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national, and in so far as procedural rules cannot have the result of making impossible in practice the exercise of rights conferred by Community law.

The essential point submitted to the Court concerns the amount of the sums to be reimbursed, which includes the question whether or not the sums paid but not owed are to be recovered in their entirety in the event of the charges having been passed on by the aggrieved trader. Confirming its judgment of 27 March 1980 in Case 61/79, Denkavit Italiana, the Court replies by ruling that it is for the national authorities to decide as to the recovery of sums unduly charged on the basis of Community regulations which have been declared invalid; it is for them to settle in terms of the national law applicable all ancillary questions such as whether the fact that it may have been possible for the charge improperly imposed to be passed on to other traders or to consumers should be taken into account.

By the third question is asked:

> "Whether, if the competent authorities of a Member State are bound to refund any part of such sums, they are bound under Community law to pay interest thereon and if so, from what date and at what rate"?

In answer to that question the Court ruled that it is at present for the national authorities, and particularly for national courts, in a case concerning the recovery of charges improperly imposed, to settle all ancillary questions relating to such reimbursement, such as the payment of interest, by applying their domestic rules regarding the rate of interest and the date from which interest must be calculated.

The application of national legislation must be effected in a non-discriminatory manner having regard to the procedural rules relating to disputes of the same type, but purely national, and the procedural rules cannot have the result of making impossible in practice the exercise of rights conferred by Community law.

Judgment of 12 June 1980

Case 733/79

Caisse de Compensation des Allocations Familiales des Regions de Charleroi et de Namur v Cosimo La Terza

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

1. Social security for migrant workers - Community rules - Object - Co-ordination of national schemes - Consequences

2. Social security for migrant workers - Family benefits - Pensioners - Benefits payable by the State of residence of the recipient of an invalidity pension - Benefits greater in amount previously awarded by another Member State - Right to supplementary benefits

(Regulation (EEC) No. 1408/71 of the Council, Art. 77 (2) (b) (i))

1. The regulations on social security for migrant workers did not set up a common scheme of social security, but allowed different schemes to exist, creating different claims on different institutions against which the claimant possesses direct rights by virtue either of national law alone or of national law supplemented, where necessary, by Community law. The Community rules cannot, therefore, in the absence of an express exception consistent with the aims of the Treaty, be applied in such a way as to deprive a migrant worker or his dependants of the benefit of a part of the legislation of a Member State, nor may they bring about a reduction in the benefits awarded by virtue of that legislation supplemented by Community law.

2. Article 77 (2) (b) (i) of Regulation No. 1408/71 must be interpreted as meaning that entitlement to family benefits from the State in whose territory the recipient of an invalidity pension resides does not take away the right to higher benefits awarded previously by another Member State. If the amount of family benefits actually received by the worker in the Member State in which he resides is less than the amount of the benefits provided for by the legislation of the other Member State, he is entitled to a supplement to the benefits from the competent institution of the latter State equal to the difference between the two amounts.

NOTE

The question of interpretation of Article 77 of Regulation No. 1408/71, emanating from the Tribunal du Travail [Labour Tribunal], Charleroi, was raised in the course of a dispute concerned with a decision of the competent Belgian social security institution not to grant an Italian worker, who is entitled to a Belgian invalidity pension and who resides in Italy, the benefit, as from 1 October 1972, of Belgian allowances for dependent children and to claim from him the reimbursement of those allowances paid between the said date and 31 October 1975.

It appears from the file in the case that on 1 June 1970 the worker in question, having worked in Italy and thereafter in Belgium, was awarded an invalidity pension under Belgian legislation alone and until 1 October 1972 received the allowances for dependent children provided for by that legislation. On 11 June 1970 the Belgian social security institution sent the papers relating to that pension to the competent Italian authorities requesting those authorities to assume responsibility for a proportion of the invalidity pension (applying the provisions relating to aggregation and apportionment), and in 1976 the Italian social security institution granted, as from 1 October 1972, a proportion of the pension as well as the benefit of the family allowances provided for under Italian legislation.

On the basis of the award of those benefits, the Belgian institution reduced the amount of the invalidity pension and decided that, with effect from 1 October 1972, payment of the allowances for dependent children provided for by Belgian legislation should be withdrawn. At the same time it claimed reimbursement from Mr La Terza of the allowances paid up to 31 October 1975, namely, Bfr 104 189.

In support of its decision the Belgian social security institution relied upon the provisions of Article 77 (2) of Regulation No. 1408/71, in terms of which family allowances for persons receiving pensions for old age, invalidity or an accident at work or occupational disease are granted, irrespective of the Member State in whose territory the pensioner or the children are residing, "to a pensioner who draws pensions under the legislation of more than one Member State:

> In accordance with the legislation of whichever of these States he resides in provided that ... a right to one of the benefits referred to in paragraph (1) is acquired under the legislation of that State ...".

Mr La Terza disputed the correctness of that decision. The amount provided for by Italian legislation being less than that of the Belgian allowances he contended that only in disregard of the objectives of Article 51 of the Treaty and of Regulation No. 1408/71 could the provisions in question be interpreted and applied so as to remove the insured person's entitlement to the higher amount of benefit due to him by virtue of the legislation of a Member State.

In view of that dispute, the Tribunal du Travail, Charleroi, asked the Court to state whether Article 77 of Regulation No. 1408/71 must "be interpreted as meaning that entitlement to family benefits, for which the Member State in whose territory the recipient of an invalidity pension resides (in this case Italy) is responsible, takes away the right to receive higher family benefits which had been awarded previously, for which another Member State is responsible"(in this case Belgium).

Affirming its earlier decisions, the Court recalls that, in laying down and developing rules for the co-ordination of national legislations, Regulation No. 1408/71 is, in fact, inspired by the fundamental principle, expressed in the seventh and eighth recitals of the preamble, to the effect that the said rules must guarantee to workers who move within the Community all the benefits which have accrued to them in the various Member States to the limit of "the greatest amount" of those benefits.

The Court therefore answers the question submitted by ruling that Article 77 (2) (b) (i) of Regulation No. 1408/71 must be interpreted as meaning that entitlement to family benefits, for which the Member State in whose territory the recipient of an invalidity pension resides is responsible, does not take away the right to receive higher family benefits awarded previously for which another Member State is responsible. Where the amount of family benefits actually received in the Member State of residence is less than that of the benefits provided for by the legislation of the other Member State the worker is entitled, as against the competent institution of the latter State, to a supplement to the benefits equal to the difference between the two amounts.

Judgment of 12 June 1980

Case 1/80

Fonds National de Retraite des Ouvriers Mineurs (F.N.R.O.M.) v Yvon Salmon

(Opinion delivered by Mr Advocate General Warner on 22 May 1980)

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

   (EEC Treaty, Art. 177)

2. Social security for migrant workers - Old-age and death(pensions) insurance - Benefits due by virtue of the legislation of a single Member State - Reduction by way of aggregation and apportionment - Not permissible

   (EEC Treaty, Art. 51; Regulation No. 3 of the Council, Arts. 27 and 28)

3. Social security for migrant workers - Old age and death (pensions) insurance - Aggregation of insurance periods - Rights to benefits relating to periods which do not overlap - No unjustified overlapping of benefits

   (Regulation No. 3 of the Council, Art. 27)

4. Social security for migrant workers - Old age and death (pensions) insurance - Rule in Article 28(4) of Regulation No. 3 - Scope
   (Regulation No. 3 of the Council, Art. 28 (4))

1. In connexion with the task entrusted to it by Article 177 of the EEC Treaty the Court has no jurisdiction to review the application of the provisions of Community law to a given case or to criticize the way in which a national court applies Community law. However, the need to arrive at a serviceable interpretation of Community law permits the Court to extract from the details of the dispute in the main action the information necessary for an understanding of the question referred to it and for the formulation of an appropriate answer.

2. The aggregation of insurance periods and the apportionment of benefits provided for by Articles 27 and 28 of Regulation No. 3 have no relevance in the case of a State in which the result sought by Article 51 of the Treaty is already attained by virtue of national legislation alone. They cannot therefore be effected, without being incompatible with Article 51 of the Treaty, if their effect is to reduce the benefits which the person concerned may claim by virtue of the laws of a single Member State on the basis solely of the periods of insurance completed under those laws provided, however, that that method does not lead to an overlapping of benefits for one and the same period.

3. The overlapping of a benefit, acquired under national law alone on the basis of national contribution periods with a benefit acquired in another State by means of aggregation in a case where, as required by Article 27, the periods of insurance "do not overlap", does not constitute an advantage which is contrary to Community law. The advantage of aggregation is the acquisition of a right to a pension which would not otherwise arise, the pension acquired in this way being calculated in proportion only to the insurance period completed in the Member State in question, to the exclusion of any period completed elsewhere.

4. The competent institution of a Member State may not rely on the provisions of Regulation No. 3 or in particular in Article 28 (4) in order to refuse the grant to a worker of benefits calculated pursuant to Articles 27 and 28 of that regulation or to reduce them on the ground that that worker is receiving a pension provided by the institution of another Member State pursuant to the legislation of that State alone.

IOTE

The main proceedings are between the F.N.R.O.M. and one of its legal advisers, Maître Salmon, whom the F.N.R.O.M. accuses of having failed, despite the issue of instructions to that effect, to lodge an appeal in due time against a judgment delivered on 17 April 1975 by the Tribunal du Travail /Labour Tribunal/, Verviers.

By that judgment the Tribunal du Travail, on the basis of an interpretation of Community law which is disputed by the F.N.R.O.M., annulled a decision of the F.N.R.O.M. withdrawing, under Article 28 (4) of Regulation No. 3 and with retroactive effect, invalidity benefits awarded by virtue of the said Regulation No. 3 to Mr Tomitzek, a German national who had worked as a miner in Germany and subsequently in Belgium. The decision of the F.N.R.O.M. was based on the fact that, following upon a decision of the Bundesknappschaft, Mr Tomitzek received, with retroactive effect, an invalidity pension, calculated on the basis of German legislation alone, which was greater than the pension previously paid by the Bundesknappschaft in application of Regulation No. 3. The F.N.R.O.M. brought an action for damages against its adviser who contended in his defence that the Tribunal du Travail, Verviers, had correctly interpreted the Community law applicable in the case.

The civil court of first instance in Liège submitted to the Court the following question:

> "Did the Tribunal du Travail, Verviers, in its judgment of 17 April 1975, correctly interpret Article 51 of the EEC Treaty and Articles 27 and 28 of Regulation (EEC) No. 3 of 25 September 1958 concerning social security for migrant workers by ruling that the German insurance institution, the Bundesknappschaft, did not award a purely national pension, which would have justified the decision taken by the plaintiff, but a Community pension which was more advantageous for the person entitled, thereby excluding the application of Article 28 (4) of the said Regulation (EEC) No. 3?"

At the outset the Court makes the observation that its task does not lie in criticizing the application by a national court of Community law. However, the need to arrive at a useful interpretation of Community law permits the Court to draw from the facts of the dispute the details necessary for an understanding of the question raised and the formulation of a suitable answer.

It appears from the papers in the case that the purpose of the reference is to enable the national court to decide whether the F.N.R.O.M. could properly rely upon Article 28 (4) of Regulation No. 3 in order to withdraw, with retroactive effect, the benefits previously awarded to Mr Tomitzek.

In other words, does Community law allow the competent institution of a Member State to refuse the award of a pro rata pension, calculated by applying Articles 27 and 28 of Regulation No. 3, to a worker who is in receipt of a pension provided by the institution of another Member State by virtue of the provisions of the legislation of that State alone?

Article 28 (4) proceeds upon the premise that a migrant worker, who has been subject successively or alternately to the legislations of two or more Member States, may claim the benefit of a pension only by means of the aggregation of periods and the apportionment of benefits provided for by Articles 27 and 28 of Regulation No. 3. However, under well settled case-law (judgment in Case 1/67 Ciechelski) the Court has held that aggregation and apportionment have no relevance in the case of a State in which the effect sought by Article 51 of the Treaty is already attained by virtue of national legislation alone. Accordingly, aggregation and apportionment cannot come into play, without being incompatible with Article 51, if their effect is to reduce the benefits which the person concerned may claim by virtue of the legislation of a single Member State provided, however, that that method does not lead to an overlapping of benefits for one and the same period.

The Court answered the question submitted by ruling that the competent institution of a Member State may not rely upon the provisions of Regulation No. 3 of the Council of 25 September 1958 on social security for migrant workers, and in particular on Article 28 (4) of the said regulation, in order to refuse to award a worker benefits calculated by applying Articles 27 and 28 of the said regulation, or to reduce the same, on the ground that that worker receives a pension provided by the institution of another Member State by virtue of the provisions of the legislation of that State alone.

Judgment of 17 June 1980

Joined Cases 789 and 790/79

Calpak and Others v Commission of the European Communities

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

1. Application for annulment - Natural or legal persons - Acts of direct and individual concern to them - Decision taken in the form of a regulation - Purpose of the proceedings

   (EEC Treaty, second paragraph of Art. 173)

2. Measures adopted by the institutions - Regulation - Concept

   (EEC Treaty, Art. 189)

1. The objective of the second paragraph of Article 173 of the EEC Treaty is in particular to prevent the Community institutions from being in a position, merely by choosing the form of a regulation, to exclude an application by an individual against a decision which concerns him directly and individually; it therefore stipulates that the choice of form cannot change the nature of the measure.

2. A provision which limits the granting of production aid for all producers in respect of a particular product to a uniform percentage of the quantity produced by them during a uniform reference period is by nature a measure of "general application" - and thus by nature a regulation - within the meaning of Article 189 of the EEC Treaty. In fact such a measure applies to objectively determined situations and produces legal effects with regard to categories of persons described in a generalized and abstract manner. The nature of the measure as a regulation is not called in question by the mere fact that it is possible to determine the number or even the identity of the producers to be granted the aid which is limited thereby.

TE

The Italian companies Calpak S.p.A., Bologna, and Emiliana Lavorazione Frutti S.p.A., Ravenna, applied to the Court under the second paragraph of Article 173 of the EEC Treaty for the annulment of certain measures of the Commission regarding production aids for Williams pears preserved in syrup. The Commission submitted a preliminary objection that the applications were inadmissible under Article 91 (1) of the Rules of Procedure and the Court decided to give a ruling on the admissibility of the applications for annulment without going into their substance.

On 24 July 1979 the Council adopted Regulation No. 1640/79 limiting the granting of production aid for Williams pears preserved in syrup thereby limiting the granting of aid for each marketing year to 57 100 tonnes. The preamble to the regulation shows that that quantity represents 83% of the average production for the marketing years 1976/77, 1977/78 and 1978/79, but it has been established that it also represents 105% of production during the 1978/79 marketing year alone as declared at the time by the French and Italian authorities, those two Member States accounting for the entire Community production. The applicants complained that the Commission abandoned the normal criterion of average production over several years applied by the Council in its regulations, adopting instead as the sole reference year the 1978/79 marketing year, which was atypical for the product in question because production in Italy was unusually low.

There is only a very limited number of Williams pears processors in the Community. These undertakings are a closed and definable group whose members were either known to or at least identifiable by the Commission at the time when it adopted the disputed provisions. Thus the applicants claimed to have fulfilled the requirements for being directly and individually concerned by the provisions, which was sufficient, in their opinion, to entitle them to request the annulment thereof under the second paragraph of Article 173 of the Treaty. For its part the Commission contended that as the disputed provisions were adopted in the form of regulations the annulment might only be sought if their content showed them to be, in fact, decisions. The second paragraph of Article 173 empowers individuals to contest, inter alia, any decision which, although in the form of a regulation, is of direct and individual concern to them.

By virtue of the second paragraph of Article 189 of the Treaty the criterion for distinguishing between a regulation and a decision is whether the measure in issue is of general application or not. A provision which limits the granting of production aid for all producers in respect of a particular product to a uniform percentage of the quantity produced by them during a uniform preceding period is by nature a measure of general application within the meaning of Article 189 of the Treaty. In fact the measure applies to objectively determined situations and produces legal effects with regard to categories of persons described in a generalized and abstract manner.

Nor is the fact that the choice of reference period is particularly important for the applicants, whose production is subject to considerable variation from one marketing year to another as a result of their own programme of production, sufficient to entitle them to an individual remedy.

It follows that the objection raised by the Commission must be accepted as regards the applications for the annulment of the provisions of the two regulations in question.

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

Judgment of 19 June 1980

Joined Cases 41, 121 and 796/79

Vittorio Testa, Salvino Maggio and Carmine Vitale v Bundesanstalt für Arbeit

(Opinion delivered by Mr Advocate General Reischl on 27 March 1980)

1. Social security for migrant workers - Unemployment - Benefits - Unemployed person going to another Member State - Entitlement to benefits maintained - System of Article 69 of Regulation No. 1408/71 - Objective

2. Social security for migrant workers - Unemployment - Benefits - Unemployed person going to another Member State - Entitlement to benefits maintained - Period of three months - Expiry - Loss of entitlement to benefits - Extent

(Regulation No. 1408/71 of the Council, Art. 69 (2))

3. Social security for migrant workers - Unemployment - Benefits - Unemployed person going to another Member State - Entitlement to benefits maintained - Conditions and limits - Compatibility with the provisions of the EEC Treaty

(EEC Treaty, Art. 51; Regulation No. 1408/71 of the Council, Art. 69)

4. Measures of the institutions - Validity - Infringement of fundamental rights - Assessment in the light of Community law alone

5. Community law - General legal principles - Fundamental rights - Right to property - Protection within the Community legal order

6. Social security for migrant workers - Unemployment - Benefits - Unemployed person going to another Member State - Entitlement to benefits maintained - Period of three months - Extension - Discretionary power of the national authorities - Limits - Principle of proportionality

(Regulation No. 1408/71 of the Council, Art. 69 (2))

1. Article 69 of Regulation No. 1408/71 is not simply a measure to co-ordinate national laws on unemployment benefits but establishes an independent body of rules in favour of workers claiming the benefit thereof which constitute an exception to national legal rules and which must be interpreted uniformly in all the Member States irrespective of the rules laid down in national law regarding the continuance and loss of entitlement to benefits.

2. Article 69 (2) of Regulation No. 1408/71, according to which a worker who returns to the competent State after the three-month period referred to in Article 69 (1) (c) has expired loses "all entitlement" to benefits under the legislation of that State, does not restrict that loss to the time between the expiry of the period and the moment when the worker makes himself available again to the employment services of the competent State. Accordingly, that worker may no longer claim entitlement, by virtue of the first sentence of Article 69 (2), to benefits as against the competent State unless the said period is extended pursuant to the second sentence of Article 69 (2).

3. Article 69 (2) of Regulation No. 1408/71 is not incompatible with the provisions of the EEC Treaty concerning freedom of movement for workers in that it limits in time and renders subject to certain conditions the right to continued payment of unemployment benefits.

4. The question of a possible infringement of fundamental rights by a measure of the Community institutions can only be judged in the light of Community law itself.

5. The right to property is one of the fundamental rights the protection of which is guaranteed within the Community legal order, in accordance with the

constitutional concepts common to the Member States and in the light of international treaties for the protection of human rights on which Member States have collaborated or to which they are signatories.

6 Whilst the competent services and institutions of the Member States enjoy a wide discretion in deciding whether to extend the three-month period laid down by Article 69 (2) of Regulation No. 1408/71, they must, in exercising that discretionary power, take account of the principle of proportionality which is a general principle of Community law. In order correctly to apply that principle in cases such as this, in each individual case the competent services and institutions must take into consideration the extent to which the period in question has been exceeded, the reason for the delay in returning and the seriousness of the legal consequences arising from such delay.

NOTE

The dispute in the main proceedings is between the Federal Employment Bureau, Nuremberg, and unemployed workers who, having used the opportunity offered by Article 69 (1) of Regulation No. 1408/71 to go to Italy in order to seek employment there, did not return to the Federal Republic of Germany within the three months' period laid down by the said provision.

On the basis of Article 69 (2) of the said regulation which provides that a worker shall lose all entitlement to benefits under the legislation of the competent State if he does not return there before the said three months' period has expired, the Bundesanstalt refused to continue paying unemployment benefit to the workers concerned. It likewise refused to apply in their favour the provision of Article 69 (2) which, in exceptional cases, allows the competent institutions to extend the three months' period to which the retention of benefits is subject. The workers concerned then brought actions before the German courts for declarations that they were entitled to continue to receive unemployment benefits.

The questions referred to the Court basically ask whether Article 69 (2) of Regulation No. 1408/71 deprives an unemployed worker who returns to the competent State after the three months' period has expired of all entitlement to unemployment benefits as against that State, even in the case where such a worker would retain a residual right to benefits under the legislation of that State.

If the answer to that question is "yes", doubts about the compatibility of Article 69 (2) with Articles 48 to 51 of the Treaty and with the requirements of the protection of fundamental rights were expressed in the grounds for the orders of the national courts and in the observations submitted to the Court.

As to the compatibility of Article 69 (2) with Articles 48 to 51 of the Treaty

It was alleged that the provision is invalid as it is incompatible with the provisions of the Treaty on the freedom of movement of workers and, in particular, with Article 51 which obliges the Council to adopt such measures in the field of social security as are necessary to provide freedom of movement for workers.

As has already been observed in a previous judgment (Case 139/78 Coccioli) the right to be absent for three months in order to seek employment in another Member State gives a worker a real advantage and assists in providing freedom of movement for workers. As part of a special system of rules which gives rights to the worker which he would not otherwise have, Article 69 (2) cannot therefore be equated with the provisions held invalid by the Court in its Petroni and Manzoni judgments to the extent to which their effect causes workers to lose advantages in the field of social security which are provided, in any event, by the legislation of a single Member State. It follows that there is not any incompatibility between Article 69 (2) of Regulation No. 1408/71 with the rules on the freedom of movement for workers in the Community.

As to the compatibility of Article 69 (2) with the fundamental rights guaranteed by Community law

In order to determine whether Article 69 (2) might infringe the fundamental rights guaranteed by Community law, consideration should be given to the fact that the system set up by Article 69 is an optional system which has application only to the extent to which a worker so requests, the worker thereby foregoing the general system applicable to workers in the State in which he became unemployed. The consequences laid down in Article 69 in the event of late return are made known to a worker in an explanatory sheet written in his language.

It is to be concluded that, even supposing that a right to the social security benefits in question may be regarded as being protected by the law of property, which is guaranteed by Community law - an issue which it is not necessary to settle in the context of these proceedings - the rules laid down by Article 69 of Regulation No. 1408/71 do not comprise any undue restriction on the retention of the right to the benefits in question.

Whilst, as the Court held in the judgment cited above, the competent services and institutions of the States enjoy a wide discretion in deciding whether to extend the period laid down by the regulation, in exercising that discretionary power they must take account of the principle of proportionality which is a general principle of Community law. In order correctly to apply that principle in cases such as this, in each individual case the competent services and institutions must take into consideration the extent to which the period in question has been exceeded, the reason for the delay in returning and the seriousness of the legal consequences arising from such delay.

The Court answered the questions referred to it by the Bayerische Landessozialgericht, Munich, the Bundessozialgericht and the Landessozialgericht, Hesse, by ruling that a worker who returns to the competent State after the three months' period referred to in Article 69 (1) (c) of Regulation No. 1408/71 has expired may not, by virtue of the first sentence of Article 69 (2), claim entitlement to the benefits as against the competent State, unless the period referred to is extended pursuant to the second sentence of Article 69 (2).

Judgment of 19 June 1980

Case 803/79

Criminal proceedings against Gérard Roudolff

(Opinion delivered by Mr Advocate General Mayras on 22 May 1980)

1. Community law - Interpretation - Ambiguous text - Teleological interpretation

2. Agriculture - Common organization of the markets - Beef and veal - Cuts of forequarters of frozen, boned or boneless meat specified as insides of cheeks, thin flanks and shin - Exclusion from subheading ex 02.01 A II (a) 2 (dd) ex 22, as incorporated into the agricultural regulations - Possibility of qualifying for export refunds - None

(Regulations of the Commission Nos. 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 and Nos. 180, 494 and 735/75)

1. Where the text of a provision is ambiguous it should be interpreted in the light of the intention and purpose of the regulations of which it forms part.

2. The wording of subheading ex 02.01 A II (a) 2 (dd) ex 22 appearing in the annexes to Regulations of the Commission Nos. 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 and Nos. 180, 494 and 735/75 fixing the export refunds on beef and veal cannot be regarded as covering exports of cuts of forequarters of frozen, boned or boneless beef or veal, specified as insides of cheeks, thin flanks and shin, or as enabling them to qualify for export refunds.

NOTE

The Tribunal de Grande Instance, Paris, referred a question to the Court for a preliminary ruling on the interpretation of subheading 02.01 A II (a) 2 (dd) 22 appearing in the Annex to the Commission regulations fixing the export refunds on beef and veal for the period from August 1974 to April 1975.

The question was raised in the context of proceedings brought against G. Roudolff, the Managing Director of a French company who was charged with having made false declarations during the period referred to in order to obtain the payment of export refunds on frozen, boned or boneless beef or veal exported to Greece. The Administration des Douanes in fact found that the meat which had been exported contained some insides of cheeks, shins and thin flanks which it considered did not qualify for export refunds under the regulations cited above.

Mr Roudolff contests this interpretation. He contends that the products in question are rendered ineligible for the refunds only if they are packed separately.

The question raised by the national court is whether the wording of the subheading under consideration, fixing export refunds for beef and veal, covers exports of cardboard boxes containing cuts of forequarters of frozen, boned or boneless beef or veal, including certain cuts described as insides of cheeks, thin flanks and shins, when the cuts were not packed separately, and do such exports thus qualify for export refunds?

The effect of the words at issue should be examined (with the help of the different language versions) in the light of the purposes of the rules in question. In this respect the Commission maintained that the Community rules confine the refunds to cuts of meat of a certain quality. This was not the case with cheeks, offal, thin flanks and shins which are processing meats in wide use in the Community. As the boned or boneless cuts are small and practically indissociable from one another because they are frozen, the separate packing of each cut is necessary for the purpose of carrying out checks.

The Court considered that the Commission had amply demonstrated why separate packing was required: this is to enable checks to be carried out and the requirement must therefore apply to all cuts qualifying for the refunds.

The Court held that the wording of subheading 02.01 A II (a) 2 (dd) 22 in the Annex to Commission Regulations Nos. 2010, 2243, 2538, 2645, 2943, 3084 and 3205/74 and 180, 494 and 735/75 fixing the export refunds for beef and veal does not cover the export of cuts of forequarters of frozen, boned or boneless beef or veal, described as insides of cheeks, thin flanks and shins, and did not render them eligible for the export refunds.

Judgment of 26 June 1980

Case 136/79

National Panasonic (UK) Ltd. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Warner on 30 April 1980)

1. Competition - Administrative procedure - Investigating powers of the Commission - Decision ordering an investigation not preceded by an investigation by mere authorization - Permissible - Request for information - Different procedure

   (Regulation No. 17/62 of the Council, Arts 11, 13 and 14)

2. Competition - Administrative procedure - Information requested during an investigation - Investigation cannot be treated as a request for information

   (Regulation No. 17/62 of the Council, Arts 11 and 14)

3. Community law - General principles of law - Observance of fundamental rights ensured by the Court of Justice

4. Competition - Administrative procedure - Aim of the investigating powers of the Commission - No infringement of the fundamental rights of undertakings

   (Regulation No. 17/62 of the Council, Art. 14)

5. Competition - Administrative procedure - Scope of the right of undertakings to be heard - No such right in the case of an investigation procedure

   (Regulation No. 17/62 of the Council, Arts 14 (3) and 19 (1); Regulation No. 99/63/EEC of the Commission)

1. Although Article 11 of Regulation No. 17 makes the exercise of the Commission's power to request information from an undertaking or ssociation of undertakings subject to a two-stage procedure, the second stage of which, involving the adoption by the Commission of a decision which specifies what information is required, may only be initiated if the first stage, in which a request for information is sent, has been carried out without success, Article 14 of the same regulation on the "investigating" powers of the Commission contains nothing to indicate that it may only adopt a decision ordering an investigation within the meaning of Article 14 (3) if it has previously attempted to carry out an investigation by mere authorization.

   Moreover, Article 13 (1) of the same regulation which provides that, at the request of the Commission, the national authorities must undertake the investigations which the Commission considers to be necessary under Article 14 (1) or which it has ordered by decision pursuant to Article 14 (3) clearly shows by the use of the word "or" that those two procedures do not necessarily overlap but constitute two alternative checks the choice of which depends upon the special features of each case.

2. The fact that the officials authorized by the Commission, in carrying out the "investigation" referred to in Article 14 of Regulation No. 17, have the power to request during that investigation information on specific questions arising from the books and business records which they examine is not sufficient to conclude that an investigation is identical to a procedure intended only to obtain information within the meaning of Article 11 of the same regulation.

3. Fundamental rights form an integral part of the general principles of law, the observance of which the Court of Justice ensures, in accordance with constitutional traditions common to the Member States and with international treaties on which the Member States have collaborated or of which they are signatories.

4. The aim of the powers given to the Commission by Article 14 of Regulation No. 17 is to enable it to carry out its duty under the EEC Treaty of ensuring that the rules on competition are applied in the common market. The function of these rules is to prevent competition from being distorted to the detriment of the public interest, individual undertakings and consumers. It does not therefore appear that Regulation No. 17, by giving the Commission the powers to carry out investigations without previous notification, infringes the fundamental rights of undertakings.

5. The exercise of the right of an undertaking to be heard before a decision is taken regarding it under Community competition law is chiefly incorporated in legal or administrative procedures for the termination of an infringement or for a declaration that an agreement, decision or concerted practice is incompatible with Article 85, such as the procedures referred to by Regulation No. 99/63/EEC of the Commission. On the other hand, the investigation procedure referred to in Article 14 of Regulation No. 17 does not aim at terminating an infringement or declaring that an agreement, decision or concerted practice is incompatible with Article 85; its sole objective is to enable the Commission to gather the necessary information to check the actual existence and scope of a given factual and legal situation. In addition, a decision ordering an investigation within the meaning of Article 14 (3) of Regulation No. 17 is not listed among the decisions which, pursuant to Article 19 (1) of Regulation No. 99/63/EEC, the Commission cannot take before giving those concerned the opportunity of exercising their right of defence.

NOTE

The application

National Panasonic (UK)Ltd,a company incorporated in the United Kingdom, requests under Articles 173 and 174 of the EEC Treaty the annulment of the Commission decision of 22 June 1979 concerning an investigation to be made pursuant to Article 14 (3) of Regulation No. 17/62 of the Council. By the same application, the applicant requests in addition that the Commission should be ordered to return to National Panasonic all documents copied by the officials of the Commission during that investigation, to destroy the notes made at that time and to undertake not to make any further use of such documents or notes or information.

The facts

The applicant is a company formed under English law and a subsidiary of the Japanese Matsushita Electrical Industry Company and the exclusive distributor in the United Kingdom of National Panasonic and Technics products. Another subsidiary of the Japanese group is National Panasonic Vertriebsgesellschaft GmbH, which is incorporated in the Federal Republic of Germany and distributes National Panasonic products in that State.

In 1977 the German company notified the Commission of an agreement relating to the distribution of National Panasonic products and requested negative clearance or an exemption under Article 85 (3) of the Treaty.

Although the notification did not indicate whether or not the agreement contained a prohibition on exports to another Member State, the information obtained by the Commission showed that National Panasonic required its re-sellers not to re-export National Panasonic and Technics products to other Member States.

On the basis of that information, the Commission considered that it was necessary to believe that the applicant had participated and was still participating in agreements and concerted practices contrary to Article 85 of the EEC Treaty and therefore decided to carry out an investigation pursuant to Regulation No. 17 of the Council (Article 14 (3)).

For that purpose on 22 June 1979 it adopted the contested decision, Article 3 of which provided inter alia that it would be notified by being handed over personally immediately before the investigation was to begin to a representative of the undertaking by the Commission's officials authorized for the purposes of the investigation.

The investigation was carried out on 27 June 1979 by two officials authorized by the Commission, accompanied by an official of the Office of Fair Trading, which is the competent authority in the United Kingdom. Those officials arrived at National Panasonic's sales offices in Slough, and, after notifying the aforementioned decision by handing it over personally to the directors of the company, in fact carried out the investigation without awaiting the arrival of the company's solicitor. They left the company's offices on the same day with copies of several documents and notes made during the investigation.

The applicant contests the validity of that investigation, maintaining that the Commission decision ordering it is unlawful. It puts forward four submissions in support of its application, alleging that that decision is in breach of Article 14 of Regulation No. 17, and of fundamental rights, that it does not contain a sufficient statement of the reasons on which it is based and that it violates the doctrine of proportionality.

The law

(a) The infringement of Article 14 of Regulation No. 17

The applicant maintains that the contested decision is unlawful because it does not comply with the spirit and letter of the provisions of Article 14 (3) of Regulation No. 17. In that connexion it maintains that on a proper construction those provisions provide for a two-stage procedure which permits the Commission to adopt a decision requiring an undertaking to submit to an investigation only after attempting to carry out that investigation on the basis of a written authorization to its own officials. That interpretation is said to be confirmed by Article 11 of Regulation No. 17.

It is true that Article 11 in fact stipulates a two-stage procedure, the second stage of which, involving the adoption by the Commission of a decision which specifies what information is required, may only be initiated if the first stage, in which a request for information is sent to the undertakings, has been attempted without success.

What is here involved is a procedure for obtaining information.

Article 14 of the regulation is different in structure. It does not prevent the Commission from carrying out an investigation without adopting a decision, solely by written authorization given to its officials, but in other respects it contains nothing to show that it may only adopt a decision if it has previously attempted to carry out an investigation by mere authorization.

What is here involved is a procedure for carrying out an investigation, which is different in nature from that under Article 11.

The difference in the rules on this subject contained in Articles 11 and 14 is explained, moreover, by the different needs met by those two provisions. Whereas the information which the Commission considers

it necessary to know may not as a general rule be collected without the co-operation of the undertakings possessing that information, investigations, on the other hand, are not necessarily subject to the same conditions. In general they aim at checking the actual existence and scope of information which the Commission already has and do not therefore necessarily presuppose previous co-operation by undertakings in possession of the information necessary for the check.

The Court holds that it is necessary to dismiss the first submission as unfounded.

(b) The infringement of fundamental rights

The applicant claims that by failing to communicate to it beforehand the decision ordering an investigation in question, the Commission has infringed fundamental rights of the applicant, in particular the right to receive advance notification of the intention to apply a decision regarding it, the right to be heard before a decision adversely affecting it is taken and the right to use the opportunity given to it under Article 185 of the Treaty to request a stay of execution of such a decision. The applicant relies on Article 8 of the European Convention for the Protection of Human Rights whereby "everyone has the right to respect for his private and family life, his home and his correspondence". Those guarantees must be afforded mutatis mutandis also to legal persons.

The Court observes that it is necessary to point out that Article 8 (2) of the European Convention, in so far as it applies to legal persons, acknowledges that interference by public authorities is permissible to the extent to which it "is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others".

In this instance, the aim of the powers given to the Commission by Article 14 of Regulation No. 17 is to enable it to carry out its duty under the EEC Treaty of ensuring that the rules on competition are adhered to within the Common Market. It does not appear therefore that Regulation No. 17, by giving the Commission the powers to carry out investigations without prior notification, infringes the right invoked by the applicant. Accordingly the second submission is also unfounded.

(c) Absence of a statement of the reasons upon which the decision was based

The applicant also maintains that the contested decision is irregular in that it fails to state or to state properly the reasons on which it is based, in particular because it in no way indicates the reasons for which the Commission applied Article 14 without attempting first of all to carry out an informal investigation. But it is an established fact that the preamble to the contested decision states the purpose thereof, which is to check facts which might show the existence of an export ban contrary to the Treaty, and indicates the penalties laid down. This submission is also unfounded.

(d) The violation of the principle of proportionality

The applicant points out that the principle of proportionality implies that a decision ordering an investigation adopted without the preliminary procedure may only be justified if the situation is

very grave, where there is the greatest urgency and where there is the need for complete secrecy before the investigation is carried out.

Considering that the contested decision was aimed solely at enabling the Commission to collect the necessary information to assess whether there was any infringement of the Treaty it does not therefore appear that the Commission's action in this instance was disproportionate to the objective pursued and violated the principle of proportionality.

The Court accordingly:

1. Dismisses the application as unfounded;

2. Orders the applicant to pay the costs.

Judgment of 26 June 1980

Case 788/79

Criminal proceedings against Herbert Gilli and Paul Andres

(Opinion delivered by Mr Advocate General Capotorti on 29 May 1980)

1. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Rules relating to production and marketing of a product - Obstacles to intra-Community trade - Permissibility - Conditions and limits

(EEC Treaty, Arts. 30 and 36)

2. Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Prohibition on importing and marketing products containing acetic acid not derived from the acetic fermentation of wine

(EEC Treaty, Art. 30)

1. In the absence of common rules relating to the production and marketing of a product it is for Member States to regulate all matters relating to its production, distribution and consumption on their own territory subject, however, to the condition that those rules do not present an obstacle, directly or indirectly, actually or potentially, to intra-Community trade.

It is only where national rules, which apply without discrimination to both domestic and imported products, may be justified as being necessary in order to satisfy imperative requirements relating in particular to the protection of public health, the fairness of commercial transactions and the defence of the consumer that they may constitute an exception to the requirements arising under Article 30 of the EEC Treaty.

2. The concept of "measures having equivalent effect" to "quantitative restrictions on imports", occurring in Article 30 of the EEC Treaty, is to be understood as meaning that a prohibition imposed by a Member State on importing or marketing vinegar containing acetic acid not derived from the acetic fermentation of wine comes within that provision where the vinegar involved is lawfully produced and marketed in another Member State.

NOTE

The Pretore di Bolzano submitted to the Court of Justice a question to establish whether the prohibition introduced by an Italian decree against the marketing of products containing acetic acid not derived from the acetic fermentation of wine constitutes a quantitative restriction on imports or a measure having equivalent effect, referred to in Article 30 of the EEC Treaty.

That question was raised in the course of criminal proceedings for fraud brought against two traders residing in Bolzano, one of them charged with marketing and holding for the purpose of sale apple vinegar made in Germany containing acetic acid not derived from the acetic fermentation of wine, and the other charged with holding the same product for the purpose of sale, the use in the food sector of products containing acetic acid not derived from the fermentation of wine being prohibited by Italian law, even where those products are imported from abroad.

The national court referred the following question to the Court:

"Must the expression 'quantitative restrictions on imports and all measures having equivalent effect' contained in Article 30 of the Treaty establishing the EEC be understood as meaning that the prohibition referred to in Article 51 of Decree No. 162 of the President of the Republic of 12 February 1965 on putting on the market products containing acetic acid not derived from the acetic fermentation of wine must be considered as being a quantitative restriction on imports or a measure having equivalent effect?"

In the absence of common rules it is for Member States to regulate on their own territory all matters relating to the production, distribution and consumption of a product subject, however, to the condition that such provisions do not constitute an obstacle to intra-Community trade.

National rules may derogate from the requirements under Article 30 only in cases of the protection of public health.

However, it appears from the documents in the file relating to this case that apple vinegar contains no injurious substances and is not harmful to health.

Thus from the point of view of both the protection of public health and fairness in commercial transactions, or from the point of view of consumer protection, there is no factor to justify a restriction on imports of the product in question.

Consequently the Court answered the question put to it by ruling that:

"The concept of 'measures having equivalent effect to quantitative restrictions on imports' occurring in Article 30 of the EEC Treaty is to be understood as meaning that a prohibition imposed by a Member State on importing or marketing products containing acetic acid not derived from the acetic fermentation of wine comes within that provision where the product involved is lawfully marketed in another Member State".

Judgment of 26 June 1980

Case 793/79

Alastair Menzies v Bundesversicherungsanstalt für Angestellte

(Opinion delivered by Mr Advocate General Reischl on 28 May 1980)

Social security for migrant workers - Invalidity insurance - Calculation of benefits - Application by analogy with provisions on insurance for old age and death - Calculation of the theoretical and actual amount - Supplementary period ("Zurechnungszeit") - Inclusion in the calculation of the theoretical amount - Exclusion in the calculation of the actual amount

(Regulation No. 1408/71 of the Council, Art. 46 (2) (a) and (b))

Although the calculation to be carried out under Article 46 (2) (a) of Regulation No. 1408/71 is intended to give a worker the maximum theoretical amount which he could claim if all periods of insurance had been completed in the State in question, the purpose of the calculation under Article 46 (2) (b) is solely to apportion the respective burdens of the benefit between the institutions of the Member States concerned in the ratio of the length of the periods of insurance completed in each of the said Member States before the risk materialized.

It follows that if, in order to evaluate the benefit awarded in the event of premature invalidity or death of the insured person, the legislation of a Member State provides that the benefit must be calculated in relation to not only periods of insurance completed by the insured person but also in relation to a supplementary period ("Zurechnungszeit") equivalent to the interval of the time between the age of the insured person at the time at which the risk materialized and the time at which he reached the age of 55, that supplementary period must also be taken into account in the calculation of the theoretical amount referred to in Article 46 (2) (a) but not in the calculation of the actual amount referred to in Article 46 (2) (b) of Regulation No. 1408/71.

NOTE

The Bundessozialgericht submitted to the Court the following question:

> "Must the expressions "insurance periods ... completed" and "insurance periods completed before materialization of the risk" contained in Article 46 (2) (a) and (b) of Regulation (EEC) No. 1408/71 of the Council of the European Communities be interpreted as also including those periods treated as such within the meaning of Article 1 (r) of the regulation which can only start to run when the risk materializes but which must, in order to obtain an appropriate pension, be added on to the insurance periods completed when the risk materializes, such as the German supplementary period within the meaning of Article 37 of the Angestelltenversicherungs-gesetz /Law on Workers' Insurance/ ?"

This question is put in the context of a dispute between a British national resident in the Federal Republic of Germany, the plaintiff in the main action, and the Bundesversicherungsanstalt für Angestellte /Federal Workers' Insurance Office/ Berlin, the defendant in the main action. The plaintiff suffered an accident at work in the Federal Republic in December 1975 at a time when he had completed 24 months of contributions in Germany and 248 months in Great Britain.

The Court answered that question by a ruling to the effect that a supplementary period which the legislation of a Member State adds on to the periods of insurance completed before the risk materializes in order to increase the benefit awarded in the case of early invalidity or premature death of the insured person must be taken into account in the calculation of the theoretical amount referred to in Article 46 (2) (a) but not in the calculation of the actual amount referred to in Article 46 (2) (b) of Regulation No. 1408/71.

Judgment of 26 June 1980

Case 808/79

Fratelli Pardini S.p.A.

(Opinion delivered by Mr Advocate General Reischl on 22 May 1980)

1. Agriculture - Common organization of the markets - Import or export documents - Loss of documents - Concept - Theft - Inclusion - Trader's right to another document allowing the transaction to be effected on the conditions laid down in the stolen document - No such right

   (Regulation (EEC) No. 193/75 of the Commission, Art. 17 (7))

2. Agriculture - Common organization of the markets - Import or export documents - Commission's implementing powers - Scope - Rules governing the consequences of the loss of the document

   (Regulation (EEC) No. 2727/75 of the Council, Art. 12 (2); Regulation (EEC) No. 193/75, Art. 17 (7))

3. Agriculture - Common organization of the markets - Import or export documents - Loss of document - Provision to the effect that the transaction may not be carried out on the basis of a duplicate - Principle of proportionality - Breach - None involved

   (Regulation (EEC) No. 193/75, Art. 17 (7))

1. The reference to "loss" of the export document in Article 17 (7) of Regulation No. 193/75 includes a theft which takes place before or after the performance of the import or export transaction. Therefore the aforesaid provision must be interpreted as meaning that an exporter who has suffered the theft of an export licence or advance fixing certificate may not obtain a new licence or certificate or equivalent document permitting him to carry out the export transactions on the conditions laid down in the stolen document.

2. It is clear from the wording of Article 12 (2) of Regulation No. 2727/75 that the Council conferred wide powers upon the Commission for the purpose of implementing the system of import and export licences introduced by that provision and that the period of

validity of licences or certificates is only one example of the detailed rules which may be adopted by the Commission under the procedure known as the Management Committee procedure.

Since, moreover, the function given to licences does not enable a distinction to be made between the right to carry out the transaction and the document which allegedly serves only as a manifestation of that right, there is no reason to suppose that the Commission is not empowered to lay down rules in connexion with that right or to prescribe that the loss of the document shall entail the extinction of the right.

3. It is necessary for the authorities entrusted with the management of the common organization of the markets to have available precise forecasts on future imports and exports. Whilst that objective requires that the performance of the undertaking to export or import in accordance with the licences or certificates issued be ensured by appropriate means, it also makes it necessary to ensure that the documents are used only for the transactions covered thereby. In the case of advance fixing certificates, that need is all the more imperative since the use of such certificates twice over may confer unjustified benefits upon traders and thus impose heavy financial burdens upon the Community.

If by requesting advance fixing traders take advantage of the considerable benefits derived from that system, it is therefore just that they should bear the disadvantages which arise from the necessity, on the part of the Community, of preventing any abuse. Therefore the risk borne by traders as a result of the provision contained in Article 17 (7) of Regulation No. 193/75 is not disproportionate in relation to the control requirements.

NOTE The president of the Tribunale di Lucca referred to the Court two questions on the interpretation and validity of Article 17 (7) of Regulation No. 193/75 of the Commission laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products. The said Article 17 (7) provides that any duplicates which may be issued where licences or certificates are lost may not be submitted for purposes of carrying out import or export operations.

The questions are put in the context of proceedings brought by an Italian undertaking which claims to have been the victim of the theft of, inter alia, an export licence relating to 12 500 tonnes of durum wheat meal with advance-fixing of the refund and which seeks the annulment and the replacement of the stolen certificate, in order to carry out the export under cover of the new document requested and subject to the same conditions as those contained in the stolen licence.

The Community rules on the common organization of the market in cereals provide that every import into or export from the Community of products to which the rules apply requires the submission of a licence, which is valid throughout the Community and of which the issue is subject to the provision of security guaranteeing the obligation to import or export during the period of validity of the licence. Advance fixing certificates may be of very great importance where the rate of levy or refund applicable on the date when the import or export is carried out is significantly different from the rate fixed in advance.

Article 17 (7) of Regulation 193/75 provides that:

> "Where a licence or certificate or extract therefrom is lost, issuing agencies may, exceptionally, supply the party concerned with a duplicate thereof, drawn up and endorsed in the same way as the original document and clearly marked with the word 'Duplicate' on each copy.
>
> Duplicates may not be submitted for purposes of carrying out import or export operations".

Alongside that disputed provision there should be cited Article 20 (1) of the same regulation which provides that:

> "Where as a result of force majeure importation or exportation cannot be effected during the period of validity of the licence or certificate, the competent agency of the issuing Member State shall decide, at the request of the titular holder, either that the obligation to import or export be cancelled, the security being released, or that the period of validity of the licence or certificate be extended for such period as may be considered necessary in view of the circumstances invoked.
>
> ...
>
> Any extension of a licence or certificate shall be recorded by means of an endorsement stamped by the issuing agency on the licence or certificate and where appropriate on its extracts, and the necessary adjustments shall be made".

The interpretation of Article 17 (7)

The first question from the court making the reference is the following:

> "Must the first and second subparagraphs of Article 17 (7) of Regulation No. 193/75 be interpreted as meaning that an exporter who has suffered the theft of an export licence, valid throughout the Community, fixing in advance the amount of the refunds, may not request and obtain a new licence or equivalent document issued by a national authority permitting him to carry out the export operations before or after the expiry of the period of validity of the stolen licence, thus suffering the total loss of the refunds fixed in advance under the said licence ?"

The plaintiff in the main proceedings submits that that provision governs only the position of a trader who, having lost the licence or certificate, does not wish to perform the obligations which flow from it and seeks to obtain release of the security.

On the other hand, the case of a trader who wishes to carry out the import or the export despite the loss of the licence or certificate is provided for only in Article 20 of the regulation and, even there, only in a general manner, detailed rules for such a case being absent.

The very wording of the articles in question allows that argument to be rejected. Article 20 is in no way concerned with the issue of a duplicate or new certificate or licence. Article 17 alone provides for that case but states expressly that the said duplicates may not be submitted for purposes of carrying out export or import operations.

Secondly, the plaintiff in the main proceedings submits that Article 17 (7) does not provide for the case of theft. As do the other legal systems of the Member States, Italian law draws a distinction between loss, misappropriation - including theft - and destruction and since all the legal systems contemplate the reproduction of documents and acknowledge the copies as having an effect essentially equivalent to that of the original, Article 17 (7) is of the nature of an exception and ought to be narrowly construed.

In the view of the Court, the word "lost" must be interpreted having regard to the function which that article fulfils in the Community system of licences and certificates. The submission of the licence or certificate is required not only for the carrying out of any operation but also for the release of the security. The view that the operation may have been carried out on the basis of the lost licence cannot be ruled out. It is for that reason that the carrying out of the operation on the basis of a duplicate is prohibited. The same problem arises in the same way in regard to a stolen licence.

The Court therefore answers the first question by a ruling to the effect that Article 17 (7) of Regulation No. 193/75 of the Commission of 17 January 1975 laying down common detailed rules for the application of the system of import and export licences and advance fixing certificates for agricultural products must be interpreted as meaning that an exporter from whom an export licence or advance-fixing certificate has been stolen may not obtain a new, equivalent permit or document allowing him to carry out the export operations subject to the conditions provided for in the stolen licence or certificate.

The validity of Article 17 (7)

The court making the reference also requests the Court to give a ruling on the following question:

> "Is Article 17 (7) of Regulation (EEC) No. 193/75, which imposes a very severe penalty upon an exporter who, without any fault on his part, has suffered the theft of an export licence, compatible with the principle of proportionality in the light of the case-law of the Court of Justice, bearing in mind that the disputed regulation is a regulation of the Commission and not a regulation of the Council of Ministers of the EEC ?"

It is necessary to point out that the provisions of the regulation in question may not be understood as imposing on the trader, in the event of the loss of a certificate or licence, a "penalty" in the proper sense of the word.

The court making the reference itself indicates in its question the two considerations which lead it to have doubts as to the validity of the provision in question, namely, the issues of proportionality and possible limits to the power which the regulation confers on the Commission.

On the last point, it appears from the wording of the regulations of the Council on this matter that the Council conferred on the Commission wide powers to put into effect the system of licences or certificates. Above all, it appears that the period of validity of licences or certificates is only one example of the detailed rules which may be laid down by the Commission.

As the rule in question appears necessary in order to ensure effective control, there is therefore no ground for thinking that in adopting it the Commission exceeded its powers.

In order to decide whether the provision in question is compatible with the principle of proportionality it is necessary first to establish the objectives of the rules in question. The prohibition contained in Article 17 (7) against carrying out the operation on the basis of mere duplicates represents a measure which is both simple and effective. On the other hand, that prohibition entails for traders the risk of losing, even without fault on their part, the benefits attaching to the original licences or certificates.

The Court answers the second question put by stating that consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of the provisions in question.

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GENERAL INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

A. TEXTS OF JUDGMENTS AND OPINIONS AND GENERAL INFORMATION

1. Judgments of the Court and opinions of Advocates General

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

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

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

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

2. Calendar of the sittings of the Court

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

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

B. OFFICIAL PUBLICATIONS

1. Reports of Cases Before the Court

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

The volumes for 1954 to 1980 are published in Dutch, English, French, German and Italian.

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

All judgments, opinions and summaries for the period 1973 to 1980 are published in their entirety in Danish.

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

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

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

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

C. GENERAL LEGAL INFORMATION AND DOCUMENTATION

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

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

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

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

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

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

3. Annual Synopsis of the work of the Court

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

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

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

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

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

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

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

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

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

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

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

Compendium of Case-law relating to the European Communities (published by H.J. Eversen, H. Sperl and J. Usher),has been discontinued.
In addition to the complete collection in French and German (1954 to 1976) an English version is now available for 1973 to 1976. The volume of the English series are on sale at: Elsevier - North Holland - Excerpta Medica, P.O. Box 211, Amsterdam (Netherlands).

3. Bibliographical Bulletin of Community case-law

This Bulletin is the continuation of the Bibliography of European Case-law of which Supplement No. 6 appeared in 1976. The layout of the Bulletin is the same as that of the Bibliography. Footnotes therefore refer to the Bibliography.

It has been on sale since 1977 at the address shown at B 1 above (Reports of Cases Before the Court).

D. SUMMARY OF TYPES OF PROCEDURE BEFORE THE COURT OF JUSTICE

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

(a) References for preliminary rulings

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

During a period of two months the Council, the Commission, the Member States and the parties to the national proceedings may submit observations or statements of case to the Court of Justice, after which they are summoned to a hearing at which they may submit oral observations, through their Agents in the case of the Council, the Commission and the Member State or through lawyers who are entitled to practise before a court of a Member State, or through university teachers who have a right of audience under Article 36 of the Rules of Procedure.

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

(b) Direct actions

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

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

The application must contain:

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

The application should also be accompanied by the following documents:

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

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

The application is notified to the defendant by the Registry of the Court of Justice. It requires the submission of a statement of defence; these documents may be supplemented by a reply on the part of the applicant and finally a rejoinder on the part of the defendant.

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

After hearing the opinion of the Advocate General, the Court gives judgment. This is served on the parties by the Registry.

E. ORGANIZATION OF PUBLIC SITTINGS OF THE COURT

As a general rule sessions of the Court are held on Tuesdays, Wednesdays and Thursdays except during the Court's vacations - that is, from 22 December to 8 January, the week preceding and two weeks following Easter, and from 15 July to 15 September. There are three separate weeks during which the Court also does not sit : the week commencing on Carnival Monday, the week following Whitsun and the first week in November.

The full list of public holidays in Luxembourg set out below should also be noted. Visitors may attend public hearings of the Court or of the Chambers so far as the seating capacity will permit. No visitor may be present at cases heard in camera or during proceedings for the adoption of interim measures. Documentation will be handed out half an hour before the public sitting to visiting groups who have notified the Court of their intention to attend the sitting at least one month in advance.

Public holidays in Luxembourg

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

New Year's Day	1 January
Easter Monday	variable
Ascension Day	variable
Whit Monday	variable
May Day	1 May
Robert Schuman Memorial Day	9 May
Luxembourg National Day	23 June
Assumption	15 August
"Schobermesse" Monday	Last Monday of August or first Monday of September
All Saints' Day	1 November
All Souls' Day	2 November
Christmas Eve	24 December
Christmas Day	25 December
Boxing Day	26 December
New Year's Eve	31 December

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

I. COUNTRIES OF THE COMMUNITY

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75782 Paris CEDEX 16 (Tel. 5015885)
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