Information on the Court of Justice of the European Communities

1982 – I

I N F O R M A T I O N

on

THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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1982

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C O N T E N T S

COMPOSITION OF THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

for the judicial year 1982

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Order of precedence

*

J. MERTENS DE WILMARS, President of the Court
F. CAPOTORTI, First Advocate General
G. BOSCO, President of the First Chamber
A. TOUFFAIT, President of the Third Chamber
O. DUE, President of the Second Chamber
P. PESCATORE, Judge
Lord MACKENZIE STUART, Judge
G. REISCHL, Advocate General
A. O'KEEFFE, Judge
T. KOOPMANS, Judge
U. EVERLING, Judge
A. CHLOROS, Judge
Sir Gordon SLYNN, Advocate General
S. ROZES, Advocate General
P. VERLOREN VAN THEMAAT, Advocate General
F. GREVISSE, Judge
A. VAN HOUTTE, Registrar[1]

First Chamber	Second Chamber	Third Chamber
G. BOSCO President	O. DUE President	A. TOUFFAIT President
A. O'KEEFFE Judge	A. CHLOROS Judge	Lord MACKENZIE STUART Judge
T. KOOPMANS Judge	F. GREVISSE Judge	U. EVERLING Judge
	P. PESCATORE [2] Judge	

1 - With effect from 9 February 1982 P.E. Heim has replaced A. Van Houtte;

2 - Judge Pescatore is attached to the Second Chamber in respect of cases in which he is required to sit.

J U D G M E N T S

of the

C O U R T O F J U S T I C E

of the

E U R O P E A N C O M M U N I T I E S

Judgment of 14 January 1982

Case 64/81

Nicolaus Corman & Fils S.A. v Hauptzollamt Gronau

(Opinion delivered by Mr Advocate General Reischl on 19 November 1981)

1. Community law - Concepts - Interpretation - Reference to national legal system - Impermissible

2. Agriculture - Monetary compensatory amounts - Reduction in the rate - Butter sold at a reduced price to certain undertakings for processing - Obligatory destination - Powder for the preparation of edible ices falling within subheadings Nos. ex. 18.06 D or ex. 21.07 F of the Common Customs Tariff - Meaning of the words "edible ices ... suitable for consumption"

   (Regulation No. 1259/72 of the Commission, Art. 6 (1) (c), as amended by Regulations Nos. 2815/72 and 2819/74)

1. The Community legal order does not aim in principle to define its concepts on the basis of one or more national legal systems without express provision to that effect.

2. Powder falling within subheadings Nos. ex. 18.06 D or ex. 21.07 F of the Common Customs Tariff and intended for the preparation of edible ices within the meaning of the third indent of Article 6 (1) (c) of Regulation No. 1259/72 as amended by Regulation No. 2815/72 of the Commission and as last amended by Regulation No. 2819/74 must contain only products which can be processed into edible ices suitable for consumption without any treatment other than the addition of water and refrigeration. Suitability for consumption as an edible ice within the meaning of the said regulation requires for the purposes of Community law treatment of the basic product such that its sole possible application is the production of edible ices, that is to say, of a product which is perceptibly sugared or flavoured and whose consistency, after the addition of water and refrigeration, is such that it does not break up too rapidly at ambient temperatures and which retains its freshness for a sufficiently long period.

NOTE

The Finanzgericht [Finance Court] Münster referred three questions to the Court of Justice for a preliminary ruling on the interpretation of Article 6 of Regulation No. 1259/72 of the Commission of 16 June 1972 on the disposal of butter at a reduced price to certain Community processing undertakings as amended by Regulation No. 2815/72 of the Commission and as last amended by Regulation No. 2819/74 of the Commission.

The questions were submitted in connexion with a dispute between a Belgian company which exports concentrated butter intended for use by a German firm in the manufacture of a powder preparation from which, by the addition of water and refrigeration, edible ices may be made, and the Hauptzollamt [Principal Customs Office] Gronau which levied monetary compensatory amounts not at the reduced rate of 50% (Article 20 of Regulation No. 1259/72) but at the full rate on the ground that the concentrated butter in question had not been transported, in accordance with its intended purpose, as a powder preparation for the manufacture of edible ices and therefore could not be classified under subheading No. ex 18.06 D or ex 21.07 F of the Common Customs Tariff.

The Hauptzollamt came to the conclusion, on the basis of an examination of the powder preparations at issue, that such preparations were not suitable for consumption as edible ices without any treatment other than the addition of water and refrigeration.

Consequently the national court raised three questions which in substance sought to ascertain the significance for the purposes of Community law of the expression "suitable for consumption" within the meaning of Article 6 of Regulation No. 1259/72 which provides that butter sold in accordance with that regulation and in compliance with its objectives may be processed only into "powder for the preparation of edible ices ... and suitable for consumption without any treatment other than the addition of water and refrigeration".

In its reply, the Court ruled that:

"Powder preparations within tariff subheading No. ex 18.06 D or ex 21.07 of the Common Customs Tariff intended for the preparation of edible ices within the meaning of the third indent of Article 6 (1) (c) of Regulation No. 1259/72 of the Commission as amended by Regulation No. 2815/72 of the Commission and as most recently amended by Regulation No. 2819/74 of the Commission of 8 November 1974 (Official Journal No. L 301, p. 21) must contain exclusively products which may be processed into edible ices suitable for consumption without any treatment other than the addition of water and refrigeration. Suitability for consumption as an edible ice within the meaning of the said regulation is defined at Community level as the degree of preparation of a basic product which enables it to be used solely for the manufacture of edible ice, that is to say a distinctly sweetened or flavoured product the consistency of which, after the addition of water and refrigeration, is such that it does not melt too rapidly at room temperature and that it retains its freshness for a sufficient period."

Judgment of 14 January 1982

Case 65/81

Francesco Reina and Letizia Reina v
Landeskreditbank Baden-Württemberg

(Opinion delivered by Advocate General Sir Gordon Slynn on 10 December 1981)

1. Preliminary questions - Reference to the Court - Decision making the reference taken by a court not properly constituted - Absence of any effect on the Court's jurisdiction

   (EEC Treaty, Art. 177)

2. Free movement of persons - Workers - Equality of treatment - Social and tax advantages - Concept

   (Regulation No. 1612/68 of the Council, Art. 7 (2))

3. Free movement of persons - Workers - Equality of treatment - Social advantages - Concept - Benefits granted on a discretionary basis

   (Regulation No. 1612/68 of the Council, Art. 7 (2))

4. Free movement of persons - Workers - Equality of treatment - Social advantages - Concept - Interest-free loans on child-birth

   (Regulation No. 1612/68 of the Council, Art. 7 (2))

1. Where a court of a Member State brings a matter before the Court of Justice under Article 177 of the EEC Treaty the Court has jurisdiction, under that provision, to answer the questions raised without there being any need to consider first whether the decision making the reference to it was taken in accordance with the rules of national law governing the organization of the courts and their procedure.

2. It follows from the provisions of Regulation No. 1612/68 and from the objective pursued that the advantages which that regulation extends to workers who are nationals of other Member States are all those which, whether or not linked to a contract of employment, are generally granted to national workers primarily because of their objective status as workers or by virtue of the mere fact of their residence on the national territory and the extension of which to workers who are nationals of other Member States therefore seems suitable to facilitate their mobility within the Community.

3. The concept of "social advantage" referred to in Article 7 (2) of Regulation No. 1612/68 encompasses not only the benefits accorded by virtue of a right but also those granted on a discretionary basis.

4. Article 7 (2) of Regulation No. 1612/68 is to be interpreted as meaning that the concept of "social advantage" referred to in that provision encompasses interest-free loans granted on childbirth by a credit institution incorporated under public law, on the basis of guidelines and with financial assistance from the State, to families with a low income with a view to stimulating the birth-rate. Such loans must therefore be granted to workers of other Member States on the same conditions as those which apply to national workers.

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NOTE

The Verwaltungsgericht [Administrative Court] Stuttgart referred certain questions to the Court of Justice for a preliminary ruling on freedom of movement of workers within the Community.

The questions were raised in a dispute on a matter of administrative law concerning the grant of a childbirth loan between an Italian couple residing in the Federal Republic of Germany and the Landeskreditbank Baden-Württemberg. That institution grants on application, in accordance with directives issued by the competent authority, loans inter alia on the birth of a child. No interest is payable on such loans which are granted for seven years and amount to between DM 8 000 and DM 12 000.

The plaintiffs in the main action, Mr and Mrs Reina, a married couple, applied for a grant of a loan on the birth of twins.

They were refused a loan by the relevant financial institution, as a result of which the national court before which proceedings were instituted has in substance asked the Court of Justice whether Article 7 (2) of Regulation No. 1612/68 must be interpreted as meaning that the concept of social advantage referred to in that provision encompasses interest-free loans on childbirth granted by a credit establishment governed by public law, on the basis of directives and with financial assistance from the State, to families with low incomes with a view to stimulating the birth-rate.

The Landeskreditbank contended that the provision in question was inapplicable to the loans concerned in view of the absence of any link between the grant of a loan and the recipient's status as a worker.

The Court recalled that under Article 7 of Regulation No. 1612/68 a worker in a host country must enjoy the same social and tax advantages as national workers.

Childbirth loans such as those provided for by the national legislation satisfy in principle the criteria which enable them to be described as social advantages to be granted to workers of all the Member States without any discrimination on grounds of nationality particularly in view of their aim which is to alleviate, in the case of families with a low income, the financial burden resulting from the birth of a child.

The Court ruled that:

"Article 7 (2) of Regulation No. 1612/68 of the Council of 15 October 1968 must be interpreted as meaning that the concept of social advantage referred to in that provision encompasses interest-free loans granted on childbirth by a credit establishment governed by public law, on the basis of directives and with financial assistance from the State, to families with a low income with a view to stimulating the birth-rate. Such loans must therefore be granted to workers of other Member States on the same conditions as they are accorded to national workers".

Judgment of 19 January 1982

Case 8/81

Ursula Becker v Finanzamt Münster-Innenstadt

(Opinion delivered by Advocate General Sir Gordon Slynn on 18 November 1981)

1. Measures adopted by institutions - Directives - Effect - Non-implementation by a Member State - Right of individuals to rely upon the directive - Conditions

   (EEC Treaty, Art. 189)

2. Measures adopted by institutions - Directives - Directive conferring a margin of discretion on the Member States - Provisions which are severable and may be relied upon by individuals

   (EEC Treaty, Art. 189; Council Directive No. 77/388)

3. Tax provisions - Harmonization of laws - Turnover tax - Common system of value added tax - Exemptions conferred by the Sixth Directive - Taxable persons' right of option - Implementation - Powers of the Member States - Limits

   (Council Directive No. 77/388, Art. 13 B and C)

4. Tax provisions - Harmonization of laws - Turnover tax - Common system of value added tax - Exemptions conferred by the Sixth Directive - Effects within the system of value added tax

   (Council Directive No. 77/388)

5. Tax provisions - Harmonization of laws - Turnover tax - Common system of value added tax - Exemptions conferred by the Sixth Directive - Exemption of transactions consisting of the negotiation of credit - Possibility of individuals' relying upon the relevant provision where the directive has not been implemented - Conditions

   (Council Directive No. 77/388, Art. 13 B (d) 1.)

1. It would be incompatible with the binding effect which Article 189 of the EEC Treaty ascribes to directives to exclude in principle the possibility of the obligation imposed by it being relied upon by persons concerned. Particularly in cases in which the Community authorities have, by means of a directive, placed Member States under a duty to adopt a certain course of action, the effectiveness of such a measure would be diminished if persons were prevented from relying upon it in proceedings before a court and national courts were prevented from taking it into consideration as an element of Community law.

   Consequently, a Member State which has not adopted the implementing measures required by the directive within the prescribed period may not plead, as against individuals, its own failure to perform the obligations which the directive entails. Thus, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may, in the absence of implementing measures adopted within the prescribed period, be relied upon as against any national provision which is incompatible with the directive or in so far as the provisions define rights which individuals are able to assert against the State.

2. Whilst the Sixth Council Directive No. 77/388 on the harmonization of the laws of the Member States relating to turnover taxes undoubtedly confers upon the Member States varying degrees of discretion as regards implementing certain of its provisions, individuals may not for that reason be denied the right to rely on any provisions which owing to their particular subject-matter are capable of being severed from the general body of provisions and applied separately. This minimum guarantee for persons adversely affected by the failure to implement the directive is a consequence of the binding nature of the obligation imposed on the Member States by the third paragraph of Article 189 of the EEC Treaty. That obligation would be rendered totally ineffectual if the Member States were permitted to annul, as the result of their inactivity, even those effects which certain provisions of a directive are capable of producing by virtue of their subject-matter.

3. Article 13 C of Directive No. 77/388 does not in any way confer upon the Member States the right to place conditions on or to restrict in any manner whatsoever the exemptions provided for by Part B. It merely reserves the right to the Member States to allow, to a greater or lesser degree, persons entitled to those exemptions to opt for taxation themselves, if they consider that it is in their interest to do so.

4. The scheme of Directive No. 77/388 is such that on the one hand, by availing themselves of an exemption, persons entitled thereto necessarily waive the right to claim a deduction in respect of input tax and on the other hand, having been exempted from the tax, they are unable to pass on any charge whatsoever to the person following them in the chain of supply, with the result that the rights of third parties in principle cannot be affected.

5. As from 1 January 1979 it was possible for the provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1. of Directive No. 77/388 to be relied upon, in the absence of the implementation of that directive, by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State could not claim, as against him, that it had failed to implement the directive.

NOTE

The Finanzgericht [Finance Court] Münster referred to the Court for a preliminary ruling a question on the interpretation of Article 13 B of the Sixth Council Directive in order to determine whether that provision might be regarded as having been directly applicable in the Federal Republic of Germany from 1 January 1979 when that Member State failed to adopt within the period laid down the measures necessary in order to ensure its implementation.

The background to the dispute

Under the provisions of the Sixth Directive the Member States were required to adopt by 1 January 1978 at the latest the necessary laws, regulations and administrative provisions in order to modify their systems of value added tax in accordance with the requirements of the directive.

The Federal Republic of Germany implemented the Sixth Directive by the Law of 26 November 1979, which took effect on 1 January 1980.

In her monthly returns in respect of value added tax for the period from March to June 1979 Mrs Becker, the plaintiff in the main proceedings, who carries on the business of a self-employed credit negotiator, requested that her transactions be exempted from tax, claiming that Article 13 B (d) of the Sixth Directive, which compels the Member States to exempt from value added tax inter alia "the granting and the negotiation of credit", had already been incorporated into national law since 1 January 1979.

Consequently, in each case Mrs Becker declared the amount of tax payable and the deduction in respect of input tax to be "nil".

The Finanzamt did not accept those returns and, in its provisional notices of assessment for the months in question, formally charged turnover tax on the transactions of the plaintiff in the main proceedings, subject to a deduction in respect of input tax. Against those assessments the plaintiff in the main proceedings relied upon the Sixth Directive.

Those circumstances led the Finanzgericht to refer to the Court the following question:

> "Has the provision contained in Title X, Article 13 B (d) 1 of the Sixth Council Directive No. 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, concerning the exemption from turnover tax of transactions consisting of the negotiation of credit, been directly applicable in the Federal Republic of Germany from 1 January 1979?"

Substance

The Finanzamt, the Government of the Federal Republic of Germany and the Government of the French Republic do not dispute the fact that the provisions of directives may be relied upon by individuals in certain circumstances but maintain that the provision in question in the main proceedings cannot be endowed with such effect.

The French Republic considers that the directives on fiscal matters seek to achieve the progressive harmonization of the various national systems of taxation but not the replacement of those systems by a Community system of taxation. The French Government is of the opinion that the directive is not, in its entirety, capable of having any effects whatsoever in the Member States before the adoption of appropriate national legislative measures.

The Federal Republic of Germany supports the view that no direct effect can be bestowed upon the provisions of Article 13 owing to the margin of discretion, the rights and the options which that article contains.

The Finanzamt, emphasizing the problems arising from the chain of taxation, which is a characteristic of value added tax, takes the view that it is not possible to remove an exemption from its context without disrupting the entire mechanism of the fiscal system concerned.

The effect of directives in general

"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 national authorities the choice of form and methods" (Article 189 of the EEC Treaty). Thus, Member States to which a directive is addressed are under an obligation to achieve a result, which must be fulfilled before the expiry of the period laid down by the directive itself.

However, special problems arise where a Member State has failed to implement a directive correctly and, more particularly, where a directive has not been implemented within the prescribed period. A Member State which has not adopted the implementing measures required by the directive

within the prescribed period may not rely against individuals upon its own failure to fulfil the obligations contained therein.

The question of the Finanzgericht seeks to determine whether Article 13 B (d) 1 of the directive, which provides that the Member States "shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse: ... (d) the following transactions: 1. The granting and the negotiation of credit", can be regarded as having a content which is unconditional and sufficiently precise.

The scheme of the directive and the context

Inasmuch as it specifies the exempt supply and the person entitled to the exemption, the provision of itself is sufficiently precise to be relied upon by persons concerned and applied by a court.

It remains to be considered whether the right to exemption which it confers may be considered to be unconditional.

The first argument to be considered is that based on the fact that the provision referred to by the national court is an integral part of a harmonizing directive which in various respects reserves to the Member States a margin of discretion entailing rights and options.

The binding nature of the obligation imposed on the Member States by the third paragraph of Article 189 of the Treaty would be deprived of any effect if the Member States were permitted to annul by their default the very effects which certain provisions of a directive were capable of producing by virtue of their content.

The Federal Republic of Germany and the French Republic draw attention to the margin of discretion reserved to the Member States by the introductory sentence of that article, where it is stated that exemption is to be granted by the Member States "under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of the exemptions and of preventing any possible evasion, avoidance or abuse".

A Member State may not rely against a taxpayer who is able to show that his tax position actually falls within one of the categories of exemption laid down by the directive upon its failure to adopt the provisions which are specifically intended to facilitate the application of that exemption.

Moreover, the term "conditions" covers measures intended to prevent any possible evasion, avoidance or abuse. A Member State which has failed to take the precautions necessary for that purpose may not plead its own failure to do so in order to refuse to grant to a taxpayer an exemption which he may legitimately claim under the directive.

The argument based on the introductory sentence of Article 13 B must be rejected.

In support of the view that the provision in question may not be relied upon the Finanzamt, the Federal Republic of Germany and the French Republic also refer to Part C of Article 13, which reads as follows: "Options. Member States may allow taxpayers a right of option for taxation in cases of: ... (b) the transactions covered in B (d) ... Member States may restrict the scope of this right of option and shall fix the details of its use". The Court considers that Article 13 C in no way confers upon the Member States the right to place conditions on or restrict in any manner whatsoever the exemptions provided for by Part B. It merely reserves the right to the Member States to allow to a varying extent persons entitled to exemptions to opt for taxation themselves, if they consider that it is in their interest to do so.

The provision relied upon in order to prove the conditional nature of the exemption is not relevant to this case.

The system of value added tax

The Finanzamt considers that the severing of the normal chain of value added tax by the effect of an exemption would be likely adversely to affect the interests both of the actual person entitled to the exemption and of the taxpayers who follow or even precede him in the chain of supply.

The Court points out that the scheme of the directive is such that on the one hand by availing themselves of an exemption persons entitled thereto necessarily waive the right to claim a deduction in respect of input tax and on the other hand, having received exemption, they are unable to pass any charge whatsoever on to persons following them in the chain of supply, with the result that the rights of third parties are in principle unlikely to be affected.

The arguments put forward by the Finanzamt and the Federal Government as to a disruption of the normal pattern of carrying forward the charge to value added tax are unfounded.

In reply to the question raised the Court ruled as follows:

"The provision concerning the exemption from turnover tax of transactions consisting of the negotiation of credit contained in Article 13 B (d) 1 of the Sixth Council Directive No. 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment might, in the absence of the implementation of that directive, be relied upon from 1 January 1979 by a credit negotiator where he had refrained from passing that tax on to persons following him in the chain of supply, and the State might not rely against him upon its failure to implement the directive".

Judgment of 27 January 1982

Joined Cases 256, 257, 265, 267/80 and 5/81

Birra Wührer S.p.A. and Others v Council and Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 13 October 1981)

Action for damages - Period of limitation - Date of commencement - Liability arising from a legislative measure - Date on which the injurious effects of the measure are produced

(EEC Treaty, Art. 178 and second paragraph of Art. 215; Protocol on the Statute of the Court of Justice of the EEC, Art. 43)

As is apparent from Article 215 of the EEC Treaty and Article 43 of the Protocol on the Statute of the Court of Justice of the EEC, the involvement of the non-contractual liability of the Community and the assertion of the right to compensation for damage suffered depend on the satisfaction of a number of requirements relating to the existence of an unlawful measure adopted by the Community institutions, actual damage and a causal relationship between them.

The period of limitation which applies to proceedings in matters arising from the non-contractual liability of the Community therefore cannot begin before all the requirements governing the obligation to provide compensation for damage are satisfied and in particular before the damage to be made good has materialized. Accordingly, since the situations concerned are those in which the liability of the Community has its origin in a legislative measure, the period of limitation cannot begin before the injurious effects of that measure have been produced.

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NOTE

The applicants, which are producers of maize gritz for the brewing industry, brought actions seeking compensation for the damage which they sustained as a result of Regulations (EEC) Nos. 665/75 and 668/75 of the Council of 4 March 1975, which abolished the production refunds for maize groats and meal and for broken rice, and as a result of the failure to reintroduce them during the period from 1 August or 1 September 1975 to 19 October 1977.

The Council and the Commission raised objections under Article 91 of the Rules of Procedure, relying upon the five-year period of limitation provided for by Article 43 of the Protocol on the Statute of the Court of Justice of the EEC. The Court decided to deal with the objection without considering the substance of the case.

The defendants contend that the actions are inadmissible because the claims addressed to the Commission for payment of the refunds due for the period from 1 August or 1 September 1975 to 19 October 1977 were out of time.

They contend that the date from which the period of limitation provided for by Article 43 starts to run must be taken to be that on which it becomes possible to bring an action to establish liability and that that five-year period of limitation should run from 20 March 1975, the date of publication of the regulations in question (Nos. 665 and 668/75), which were declared to be invalid by the Court in its judgments of 19 October 1977.

The applicants claim essentially that in a case such as the present the five-year period of limitation for actions seeking to establish the non-contractual liability of the Community can begin to run only from the date on which the damage actually occurs, that is to say from the date on which payment of the refunds falls due after the transactions which qualify for those refunds have been carried out.

As is clear from Article 215 of the EEC Treaty and from Article 43 of the Protocol on the Statute of the Court of Justice of the EEC, the incurring of non-contractual liability by the Community and the exercise of the right to compensation for damage sustained depend on the fulfilment of a set of conditions concerning the existence of a wrongful act on the part of the Community institutions, of actual damage and of a casual link between them.

It follows that the period of limitation for an action to establish Community liability cannot start to run until all the conditions governing the obligation to make good the damage are fulfilled and, in particular, until the damage which is to be made good has been sustained. Consequently, since in these cases the Community liability arises from a legislative measure, that period of limitation cannot begin to run until the damaging effects of that measure have occurred and therefore in the circumstances of these cases until the applicants have performed the transactions which qualify them for the refunds and have sustained damage which is certain.

Consequently, it may not be pleaded against the applicants that the period of limitation started to run on a date prior to that on which the damaging effects of the Community's wrongful acts occurred.

The Court dismissed the objection.

Judgment of 27 January 1981

Case 51/81

De Franceschi S.p.A. Monfalcone v Council and Commission of the European Communities

(Opinion delivered by Mr Advocate General Capotorti on 13 October 1981)

Action for damages - Period of limitation - Date of commencement - Liability arising from a legislative measure - Date on which the injurious effects of the measure are produced

(EEC Treaty, Art. 178 and second paragraph of Art. 215; Protocol on the Statute of the Court of Justice of the EEC, Art. 43)

As is apparent from Article 215 of the EEC Treaty and Article 43 of the Protocol on the Statute of the Court of Justice of the EEC, the involvement of the non-contractual liability of the Community and the assertion of the right to compensation for damage suffered depend on the satisfaction of a number of requirements relating to the existence of an unlawful measure adopted by the Community institutions, actual damage and a causal relationship between them.

The period of limitation which applies to proceedings in matters arising from the non-contractual liability of the Community therefore cannot begin before all the requirements governing the obligation to provide compensation for damage are satisfied and in particular before the damage to be made good has materialized. Accordingly, since the situations concerned are those in which the liability of the Community has its origin in a legislative measure, the period of limitation cannot begin before the injurious effects of that measure have been produced.

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NOTE

Case identical to the preceding cases.

Judgment of 2 February 1982

Case 7/81

Antonio Sinatra v Fonds National de Retraite des Ouvriers Mineurs

(Opinion delivered by Mrs Advocate General Rozès on 22 October 1981)

Social security for migrant workers - Old-age and death insurance - Benefits - Alteration - Recalculation

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

A recalculation in accordance with the provisions of Article 46 of Regulation No. 1408/71 is necessary in respect of any alteration in benefits paid by a Member State, save where any such alteration is due to one of the "reasons for adjustment" provided for in Article 51 of Regulation No. 1408/71, which do not include supervening changes in the personal circumstances of the insured.

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NOTE

The Cour du Travail [Labour Court], Mons, Belgium, referred to the Court of Justice several questions relating to the interpretation of Article 51 of Regulation No. 1408/71 of the Council of 14 June 1971. Those questions arose in the context of proceedings between Mr Sinatra, an Italian national, and the Mine-workers' National Pension Fund. Applying national rules against the overlapping of benefits, that institution deducts from the Belgian pension the amount of the pension paid by the Italian authorities since 1 November 1970 pursuant to the relevant Community rules.

On account of the gainful employment of his wife the amount of the Belgian pension was reduced, as from 1 January 1976, to the "single rate".

The Mine-workers' National Pension Fund considered that, pursuant to Article 51 (2) of Regulation No. 1408/71 that alteration necessitated a recalculation of the benefits which resulted in Mr Sinatra's being liable to repay an overpayment of Bfr 38 000 in respect of the period from 1 January 1976 to 31 January 1979.

The national court raised a number of questions seeking to ascertain whether, pursuant to Article 51 of Regulation No. 1408/71, a recalculation of benefits in accordance with Article 46 of that regulation is necessary where an alteration in the personal situation of the insured entails a reduction in the benefits paid to him.

The system of aggregation and apportionment provided for in Article 46 cannot be applied if its effect is to diminish the benefits which the person concerned may claim by virtue of the laws of a single Member State on the basis solely of the insurance periods completed under those laws.

However, where the application of such national laws proves less favourable than the application of the rules regarding aggregation and apportionment, those rules must, by virtue of Article 46 of Regulation No. 1408/71, be applied.

Thus the acknowledged right of the migrant worker to benefit from the most favourable social security system implies in principle that a comparison must be made.

However, in order to reduce the administrative burden which a fresh examination of the insured's situation would represent, the regulation intended to exclude a fresh calculation where the alterations in benefits result from events unconnected with the personal situation of the insured and are the consequences of the general evolution of the economic and social situation.

That exclusion cannot however be extended to alterations in benefits due to a change in the personal situation of the insured such as a change from the "household" category to the "single" category.

In answer to the questions referred to it the Court of Justice ruled that a recalculation in accordance with the provisions of Article 46 of Regulation No. 1408/71 is necessary in respect of any alteration in benefits paid by a Member State, save where any such alteration is due to one of the "reasons for adjustment" provided for in Article 51 of Regulation No. 1408/71, which do not include supervening changes in the personal situation of the insured.

Judgments of 2 February 1982

Cases 68, 69, 70, 71, 72 and 73/81

Commission of the European Communities v Kingdom of Belgium

(Opinion delivered by Mr Advocate General Capotorti on 2 December 1981)

Failure of a State to fulfil its obligations - Non-implementation of a directive on waste from the titanium dioxide industry

Member States - Obligations - Implementation of directives - Failure to comply - Justification - Not possible

(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

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NOTE

In all these cases, the Court of Justice has declared that the Kingdom of Belgium has failed to fulfil an obligation imposed on it by the Treaty.

The Belgian Government sought to justify its failure by stating that important institutional reforms were in train which, particularly in the field at issue, will share powers and responsibilities between national and regional organs. As long as the new institutions are not in a position to exercise their powers, the directives could not be implemented.

The Court reiterated its well-settled case-law in this matter according to which a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

Judgment of 3 February 1982

Case 248/80

(Kommanditgesellschaft in Firma Gebrüder Glunz v Hauptzollamt Hamburg-Waltershof

(Opinion delivered by Advocate General Sir Gordon Slynn on 16 September 1981)

Common Customs Tariff - Customs duties - Specific duties expressed in units of account - Conversion into the currency of the importing Member State - Application of the rate of exchange corresponding to the parity notified to the International Monetary Fund - General Rule C.3 - Validity - Reduction of customs duties to the amount payable in the case of importation into the Member State having the weakest currency - Not permissible

(Regulation No. 958/68 of the Council, as amended by Council Regulation No. 2500/77, General Rule C.3)

Consideration of General Rule C.3 in Part I, Section I, of the Annex to Council Regulation No. 2500/77 has disclosed no factor of such a kind as to affect its validity. The rule must be applied in such a way that in the case of an importation into a Member State having a strong currency customs duties expressed in units of account must be converted, in conformity with the rule, into the national currency of the Member State where the importation took place and must not be limited to the amount which would have been charged in the case of importation into the Member State having the weakest currency.

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NOTE

The Finanzgericht [Finance Court] Hamburg has referred to the Court of Justice for a preliminary ruling a question relating to the interpretation and the validity and possibly the scope of General Rule C.3. in Part I, Section 1, of the Annex to Council Regulation (EEC) No. 2500/77 of 7 November 1977 amending Regulation No.950/68 on the Common Customs Tariff (Official Journal 1977, No. L 289, p.1).

That question was raised in the context of proceedings between Glunz, the plaintiff in the main proceedings, and the German customs authority relating to the customs classification and the amount of customs duty to be charged on the importation in August 1978 of a consignment of small ceramic figures the forearms of which were in the shape of a candlestick.

The plaintiff in the main proceedings declared those items under Heading 97.05 of the Common Customs Tariff comprising "Christmas-tree decorations and similar articles for Christmas festivities" attracting ad valorem duty of 10%.

The customs authority reviewed its position and considered that the goods came under tariff subheading 69.13 B comprising "statuettes ... of porcelain or china..." attracting ad valorem duty of 11%.

In the order for reference the national court states that it has come to the conclusion that the relevant subheading was 69.13 B (statuettes of porcelain) and that the specific duty should apply. It nevertheless considered that the dispute as to the calculation of the amount of duty, by means of converting units of account into national currency, raised a problem relating to the interpretation and the validity of the rule in question and therefore requested the Court of Justice to give a preliminary ruling on a question worded as follows:

> "Is General Rule C.3. in Part I, Section 1, of the Annex to Council Regulation (EEC) No. 2500/77 of 7 November 1977 in its application to tariff heading 69.13 B of the Common Customs Tariff invalid in so far as, in the case of the importation of goods into a Member State with a strong currency, it would lead to a higher incidence of customs duty than in the case of importation into the Member State whose currency has most depreciated in relation to the parity notified in the International Monetary Fund, or is the said rule to be interpreted in such a way that customs duty is to be charged only at the level at which it would have been charged in the case of importation into the Member State with the weakest currency?"

In answer to that question the Court of Justice ruled as follows:

> "Consideration of General Rule C.3. in Part I, Section 1, of the Annex to Council Regulation (EEC) No. 2500/77 of 7 November 1977 (Official Journal 1977 No. L289, p.1) has disclosed no factor of such a kind as to affect its validity and the rule must be applied in such a way that, in the case of an importation into a Member State having a strong currency, customs duties expressed in units of account must be converted, in conformity with the rule, into the national currency of the Member State where the importation took place and must not be limited to the amount which would have been charged in the case of importation into the Member State having the weakest currency."

Judgment of 3 February 1982

Joined Cases 62 and 63/81

SECO S.A. and Desquenne & Giral S.A. v Etablissement d'Assurance contre la Vieillesse et l'Invalidité

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 16 December 1981)

1. Freedom to provide services - Restrictions - Prohibition - Discrimination on grounds of nationality - Disguised discrimination

   (EEC Treaty, Arts. 59 and 60, third para.)

2. Freedom to provide services - Restrictions - Social security contributions required from employers without any corresponding social security benefit for workers - Justification based on the general interest - Not permissible

   (EEC Treaty, Arts. 59 & 60)

3. Freedom to provide services - Restrictions - Social security contributions required from employers established in a Member State other than that in which the work is performed - Justification based on legislation on minimum wages - Not permissible

   (EEC Treaty, Arts. 59 & 60)

4. Freedom to provide services - Undertakings established in a Member State employing nationals of non-member countries - Performance of work in another Member State - Requirement to pay in that State the employer's share of social security contributions not related to any social security benefit for workers - Restriction not compatible with the Treaty

   (EEC Treaty, Arts 59 & 60)

1. Article 59 and the third paragraph of Article 60 of the EEC Treaty entail the abolition of all discrimination against a person providing a service on the grounds of his nationality or the fact that he is established in a Member State other than that in which the service must be provided. Thus they prohibit not only overt discrimination based on the nationality of the person providing the service but also all forms of covert discrimination which, although based on criteria which appear to be neutral, in practice lead to the same result.

2. Legislation which requires employers to pay in respect of their workers social security contributions not related to any social security benefit for those workers may not reasonably be considered justified on account of the general interest in providing workers with social security.

3. Community law does not preclude Member States from applying their legislation, or collective labour agreements entered into by both sides of industry relating to minimum wages, to any person who is employed, even temporarily, within their territory, no matter in which country the employer is established, just as Community law does not prohibit Member States from enforcing those rules by appropriate means. However, it is not possible to describe as an appropriate means any rule or practice which imposes a general requirement to pay social security contributions, or other such charges affecting the freedom to provide services, on all persons providing services who are established in other Member States and employ workers who are nationals of non-member countries, irrespective of whether those persons have complied with the legislation on minimum wages in the Member State in which the services are provided, because such a general measure is by its nature unlikely to make employers comply with that legislation or to be of any benefit whatsoever to the workers in question.

4. Community law precludes a Member State from requiring an employer who is established in another Member State and temporarily carrying out work in the first-named Member State, using workers who are nationals of non-member countries, to pay the employer's share of social security contributions in respect of those workers when that employer is already liable under the legislation of the State in which he is established for similar contributions in respect of the same workers and the same periods of employment and the contributions paid in the State in which the work is performed do not entitle those workers to any social security benefits. Nor would such a requirement be justified if it were intended to offset the economic advantages which the employer might have gained by not complying with the legislation on minimum wages in the State in which the work is performed.

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NOTE

The Cour de Cassation of the Grand Duchy of Luxembourg referred to the Court of Justice for a preliminary ruling two questions as to the interpretation of the provisions of the Treaty concerning the freedom to provide services in the light of the Luxembourg legislation governing contributions to old-age and invalidity insurance.

Those questions were raised in the context of proceedings between two undertakings based in France, specializing in construction work, and the maintenance of the infrastructure of the railway network, SECO S.A. and Desquenne & Giral S.A., and the Etablissement d'Assurance contre la Vieillesse et l'Invalidité [Old-age and Invalidity Insurance Institution],a Luxembourg social security institution.

In that connexion the undertakings temporarily seconded workers who were neither nationals of a Member State nor from a country linked to Luxembourg by an international convention on social security during the period in question. Those workers remained compulsorily affiliated to the French social security system during the entire period of the work carried out in Luxembourg.

By virtue of Luxembourg social security legislation, the Luxembourg Government may exempt from insurance foreigners who are only temporarily resident in the Grand Duchy. In that case, the employer is to be nevertheless liable for the share of contributions for which he is personally responsible although those contributions do not entitle the workers concerned to any social security benefit.

The reason for the enactment of those provisions was, on the one hand, that it would be inequitable to collect contributions from workers residing in Luxembourg only temporarily and, on the other hand, the temptation for employers to use foreign labour in order to alleviate the burden of paying their share of social insurance contributions must be avoided.

SECO S.A. and Desquenne & Giral S.A. having been held liable for the employer's share of those contributions brought proceedings against that decision claiming that the Luxembourg legislation in question was not applicable to them because it was discriminatory and likely to impede the freedom to provide services within the Community.

The questions raised seek in substance to establish whether Community law precludes a Member State from requiring an employer, who is established in another Member State and is temporarily carrying out work in the first-named Member State using workers who are nationals of non-member countries, to pay the employer's share of contributions to social security insurance in respect of those workers, when that employer is already liable under the legislation of the State in which it is established for similar contributions, in respect of the same workers and for the same periods of employment and the contributions paid in the State in which the service is provided do not entitle those workers to any social security benefits.

In answer to the questions referred to it the Court of Justice ruled that:

> "Community law precludes a Member State from requiring an employer, who is established in another Member State and temporarily carrying out work in the first-named Member State using workers who are nationals of non-member countries, to pay the employer's share of social security contributions in respect of those workers, when that employer is already liable under the legislation of the State in which it is established for comparable contributions, in respect of the same workers and the same periods of employment and the contributions paid in the State in which the service is provided do not entitle those workers to any social security benefits. Nor would such a requirement be justified if it were intended to offset the economic advantages which the employer might gain by disregarding the minimum wage rules of the State in which the service is provided".

Judgment of 9 February 1982

Case 270/80

Polydor Limited and RSO Records Inc. v
Harlequin Record Shops Limited and Simons Records Limited

(Opinion delivered by Mrs Advocate General Rozès on 1 December 1981)

1. International agreements - Agreement between the EEC and the Portuguese Republic - Different purpose from that of the EEC Treaty - Provisions of the Treaty governing the relationship between industrial and commercial property rights and the free movement of goods - Interpretation given by the Court - Transposition to the provisions of the Agreement - Not possible

   (EEC Treaty, Arts. 30 and 36; Agreement between the EEC and Portugal of 22 July 1972, Arts. 14 (2) and 23)

2. International agreements - Agreement between the EEC and the Portuguese Republic - Restrictions on trade justified on the ground of the protection of industrial and commercial property - Copyright - Attempt by the copyright owner to restrain the importation into a Member State of protected products placed on the market in Portugal by the owner's licensee - Permissible

   (Agreement between the EEC and Portugal of 22 July 1972, Arts. 14 (2) and 23)

1. The similarity between the terms used in Articles 30 and 36 of the EEC Treaty,on the one hand, and Articles 14 (2) and 23 of the Agreements between the EEC and the Portuguese Republic, on the other, is not a sufficient reason for transposing to the provisions of the Agreement the case-law of the Court which determines in the context of the Community the relationship between the protection of industrial and commercial property rights and the rules on the free movement of goods.

   Although it makes provision for the unconditional abolition of certain restrictions on trade between the Community and Portugal, such as quantitative restrictions and measures having equivalent effect, the Agreement does not have the same purpose as the EEC Treaty, inasmuch as the latter seeks to unite national markets into a single market reproducing as closely as possible the conditions of a domestic market. It follows that in the context of the Agreement restrictions on trade in goods may be considered to be justified on the ground of the protection of industrial and commercial property in a situation in which their justification would not be possible within the Community.

2. The enforcement by the proprietor or by persons entitled under him of copyrights protected by the law of a Member State against the importation and marketing of gramophone records lawfully manufactured and placed on the market in the Portuguese Republic by licensees of the proprietor is justified on the ground of the protection of industrial and commercial property within the meaning of Article 23 of the Agreement between the EEC and the Portuguese Republic and therefore does not constitute a restriction on trade such as is prohibited by Article 14 (2) of the Agreement. Such enforcement does not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Community and Portugal within the meaning of the said Article 23.

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NOTE

The Court of Appeal of England and Wales referred to the Court of Justice for a preliminary ruling a number of questions on the interpretation of Articles 14 (2) and 23 of the Agreement between the European Economic Community and the Portuguese Republic.

The main proceedings concerned an action for infringement of copyright brought against two British undertakings specializing in the importation and sale of gramophone records, Harlequin and Simons, which imported from Portugal and put on sale in the United Kingdom records featuring "The Bee Gees" without obtaining the consent of the proprietor of the copyrights or of his exclusive licensee in the United Kingdom.

The proprietor of the copyrights in the sound recordings in question is a British record-producing company, R.S.O., which granted to one of its subsidiary companies, Polydor, an exclusive licence to manufacture and distribute gramophone records and cassettes reproducing those recordings in the United Kingdom. The same records and cassettes were manufactured and marketed in Portugal by two companies incorporated under Portuguese law, which were licensees of R.S.O. in Portugal. Simons purchased records containing those recordings in Portugal in order to import them into the United Kingdom with a view to their sale. Harlequin purchased a number of those records from Simons for the purpose of retail sale.

The Court of Appeal established that there had been an infringement of English copyright law (cf. the Copyright Act 1956).

Harlequin and Simons maintained, however, that the proprietor of a copyright might not rely upon that right in order to restrain the importation of a product into a Member State of the Community, if that product had been lawfully placed on the market in Portugal by him or with his consent. In support of that submission the companies relied upon Articles 14 (2) and 23 of the Agreement between the European Economic Community and Portugal of 1972, claiming that those provisions were based on the same principles as Articles 30 and 36 of the EEC Treaty and accordingly had to be interpreted in a similar manner.

According to the well-established case-law of the Court, the exercise of an industrial and commercial property right by the proprietor thereof, including the commercial exploitation of a copyright, in order to prevent the importation into a Member State of a product from another Member State, in which that product has lawfully been placed on the market by the proprietor or with his consent, constitutes a measure having an effect equivalent to a quantitative restriction for the purposes of Article 30 of the Treaty, which is not justified on the ground of the protection of industrial and commercial property within the meaning of Article 36 of the Treaty.

The first two questions seek to determine whether the same interpretation must be placed on Articles 14 (2) and 23 of the Agreement.

Article 14 (2) reads: "Quantitative restrictions on imports shall be abolished on 1 January 1973 and any measures having an effect equivalent to quantitative restrictions on imports shall be abolished not later than 1 January 1975."

Article 23 reads: "The Agreement shall not preclude prohibitions or restrictions on imports ... justified on grounds of ... the protection of industrial and commercial property ... Such prohibitions or restrictions must not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between the Contracting Parties."

The purpose of the Agreement is to consolidate and to extend the economic relations existing between the Community and Portugal and to ensure, with due regard for fair conditions of competition, the harmonious development of their commerce for the purpose of contributing to the work of constructing Europe.

Articles 3 to 7 of the Agreement provide for the abolition of customs duties and of charges having equivalent effect in trade between the Community and Portugal. The same principle is applied by Article 14 to quantitative restrictions and measures having equivalent effect.

The provisions of the Agreement on the elimination of restrictions on trade between the Community and Portugal are expressed in terms which in several respects are similar to those of the EEC Treaty on the abolition of restrictions on intra-Community trade.

However, such similarity of terms is not a sufficient reason for transposing to the provisions of the Agreement the above-mentioned case-law, which determines in the context of the Community the relationship between the protection of industrial and commercial property rights and the rules on the free movement of goods. The Treaty, by establishing a common market and progressively approximating the economic policies of the Member States, seeks to unite national markets into a single market having the characteristics of a domestic market.

Those considerations do not apply in the context of the relations between the Community and Portugal as defined by the Agreement. The Agreement makes provision for the abolition of certain restrictions on trade between the Community and Portugal but does not seek to create a single market.

It follows that in the context of the Agreement restrictions on trade in goods will be considered to be justified on the ground of the protection of industrial and commercial property in circumstances in which their justification would not be possible within the Community.

Such a distinction is all the more necessary inasmuch as the instruments which the Community has at its disposal in order to achieve the uniform application of Community law and the progressive abolition of legislative disparities within the Common Market have no equivalent in the context of relations between the Community and Portugal.

The Court therefore ruled that:

"The enforcement by the proprietor or by persons entitled under him of copyrights protected by the law of a Member State against the importation and marketing of gramophone records lawfully manufactured and placed on the market in the Portuguese Republic by licensees of the proprietor is justified on the ground of the protection of industrial and commercial property within the meaning of Article 23 of the Agreement between the European Economic Community and the Portuguese Republic of 22 July 1972 (Official Journal, English Special Edition 1972 (31 December) (L 301), p. 167) and therefore does not constitute a restriction on trade such as is prohibited by Article 14 (2) of that Agreement. Such enforcement does not constitute a means of arbitrary discrimination or a disguised restriction on trade between the Community and Portugal within the meaning of the said Article 23."

Judgment of 9 February 1982

Case 12/81

E. Garland v British Rail Engineering Limited

(Opinion delivered by Mr Advocate general VerLoren van Themaat on 8 December 1981)

1. Social policy - Men and women - Pay - Equality - Principle - Discrimination arising from travel facilities provided for former employees after retirement

(EEC Treaty, Art. 119)

2. Social policy, Men and women - Pay - Equality - Principle - Direct effect - Discrimination based on difference of sex capable of being established by national court

(EEC Treaty, Art. 119)

1. The fact that an employer (although not bound to do so by contract) provides special travel facilities for former male employees to enjoy after their retirement constitutes discrimination within the meaning of Article 119 against former female employees who do not receive the same facilities.

2. Where a national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the grant by an employer of special travel facilities solely to retired male employees represents discrimination based on difference of sex, the provisions of Article 119 of the Treaty apply directly to such a situation.

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NOTE

The House of Lords referred to the Court for a preliminary ruling two questions concerning the application of the principle of equal pay for men and women.

The questions arose in the context of a dispute between British Rail Engineering Ltd. and one of its employees concerning discrimination alleged to be suffered by female employees who on retirement no longer enjoy travel facilities for their spouses and dependent children, although male employees continue to do so.

The dispute led the House of Lords to refer the following questions to the Court:

"1. Where an employer provides (although not bound to do so by contract) special travel facilities for former employees to enjoy after retirement which discriminate against former female employees in the manner described above, is this contrary to:

(a) Article 119 of the EEC Treaty?

...

2. If the answer ... is in the affirmative, is Article 119 ... directly applicable in Member States so as to confer enforceable Community rights upon individuals in the above circumstances?"

Question 1

In order to answer the first question it was necessary to investigate the legal nature of the special travel facilities at issue in the case which the employer grants although not contractually bound to do so.

In its judgment of 25 May 1971 in Case 80/70 Defrenne([1971] ECR 445) the Court stated that the concept of pay contained in the second paragraph of Article 119 comprised any other consideration, whether in cash or in kind, whether immediate or future, provided that the worker received it, albeit indirectly, in respect of his employment from his employer.

From the facts of the case it was clear that rail travel facilities such as those referred to by the House of Lords fulfilled the criteria enabling them to be treated as pay within the meaning of Article 119 of the EEC Treaty.

The argument that the facilities were not related to a contractual obligation was considered to be immaterial. The legal nature of the facilities was not important for the purposes of the application of Article 119 provided that they were granted in respect of the employment.

The Court therefore ruled in reply to the first question that:

"Where an employer (although not bound to do so by contract) provides special travel facilities for former male employees to enjoy after their retirement this constitutes discrimination within the meaning of Article 119 against former female employees who do not receive the same facilities".

Question 2

Since the first question was answered in the affirmative the question arose of the direct applicability of Article 119 in the Member States and of the rights which individuals might invoke on that basis before national courts.

Applying the previous case-law (Jenkins, Case 96/80) the Court ruled that:

"Where a national court is able, using the criteria of equal work and equal pay, without the operation of Community or national measures, to establish that the grant of special travel facilities solely to retired male employees represents discrimination based on difference of sex, the provisions of Article 119 of the Treaty apply directly to such a situation."

Judgment of 10 February 1982

Case 21/81

Openbaar Ministerie v Daniël Bout and B.V.I. Bout en Zonen

(Opinion delivered by Mr Advocate General Reischl on 11 November 1981)

1. Fisheries - Conservation of the resources of the sea - Exclusive power of the Community - Failure to exercise it - Implementation of national conservation measures - Conditions - Duty to consult the Commission and to adhere to its viewpoint

   (Act of Accession, Art. 102)

2. Community law - Conflicting national legislative measure - Criminal conviction - Incompatibility with Community law - National rules in conformity with Community obligations - Permissible penalty

3. Measures adopted by the institutions - Application ratione temporis - Retroactivity of a rule of substantive law - Conditions

4. Fisheries - Conservation of resources of the sea - Technical conservation measures - Regulation No. 2527/80 and subsequent regulations extending its validity - Retroactivity - Absence thereof

   (Council Regulation (EEC) No. 2527/80)

1. The power to adopt, as part of the common fisheries policy, measures relating to the conservation of the resources of the sea has belonged fully and definitively to the Communities since the expiration on 1 January 1979 of the transitional period laid down by Article 102 of the Act of Accession so that after that date the Member States are no longer entitled to exercise any power of their own in this matter and may henceforth only act as trustees of the common interest, in the absence of appropriate action on the part of the Council. In a situation characterized by the inaction of the Council and by the maintenance, in principle, of the conservation measures in force the Member States have an obligation to undertake detailed consultations with the Commission and to seek its approval in good time and also a duty not to lay down national conservation measures in spite of objections, reservations or conditions which may be formulated by the Commission.

2. Where criminal proceedings are brought by virtue of a national measure which is held to be contrary to Community law, a conviction in those proceedings is likewise incompatible with Community law. On the contrary, it is for the Member States to enforce compliance in the zone coming within its jurisdiction with those measures adopted by it in conformity with its Community obligations.

3. Substantive rules of Community law must be interpreted, in order to ensure respect for the principles of legal certainty and the protection of legitimate expectation, as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such an effect must be given to them.

4. Neither Council Regulation (EEC) No. 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources nor any subsequent regulations extending its validity have retroactive effect.

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NOTE

The Rechtbank van Eerste Aanleg [Court of First Instance], Bruges, referred to the Court for a preliminary ruling two questions concerning the interpretation in relation to Belgian fisheries legislation of Article 102 of the Act of 22 January 1972 concerning the Conditions of Accession and of Regulation No. 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources.

The questions arose in the course of criminal proceedings against the proprietor of a Netherlands fishing vessel for contravention of the Arrêté Royal Belge [Belgian Royal Decree] of 28 April 1979 laying down measures for the protection of resources in fish, crustaceans and molluscs in the Belgian fishing zone.

On 7 May 1980 a Netherlands fishing vessel having a tonnage of 67 GRT fished for sole and plaice within Belgian coastal waters with a net made of double twine having a mesh size greater than 75 mm but less than 80 mm.

In the course of the criminal proceedings the accused argued that Council Regulation No. 2527/80 contained provisions more favourable to his case, a submission which led the Netherlands Court to refer the matter to the Court of Justice for a preliminary ruling.

The first question asked whether after 31 December 1978 Member States were still empowered to adopt for the conservation of fishing resources measures such as those contained in the Belgian Royal Decrees in question.

On the basis of its previous decisions (Case 804/79, Commission v United Kingdom) the Court held that on the expiry of the transitional period laid down in Article 102 of the Act of Accession Member States ceased to have the power to adopt, without the necessary prior consultation with the Commission or in defiance of any objections, reservations or conditions expressed by the latter, conservatory measures for fisheries such as those contained in the Belgian Royal Decrees of 23 April and 20 December 1979 laying down measures for the protection of resources of fish, crustaceans and molluscs; further, Member States were no longer entitled to enforce such provisions within the area subject to their jurisdiction if the measures had not been adopted in compliance with the above-mentioned obligations.

The second question was whether Regulation No. 2527/80 must be interpreted as having retroactive effect.

The Court recalled that it had consistently held in the past that in order to uphold the principles of legal certainty and the protection of legitimate expectation substantive Community rules must be interpreted as extending to circumstances already obtaining on their entry into force only in so far as it is manifest from their terms, purpose or general scope that such effect is to be attributed to them.

In reply to the second question the Court ruled that:

"Neither Council Regulation No. 2527/80 of 30 September 1980 laying down technical measures for the conservation of fishery resources, nor the subsequent regulations extending the period of its validity have retroactive effect."

Judgment of 10 February 1982

Case 74/81

Rudolf Flender and Others v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 24 November 1981)

Application for declaration of nullity - Action having lost its purpose - No need to give a decision

(ECSC Treaty, Art. 33, second para.)

A declaration that there is no need to give a decision must be made in respect of an action concerning a decision which has not had, and can no longer have, any adverse effects on the applicants and which has therefore lost its purpose.

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NOTE

Four undertakings, producers of steel tube, brought an action under the second paragraph of Article 33 of the ECSC Treaty for the annulment of Commission Decision No. 385/81/ECSC of 13 February 1981 concerning certain obligations to be fulfilled by Community producers of steel tube.

The decision under challenge was adopted under a system introduced by the Decision of 31 October 1980 establishing steel production quotas for steel undertakings. Material for tubes is exempt from quotas under the system on condition that it is actually used within the Common Market for the production of tube. Furthermore, a special supervisory régime was introduced for some of that material.

In the recitals in the preamble to the contested decision, the Commission maintained that it was necessary, in view of the exemption and the special régime, for it to be informed of, and enabled to check, the actual use to which the material in question was put and for such a check to be carried out among tube producers which, in that capacity, were not ECSC undertakings within the meaning of Article 80 of the Treaty. On those grounds, the Commission resorted to Article 95 of the ECSC Treaty with a view to extending, by the contested decision, the application of the provisions of Article 47 of the Treaty to tube producers.

The decision complained of required tube producers to furnish to the Commission on a monthly basis information concerning their production of tube and the origin of the material used.

It is apparent from the file on the case that during the period in which the decision under challenge was in force, the applicants failed to supply any information to the Commission which merely sent them a reminder. The Commission failed to adopt any verification or control measures in relation to the applicants, or to impose any fine or penalty payment on them.

The applicants claimed that the decision should be declared void on grounds of a misuse of powers in relation to them, the Commission's lack of competence and the incompatibility of the decision with the Treaty.

The Commission contended that the action was inadmissible on the ground that the applicants, which were not undertakings within the meaning of the Treaty, could challenge only individual decisions and had not, in any event, successfully argued that the general decision, the annulment of which they sought, constituted a misuse of powers affecting them within the meaning of the second paragraph of Article 33 of the Treaty.

In the course of the oral procedure, the Commission acknowledged that it was no longer empowered to carry out checks on the spot under the decision and stated in consequence that it would no longer take action against the applicants on the basis of the decision. The applicants raised no objections to the adoption of that position.

Therefore the action was rendered devoid of purpose.

The Court held that it was unnecessary to rule on the action.

Judgment of 10 February 1982

Case 76/81

S.A. Transporoute et Travaux v The Minister of Public Works, Grand Duchy of Luxembourg

(Opinion delivered by Mr Advocate General Reischl on 13 January 1982)

1. Freedom to provide services - Co-ordination of procedures for the award of public works contracts - Proof of tenderer's good standing and qualifications - Requirement of an establishment permit - Not permissible

   (EEC Treaty, Art. 59; Council Directive No. 71/305, Arts. 23 to 26)

2. Freedom to provide services - Co-ordination of procedures for the award of public works contracts - Abnormally low tender - Obligations of the authority awarding the contract

   (Council Directive No. 71/305, Art. 29 (5))

1. Council Directive No. 71/305 must be interpreted as precluding a Member State from requiring a tenderer in another Member State to furnish proof by any means, for example by an establishment permit, other than those prescribed in Articles 23 to 26 of that directive, that he satisfies the criteria laid down in those provisions and relating to his good standing and qualifications.

   The result of that interpretation of the directive is also in conformity with the scheme of the Treaty provisions concerning the provision of services. To make the provision of services in one Member State by a contractor established in another Member State conditional upon the possession of an establishment permit in the first State would be to deprive Article 59 of the Treaty of all effectiveness, the purpose of that article being precisely to abolish restrictions on the freedom to provide services by persons who are not established in the State in which the service is to be provided.

2. When in the opinion of the authority awarding a public works contract a tenderer's offer is obviously abnormally low in relation to the transaction Article 29 (5) of Directive No. 71/305 requires the authority to seek from the tenderer, before coming to a decision as to the award of the contract, an explanation of his prices or to inform the tenderer which of his tenders appear to be abnormal, and to allow him a reasonable time within which to submit further details.

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The Conseil d'Etat [State Council] of the Grand Duchy of Luxembourg referred to the Court for a preliminary ruling two questions concerning the interpretation of Council Directives No. 71/304 and No. 71/305 on, respectively, the abolition of restrictions on freedom to provide services in respect of public works contracts and the award of public works contracts to contractors acting through agencies or branches, and the co-ordination of procedures for the award of public works contracts.

The questions arose in the course of a dispute the origin of which lay in a notice of invitation to tender issued by the Administration des Ponts et Chaussées [Bridges and Highways Authority] of the Grand Duchy of Luxembourg in response to which S.A. Transporoute et Travaux (hereinafter referred to as "Transporoute"), a company incorporated under Belgian law, submitted the lowest tender.

The tender was rejected by the Minister of Public Works because Transporoute was not in possession of the government establishment permit required by Article 1 of the Règlement Grand-Ducal [Grand-Ducal Regulation] of 6 November 1974 and because the prices in Transporoute's tender were considered by the Minister of Public Works to be abnormally low within the meaning of the fifth and sixth paragraphs of Article 32 of that regulation. As a result, the Minister of Public Works of the Grand Duchy of Luxembourg awarded the contract to a consortium of Luxembourg contractors whose tender was considered to be the most economically advantageous.

Transporoute sought to have the decision annulled by the Conseil d'Etat, arguing that the reasons given for rejecting its tender amounted to an infringement of Council Directive No. 71/305.

The first question was whether it was contrary to the provisions of Council Directives No.71/304 and No. 71/305, in particular those of Article 24 of Directive No. 71/305, for the authority awarding the contract to require as a condition of the award of a public works contract to a tenderer established in another Member State that in addition to being properly enrolled in the professional or trade register of the country in which he was established the tenderer must be in possession of an establishment permit issued by the government of the Member State in which the contract was awarded.

The Court ruled in reply that:

"Council Directive No. 71/305 must be interpreted as precluding a Member State from requiring a tenderer established in another Member State to furnish proof that the criteria listed in Articles 23 to 26 of that directive are satisfied, and proof as to his good standing and professional qualifications, in any form, including an establishment permit, other than those listed in the relevant provisions".

The second question was whether the provisions of Article 29 (5) of Directive No. 71/305 required the authority awarding the contract to request tenderers whose tenders, in the authority's opinion, were obviously abnormally low in relation to the transaction, to furnish explanations for those prices before investigating their composition and deciding to whom it would award the contract, or whether in such circumstances they allowed the authority awarding the contract to decide whether it was necessary to request such explanations.

The Court ruled in reply that:

"When in the opinion of the authority awarding a public works contract a tenderer's offer is obviously abnormally low in relation to the transaction Article 29 (5) of Directive No. 71/305 requires the authority to seek from the tenderer, before the award of the contract, an explanation of his prices, or to inform the tenderer which of his tenders appear to be abnormal, and to allow him a reasonable time within which to submit further details."

Judgment of 11 February 1982

Case 278/80

Chem-Tec B.H. Naujoks v Hauptzollamt Koblenz

(Opinion delivered by Mrs Advocate General Rozès on 17 December 1981)

Common Customs Tariff - Tariff headings - "Prepared glues" and "Products suitable for use as glues" within the meaning of heading 35.06 - Concept - Adhesive paper strip or strip of unvulcanized synthetic rubber - Inclusion - Classification of product in subheading 35.06 B - Conditions - Package for sale by retail not exceeding a net weight of 1 kg - Indication specifying use - Limits

1. Tariff heading 35.06 of the Common Customs Tariff must be interpreted as also including a product described as "adhesive paper strip" or as "strip, of unvulcanized synthetic rubber" wound on to a spool and consisting of a double-sided adhesive strip and a strip of paper (treated with silicone) separating the adhesive strips which have been rolled up and which is used in such a way that the paper strip is peeled off and therefore does not adhere when the double-sided adhesive strip is applied.

2. The expression "put up for sale by retail ... in packages not exceeding a net weight of 1 kg" in subheading 35.06 B is to be interpreted as meaning that the paper strip described above may be regarded as a package but that the classification of the rolls in that subheading presupposes that they are suitable for sale by retail without any additional packaging and that the net weight of the rolls, that is to say the weight of the adhesive layer, does not exceed 1 kg.

3. If the product cannot be put to any use other than that of an adhesive, the package need not, for the product to be classified in subheading 35.06 B, bear any indication as to its use.

NOTE The Bundesfinanzhof [Federal Finance Court] referred to the Court of Justice two questions for a preliminary ruling on the interpretation of tariff heading 35.06 of the Common Customs Tariff which is worded as follows:

> Prepared glues not elsewhere specified or included; products suitable for use as glues put up for sale by retail as glues in packages not exceeding a net weight of 1 kg:
>
> A. Prepared glues not elsewhere specified or included:
>
> I. Vegetable glues:
>
> (a) Obtained from natural gums .....
> (b) Other .....
>
> II. Other glues .....
>
> B. Products suitable for use as glues put up for sale by retail as glues in packages not exceeding a net weight of 1 kg .....

Those questions were raised in connexion with a dispute between the competent customs authority and a German undertaking which, from October 1973 until July 1974, put into free circulation in the Federal Republic of Germany a product known as "adhesive transferable strips", Scotch Brand, No. 465.

Initially the product was classified in subheading 48.15 A "Adhesive strips of a width not exceeding 10 cm. the coating of which consists of unvulcanized ... synthetic rubber", subsequently in subheading 40.05 C "Strip, of unvulcanized synthetic rubber; Other", later in subheading 39.02 C XII "Polymerization products ....: Acrylic polymers ...." and finally in the aforesaid subheading 35.06 B.

It was against the last classification that the importing undertaking instituted proceedings before the Finanzgericht [Finance Court] Rheinland-Pfalz contending that the product should be classified in subheading 40.05 C, alternatively in subheading 39.02 B or, as a further alternative, in the aforesaid subheading 35.06 A.

When the matter was brought before the Bundesfinanzhof, the latter referred the following questions to the Court for a preliminary ruling:

> "A. Is tariff heading 35.06 of the Common Customs Tariff to be interpreted as also including a product described as 'adhesive paper strip' or as 'strip, of unvulcanized synthetic rubber' wound on to a spool and consisting of a double-sided adhesive strip and a strip of paper (treated with silicone) separating the adhesive strips which have been rolled up and which is used in such a way that the paper strip is peeled off and therefore does not adhere when the double-sided adhesive strip is applied?

B. If the answer to the first question is in the affirmative: how is the concept of 'put up for sale by retail ..... in packages not exceeding a net weight of 1 kg.' (tariff subheading 35.06 B) to be interpreted? Does the product described in Question A fulfil those conditions by reason only of the fact that the glue along the whole length of the adhesive strip is joined to a paper strip with the result that the latter can be regarded as a package, or must the adhesive strips within the required weight limit be contained in special packages and in addition be marked as glue by written indications?"

In reply, the Court ruled that:

"1. Tariff heading 35.06 of the Common Customs Tariff must be interpreted as also including a product described as 'adhesive paper strip' or as 'strip, of unvulcanized synthetic rubber' would on to a spool and consisting of a double-sided adhesive strip and a strip of paper (treated with silicone) separating the adhesive strips which have been rolled up and which is used in such a way that the paper strip is peeled off and therefore does not adhere when the double-sided adhesive strip is applied.

2. The expression 'put up for sale by retail .... in packages not exceeding a net weight of 1 kg.' in subheading 35.06 B is to be interpreted as meaning that the paper strip described above may be regarded as a package but that the classification of the rolls in that subheading presupposes that they are capable of being sold by retail without any additional packaging and that the net weight of the rolls, that is to say the weight of the layer of adhesive, does not exceed 1 kg.

3. If the product cannot be used for any purposes other than those for which glues are employed, the package need not, for the product to be classified in subheading 35.06 B, bear any indication specifying its use."

Judgment of 16 February 1982

Case 204/80

Procureur de la République and Others v Guy Vedel and Others

(Opinion delivered by Mrs Advocate General Rozès on 20 October 1981)

Agriculture - wine-based aperitifs - Community definition - None - Power of Member States to enact rules as to quality - Requirement of minimum proportion of alcohol - Permissibility - Conditions

(Council Regulations No. 816/70, Annex II, point 10, and No. 337/79, Annex II, point 11)

The appellation "wine-based aperitifs" is not at present governed by Community regulations which exclude the application of the national legislation of the Member States.

Since there are no applicable Community regulations the Member States continue to have the power to define the standards applicable to the manufacture and marketing of national products called wine-based aperitifs. Therefore a Member State may not be prevented from subjecting the manufacturer of wine-based aperitifs to special quality rules, depending on the characteristics of that kind of beverage. If a requirement of a minimum proportion of alcohol is within the Community limits, it meets that criterion of quality.

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NOTE

The Tribunal Correctionnel [division of the Regional Court having jurisdiction in criminal cases], Montpellier, referred three questions to the Court for a preliminary ruling, in order to be able to assess whether the provisions of the French legislation laying down the minimum percentage and alcoholic strength of wine contained in products called "wine-based apéritifs" which fall within tariff heading 22.06, are compatible with the common organization of the market in wine.

Those questions were raised in the context of criminal proceedings brought against the managing director of a company for preparing and selling an apéritif, Saint-Raphaël, which was not made in accordance with the quality requirements contained in Article 5 of the French Decree of 31 January 1930.

That article in effect prohibits the sale or offering for sale under the description vermouth of beverages with an alcoholic strength exceeding 23° or containing less than 80% of liqueur wine, grape must or ordinary wine having an alcoholic strength of not less than 10°. The accused were prosecuted for preparing and marketing from 1975 to 1978 more than 200 000 hectolitres which did not contain 80% of wine or which had been made using wine with a strength of less than 10°.

The accused claimed that the provisions of the French Decree of 31 January 1930 were not applicable on the ground that they were incompatible with the provisions of Community law because the minimum alcohol content required by the Community regulations was 8.5° instead of 10° required by the French legislation.

They claimed that as a result Article 5 of the Decree of 31 January 1930 had become inapplicable in its entirety, because the fact that the rule contained therein on the alcoholic strength of table wine in wine-based apéritifs was incompatible with Community regulations meant that the rule therein as to the minimum percentage of 80% was also inapplicable.

The Court ruled in this case that:

1. The description of "wine-based apéritifs" is not at present governed by Community rules which exclude the application of the national legislation of the Member States.

2. Regulation No. 816/70 of the Council of 28 April 1970 laying down additional provisions for the common organization of the market in wine does not preclude national legislation on the preparation of wine-based apéritifs from containing a provision such as that referred to by the national court.

Judgment of 16 February 1982

Case 258/80

Metallurgica Rumi S.p.A. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 29 October 1981)

1. Objection of illegality - Provisions of general decisions which may be so challenged - Provisions constituting the basis for the contested individual decision

   (ECSC Treaty, third paragraph of Article 36)

2. ECSC - Production - System of production quotas for steel - Decision No. 2794/80 - Retroactive nature

3. Measures of the institutions - Time from which they take effect - Principle that they may not be retroactive - Exceptions - Conditions

4. ECSC - Production - System of quotas - Obligation of the Commission to carry out studies jointly with undertakings and associations of undertakings - Limits

   (ECSC Treaty, Art. 58 (2))

5. ECSC - Production - System of quotas - Concomitant adoption of measures concerning imports from non-member countries - Power of appraisal of the Commission

   (ECSC Treaty, Art. 58 (1))

1. Although, in an action for a declaration that an individual decision is void, the applicant may submit that certain provisions of the general decisions which the contested decision implements are illegal, he may do so only if the individual decision is based on the rules alleged to be illegal.

2. Although Decision No. 2794/80/ECSC, fixed production quotas for the steel industry from 1 October 1980, whereas it did not enter into force until 31 October 1980, it did not have genuine retroactive effect since the undertakings were able to adjust their production in November and December to take account of their quotas for the quarter and thereby avoid any infringement.

3. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

4. Although, pursuant to its obligation under Article 58 (2) of the ECSC Treaty to carry out studies jointly with undertakings and associations of undertakings in order to determine production quotas, the Commission is obliged to consult undertakings and associations of undertakings in conducting such studies, that obligation does not imply that it must consult each undertaking individually or that it must obtain the agreement of the steel producers to the measures proposed.

5. Under the terms of Article 58 (1) of the ECSC Treaty the Commission has power to take "to the necessary extent" the measures provided for in Article 74 at the same time as any measure taken on the basis of Article 58. The appraisal of the necessity of taking such measures is a matter for the Commission, subject to the Court's power to review the lawfulness of the Commission's exercise of its discretion.

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NOTE

The company Metallurgica Rumi requested a declaration that an individual decision of the Commission concerning the fixing of the applicant's production quotas for the fourth quarter of 1980 pursuant to Commission Decision No. 2794/80 establishing a system of steel production quotas was void. The applicant considered that the contested decision was unlawful, on the one hand, because it was in implementation of various provisions, which it considers unlawful, of the general decision, Decision No. 2794/80, and, on the other, because the Commission failed to ensure that the verifying officials provided the guarantees of independence indispensable to the maintenance of the business secrecy of undertakings.

(a) With regard to the fact that the Commission entrusted the task of carrying out inspections to employees of competing undertakings the applicant has not claimed that there was any breach of its business secrecy.

(b) The applicant criticizes the fact that Decision No. 2794/80, which only entered into force on the date of its publication, 31 October 1980, lays down production quotas from 1 October; the provision is accordingly retroactive. Since it has not been established that undertakings exhausted their production quotas for the fourth quarter of 1980 before the entry into force of the decision that decision did not have a truly retroactive effect since the undertakings were able to adapt their production in the months of November and December to take account of the quotas for the quarter. Furthermore, although in general the principle of legal certainty precludes the time from which a Community measure takes effect from being fixed at a date prior to publication it may be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly protected.

(c) According to the applicant the Commission has failed to satisfy the requirement laid down by Article 58 of the ECSC Treaty that the Commission must determine the quotas on the basis of studies made jointly with undertakings and associations of undertakings. That obligation of the Commission must, however, receive a wide interpretation: the Commission obtains information on the general situation in the iron and steel industry by conducting continuous studies; the undertakings are entitled to present any suggestions or comments on questions affecting them and are bound to furnish the Commission regularly with their production figures. The Commission furthermore conducted specific studies for the requirements of the system of quotas. These various factors constitute the studies prescribed by Article 58 of the ECSC Treaty.

The obligation to consult undertakings and associations of undertakings does not imply that the Commission must consult each undertaking individually. The Commission informed the undertakings of the measures which it intended to take and held meetings with the associations, permitting them to notify it of their proposals. The Commission has accordingly fulfilled its obligations under Article 58 of the ECSC Treaty.

(d) Rumi complains that the Commission failed to take measures against imports. Article 58 of the ECSC Treaty nevertheless shows that the Commission has power to take such measures "to the extent necessary". An appraisal of the necessity of taking such measures is a matter for the Commission, subject to the review by the Court of the lawfulness of the way in which it is carried out. In view of the fact that the ECSC is a net exporter of steel the Commission had reason to fear that, by taking non-negotiated restrictive decisions with regard to non-member countries, it might provoke retaliatory measures on their part which would be detrimental to the general interest.

On those grounds the Court dismissed the application of Metallurgica Rumi.

Judgment of 16 February 1982

Case 276/80

Ferriera Padana S.p.A. v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 29 October 1981)

1. ECSC - Production - System of quotas - Obligation of the Commission to carry out studies jointly with undertakings and associations of undertakings - Limits

   (ECSC Treaty, Art. 58 (2))

2. ECSC - Production - System of quotas - Existence of a manifest crisis - Express finding for each sector of the steel industry - Not required

   (ECSC Treaty, Art. 58 (1))

3. ECSC - Production - System of quotas - Insufficiency of the means of action provided for in Article 57 of the Treaty - Power of appraisal of the Commission

   (ECSC Treaty, Arts. 57 and 58 (1))

4. ECSC - Production - System of production quotas for steel - Decision No. 2794/80 - Retroactive nature

5. Measures of the institutions - Time from which they take effect - Principle that they may not be retroactive - Exceptions - Conditions

6. ECSC - Objectives - Compromise between various objectives - Duty of the Commission

   (ECSC Treaty, Arts. 2, 3, and 4)

7. ECSC - Production - System of quotas - Concomitant adoption of measures concerning imports from non-member countries - Power of appraisal of the Commisison

   (ECSC Treaty, Art. 58 (1))

8. ECSC - Production - System of production quotas for steel - Distinction between integrated and non-integrated undertakings - Not permissible

   (ECSC Treaty, Art. 58)

9. ECSC - Production - System of production quotas for steel - Principle of solidarity - Exclusion from the system of small and medium-scale undertakings - Not permissible

(ECSC Treaty - Art. 58; Decision No. 2794/80)

1. Although, pursuant to its obligation under Article 58 (2) of the ECSC Treaty to carry out studies jointly with undertakings and associations of undertakings in order to determine production quotas, the Commission is obliged to consult undertakings and associations in conducting such studies, that obligation does not imply that it must consult each undertaking individually or that it must obtain the agreement of the steel producers to the measures proposed.

2. The Commission is not bound by the terms of Article 58 of the ECSC Treaty to establish in its decisions fixing production quotas for the steel industry a finding that there was a manifest crisis in every sector of the steel industry if there is manifestly a general crisis.

3. In the event of a manifest crisis Article 58 of the ECSC Treaty confers upon the Commission a wide power to appraise whether the indirect means of action at its disposal under Article 57 of that Treaty have proved insufficient and whether it is necessary to intervene directly in order to restore the balance between supply and demand.

4. Although Decision No. 2794/80/ECSC fixed production quotas for the steel indsutry from 1 October 1980, whereas it did not enter into force until 31 October 1980, it did not have genuine retroactive effect since the undertakings were able to adjust their production in November and December to take account of their quotas for the quarter and thereby avoid any infringement.

5. Although in general the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication, it may exceptionally be otherwise where the purpose to be achieved so demands and where the legitimate expectations of those concerned are duly respected.

6. It is not certain that all the objectives of the ECSC Treaty can be simultaneously pursued in their entirety and in all circumstances. It is the task of the Commission to effect a permanent compromise between those different objectives.

7. Under the terms of Article 58 (1) of the ECSC Treaty the Commission has power to take "to the necessary extent" the measures provided for in Article 74 at the same time as any measure taken on the basis of Article 58. The appraisal of the necessity of taking such measures is a matter for the Commission, subject to the Court's power to review the lawfulness of the Commission's exercise of its discretion.

8. Once the Commission decides to establish a general system of quotas for the steel industry, it cannot distinguish between integrated and non-integrated undertakings if it wishes to achieve its objective of reducing production.

9. By providing for intervention by means of coercive action in certain defined circumstances the ECSC Treaty derogates from the normal rules governing the working of the Common Market, which are based on the principle of the market economy.

   Therefore it cannot be argued that the Commission should not include small and medium-scale steel undertakings, which are more efficient, in a system of production quotas for steel since that system would otherwise be rendered ineffective.

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NOTE

The undertaking Ferriera Padana, a manufacturer of concrete reinforcement bars, also requested the annulment of the individual decision of the Commission fixing the production quotas of the applicant for the fourth quarter of 1980 pursuant to Commission Decision No. 2794/80 establishing a system of production quotas for steel. The applicant considers that the contested decision is unlawful because it is in implementation of the general decision, Decision No. 2794/80, which it considers unlawful for various reasons.

With regard to the submissions concerning the lack of consultation, the retroactive nature of the general decision, Decision No. 2794/80, and the failure to take measures against imports, reference may be made to sections (c) (b) and (d) of the judgment in Case 258/80 (Rumi).

The applicant further considers that the conditions prescribed by Article 58 for establishing a system of quotas - the existence of a decline in demand which constitutes a manifest crisis and the insufficiency of the means of action provided for in Article 57 of the ECSC Treaty - were not fulfilled in the sector of concrete reinforcement bars. This argument cannot be upheld.

At the time when the system of quotas was introduced there was a sharp decline in demand in all sectors in which steel is used, including the building sector which constitutes the outlet for the products in question. Furthermore the Commission is not obliged to find in its decision that there is a manifest crisis in every sector of the iron and steel industry if there is manifestly a general crisis, as there is in this case.

Where there is a general crisis Article 58 of the ECSC Treaty confers upon the Commission a wide power of appraisal which it exercised in adopting Decision No. 2794/80. In reaching the conclusion that indirect means of action had proved insufficient and that it was necessary to intervene directly in order to re-establish the balance between supply and demand the Commission did not exceed the limits of its power of appraisal.

The applicant also criticizes the fact that production intended for export to non-member countries was included in the maximum quotas, thereby weakening Community undertakings as regards competition; the applicant has, however, failed to provide any proof of loss of markets. Moreover the Commission was prepared to grant an increase in the quotas if a producer was prevented from increasing the volume of his exports to non-member countries.

Consequently, the Court dismissed the application of Ferriera Padana S.p.A.

Judgment of 16 February 1982

Case 19/81

Arthur Burton v British Railways Board

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 8 December 1981)

1. Social policy - Men and women - Access to employment and working conditions - Equal treatment - Conditions for access to a voluntary redundancy scheme - Different age for men and women - Permissibility

   (Council Directive No. 76/207, Art. 5)

2. Social policy - Men and women - Equal treatment - Social security - Different minimum pensionable age - Permissibility

   (Council Directive No. 79/7, Art. 7)

1. The principle of equal treatment contained in Article 5 of Council Directive No. 76/207 applies to the conditions of access to voluntary redundancy benefit paid by an employer to a worker wishing to leave his employment.

   The fact that access to voluntary redundancy is available only during the five years preceding the minimum pensionable age fixed by national social security legislation and that that age is not the same for men as for women cannot in itself be regarded as discrimination on grounds of sex within the meaning of Article 5 of Directive No. 76/207.

2. The determination of a minimum pensionable age for social security purposes which is not the same for men as for women does not amount to discrimination prohibited by Community law.

NOTE

The Employment Appeal Tribunal submitted to the Court of Justice preliminary questions on the interpretation, with regard to the payment of voluntary redundancy benefit, of Article 119 of the Treaty and of directives on the application and implementation of the equal treatment of men and women as regards access to employment, vocational training and promotion.

Mr Burton is employed by the British Railways Board. Within the framework of a re-organization the Board made an offer of voluntary redundancy to its employees. In this connexion a collective agreement was drawn up which provided that:

> "Staff aged 60/55 (Male/Female) may leave the service under the Redundancy and Resettlement arrangements when the Function in which they are employed has been dealt with under Organization Planning".

In August 1979 Mr Burton applied for voluntary redundancy but his application was rejected on the ground that he had not attained the age of 60. Mr Burton accordingly claimed that he was treated less favourably than a woman inasmuch as the benefit would have been granted to a woman aged 58, as he was. Mr Burton contended that the Sex Discrimination Act 1975 must be construed as subject to rights which may be enforced under Community law.

This led the Tribunal to submit a series of questions intended to establish in substance whether the condition requiring a male worker to attain the age of 60 in order to qualify for voluntary redundancy benefit whilst a female worker qualifies for that benefit at the age of 55 constitutes a discrimination prohibited by Article 119 of the Treaty or by Article 1 of Directive No. 75/117 or at any rate by Directive No. 76/207 and, if so, whether the relevant provision of Community law may be relied upon before the national courts.

The foregoing shows that the problem of interpretation before the Court consists in establishing whether the conditions for access to the voluntary redundancy scheme constitute discrimination. This subject-matter is covered by Directive No. 76/207. That directive provides that the principle of equal treatment with regard to working conditions, including the conditions governing "dismissal", which must be widely construed so as to include termination of the employment relationship between a worker and his employer, even as part of a voluntary redundancy scheme , must apply.

It is accordingly necessary to take account of the relationship between measures such as that at issue and the national provisions on normal retirement age.

Under United Kingdom legislation the minimum qualifying age for a State retirement pension is 65 for men and 60 for women. A worker who is permitted by the British Railways Board to take voluntary early retirement must do so within the five years preceeding the normal minimum age of retirement.

Council Directive No. 79/7 of 19 December 1978 provides that the directive is without prejudice to the right of Member States to exclude from its scope the determination of pensionable age for the purposes of granting old-age and retirement pensions and the possible consequences thereof for other benefits.

It follows that the determination of a minimum pensionable age for social security purposes which is not the same for men as for women does not amount to discrimination prohibited by Community law.

Accordingly the Court, in replying to the questions submitted to it by the Employment Appeals Tribunal, gave the following ruling:

"1. The principle of equal treatment contained in Article 5 of Council Directive No. 76/207 of 9 February 1976 (Official Journal No. L 39, p. 40) applies to the conditions of access to voluntary redundancy benefit paid by an employer to a worker wishing to leave his employment.

2. The fact that access to voluntary redundancy is available only during the five years preceding the minimum pensionable age fixed by national social security legislation and that that age is not the same for men as for women cannot in itself be regarded as discrimination on grounds of sex within the meaning of Article 5 of Directive No. 76/207".

Judgment of 16 February 1982

Joined Cases 39, 43, 85 and 88/81

Halyvourgiki Inc. and Helleniki Halyvourgia S.A. v
Commission of the European Communities

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 12 January 1982)

1. Accession of new Member States to the Communities - Hellenic Republic - Measures adopted by the institutions binding on the acceding State - Measures adopted prior to the date on which accession took effect

   (Decision of the Council of 24 May 1979, Art. 2; Act of Accession, Art. 2)

2. Accession of new Member States to the Communities - Hellenic Republic - Procedure for adapting measures adopted by the institutions - Not applicable to measures to be adopted during the interim period

   (Act of Accession, Arts. 22 and 146; General Decisions Nos. 2794/80 and 3381/80)

3. ECSC Treaty - Production - System of quotas - Existence of a manifest crisis - Ascertainment in the light of the situation in the Community as a whole

   (ECSC Treaty, Art. 58)

4. ECSC - Production - System of quotas - Restrictions on imports from non-member countries - Conditions for imposition - Power of Commission to assess

   (ECSC Treaty, Arts. 58 (1) and 74)

5. ECSC Treaty - Production - System of quotas - Establishment on an equitable basis - Commission's freedom of choice - Taking into account of undertakings' actual production - Permissibility - Production capacity of undertakings - Exclusion justified

   (ECSC Treaty, Art. 58 (2))

6. ECSC - Production - System of production quotas for steel - Establishment on an equitable basis - Taking into account of undertakings' reference production - Cases of adaptation - Participation in voluntary reduction programmes - Reduction resulting from the Commission's control over new investment

   (General Decision No. 2794/80, Art. 4 (3) and (4))

1. Read together, Article 2 of the Act of Accession of the Hellenic Republic and Article 2 of the Decision of the Council of 24 May 1979 on the accession of that State to the European Coal and Steel Community show that it is with reference to the date on which that accession took effect, 1 January 1981, rather than the date of the Council's decision or of the signing of the documents concerning accession, that it must be determined which acts of the institutions are binding on the Hellenic Republic and applicable in that State. The acceding State accepts all the measures adopted by the institutions prior to the time when its accession took effect.

2. Articles 22 and 146 of the Act of Accession of the Hellenic Republic apply only to acts of the institutions the adaptation of which, recognized to be necessary when the documents concerning accession were signed, had to be carried out during the interim period. As regards new measures to be adopted in that period, the institutions were aware of the imminent accession of Greece, which was given an opportunity to assert its interests where necessary, in particular through the information and consultation procedure described in an agreement annexed to the Final Act.

   It is therefore incontestable that Decision No. 2794/80, adopted on 31 October 1980, establishing a system of steel production quotas and Decision No. 3381/80, adopted on 23 December 1980, fixing the abatement rates for the first quarter of 1981 are amongst the acts of the institutions which entered into force,unadapted, with respect to Greece and in its territory when accession became effective on 1 January 1981 pursuant to Article 2 of the Act of Accession.

3. The existence of a crisis within the meaning of Article 58 of the ECSC Treaty must be ascertained in the light of the situation in the Community as a whole. Therefore the introduction of measures under Article 58 may not be ruled out even if undertakings in some Member States or some regions of the Community are less affected than others by a widespread state of crisis.

4. It follows from Articles 58 (1) and 74 of the ECSC Treaty that if production quotas are imposed they do not necessarily have to be accompanied by restrictions on imports of steel products from non-member countries. The introduction of such restrictions depends on the Commission's assessment of the state of the steel market and of the need to afford that market protection. That need depends in turn both on the possibility of disposing of existing production on the internal market and on external trade. But in this regard it is necessary to take into account obligations entered into by the Community towards non-member countries and the repercussions which the introduction of import restrictions might have on Community exports in general and on steel products in particular.

   The taking into consideration of those factors requires the assessment of a complex economic situation,which means that the link established by Aricle 58 (1) between the introduction of production quotas and the imposition of restrictions on imports of competing products cannot be in any way automatic.

5. Article 58 (2) of the ECSC Treaty does not restrict the Commission's freedom to choose the basis upon which the quotas may be equitably determined in a given economic situation. There are no reasonable grounds for denying that the Commission's choice of the criterion based on undertakings' actual production may constitute an "equitable basis" within the meaning of Article 58 (2). Indeed that criterion, as adjusted by Article 4 of Decision No. 2794/80, constitutes, in the first place, an objective basis of assessment which avoids the uncertainties inherent in determining a factor which is partly conjectural, such as production capacity; secondly, it enables total production to be reduced without altering the positions of the undertakings on the market as between each other.

6. Under the scheme of Decision No. 2794/80 the aim of paragraphs (3) and (4) of Article 4 thereof is to help some undertakings by rectifying the results obtained by taking into account the reference production figures defined by Article 4 (1) and (2). The aim of those provisions is, more precisely, to adapt the reference production figures of some undertakings, having regard to their participation during the period under consideration in voluntary reduction programmes and to the restrictions placed upon them as a result of the control exercised by the Commission over new investment.

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NOTE

The companies Halyvourgiki and Helleniki Halyvourgia also requested a declaration that the individual decisions of the Commission fixing the applicants' production quotas for crude steel and rolled products for the first quarter of 1981 pursuant to general decisions, Decisions Nos. 2794/80 and 3381/80, are void.

The applicants claim that the general decisions are not applicable to Greek undertakings because they were adopted unilaterally by the Community without the co-operation of the Greek authorities during the interim period between the signature of the documents concerning the accession of the Hellenic Republic to the Communities and accession itself.

Pursuant to Article 2 of the Act of Accession, "from the date of accession, the provisions of the original Treaties and the acts adopted by the institutions of the Communities shall be binding on the Hellenic Republic and shall apply to that State under the conditions laid down in those Treaties and in this Act". Since the Hellenic Republic acceded to the ECSC with effect from 1 January 1981 that is the date which must be taken in determining the measures adopted by the institutions which bind the Hellenic Republic and which apply in that State. With regard to the new measures to be adopted during the interim period between signature and accession itself the institutions were aware that accession was imminent and the Hellenic Republic was enabled to safeguard its interests in particular through the procedure of information and consultation which forms the subject-matter of an agreement annexed to the Final Act.

The arguments of the applicants that the finding of a state of crisis was not representative of the situation of the Community after the accession of the Hellenic Republic fails to have regard to the fact that such a situation must be appraised as a whole , with regard to the Community as a whole. It has not been established that the entry of Greece into the Communities resulted in a substantial modification of the general situation of the market in iron and steel products in the Community as a whole.

In addition the applicants challenge the validity of Decision No. 2794/80 because it established production quotas without accompanying that system by measures restricting imports of iron and steel products. Article 58 of the ECSC Treaty shows that the establishment of restrictions on imports is not a necessary consequence of resort to production quotas. The establishment of such restrictions depends on the appraisal by the Commission of the state of the iron and steel market. External trade implies the taking into consideration of obligations undertaken by the Commission to non-member countries and the effects which the introduction of import restrictions might have on Community exports. Consideration of such facts requires the appraisal of a complex economic situation which excludes any automatic relation between the introduction of production quotas and the establishment of import restrictions. There is nothing to indicate that the Commission exceeded the power of appraisal conferred upon it in this matter by the ECSC Treaty.

The applicants moreover claim that the production quotas were not determined on an equitable basis: instead of being determined with reference to actual production they were fixed on the basis of the production capacity of the undertakings.

In those circumstances it must be held that the undertakings did not even exhaust the production quotas assigned to them so that the question whether the quotas were fixed on the one basis rather than the other appears irrelevant to this case. Furthermore, it should be noted that Article 58 of the ECSC Treaty does not limit the freedom of the Commission in the choice of the basis for equitably determining the quotas in a given economic situation.

The Court dismissed the applications submitted by the companies Halyvourgiki and Helleniki Halyvourgia.

Judgment of 18 February 1982

Case 277/80

Società Italiana Cauzioni v
Amministrazione delle Finanze dello Stato

(Opinion delivered by Advocate General Sir Gordon Slynn on 3 December 1981)

Free movement of goods - Community transit - External Community transit - TI document - Discharge at the office of departure - Non-discharge - Release of guarantor - Conditions

(Regulation No. 542/69 of the Council, Art. 35, as amended by Regulation No. 1079/71, Art. 1)

Article 35 of Regulation No. 542/69 of the Council of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation No. 1079/71 of 25 May 1971, must be interpreted as meaning that, unless the guarantor has been notified by the customs authorities of the non-discharge of the TI declaration within the period of twelve months from the date of its registration, the guarantor is then, in the absence of any fraud of which he may be guilty, in any event released from his obligations.

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NOTE

The Tribunale [District Court], Milan, referred to the Court for a preliminary ruling a question concerning the interpretation of Article 35 of Regulation No. 542/69 of the Council on Community transit.

In order to facilitate the transport of goods within the Community and in particular to simplify the formalities to be carried out when internal frontiers are crossed, that regulation provides a Community transit procedure, which for goods which do not satisfy the conditions laid down in Articles 9 and 10 of the EEC Treaty, is that for external Community transit.

Any goods that are to be carried under the procedure for external Community transit must be covered by a declaration on Form T1 in accordance with Annex A to the regulation, signed by the person who requests permission to effect the transit operation, that is to say the "principal" who "makes himself responsible to the competent authorities for the execution of the operation in accordance with the rules".

The regulation provides that the principal is required to furnish a guarantee. That guarantee is to consist of the joint and several guarantee of a natural or legal person established in the Member State in which the guarantee is provided who is approved by that Member State.

Article 35 of the regulation provides that "the guarantor shall be released from his obligations towards the Member States through which goods were carried in the course of a Community transit operation when the T1 document has been discharged at the office of departure.

Where the guarantor has not been notified by the office of departure of the non-discharge of the T1 document, he shall be released from his obligations on expiry of a period of twelve months from the date of registration of the T1 declaration."

S.I.C. challenged the demand served on it by the customs authorities for discharge of its obligations as guarantor of three transport operations in frozen beef.

This dispute caused the Tribunale, Milan, to submit to the Court the following question:

> "With regard to Article 35 of Regulation (EEC) No. 542/69 of 18 March 1969, as supplemented by Article 1 of Regulation (EEC) No. 1079/71 of 25 May 1971, is it always incumbent on the Amministrazione Finanziaria [Finance Administration] to intimate, within 12 months of the date of registration of a T1 declaration, the non-discharge of that document, in order to preserve the guarantee referred to in those provisions?"

In reply the Court ruled that:

> "Article 35 of Regulation No. 542/69 of the Council of 18 March 1969 on Community transit, as supplemented by Article 1 of Regulation No. 1079/71 of 25 May 1971, must be interpreted as meaning that, unless the guarantor has been notified by the customs authorities of the non-discharge of the T1 declaration within the period of twelve months from the date of registration of the declaration, in the absence of any fraud for which he is liable, the guarantor is always released from his obligations".

Judgment of 18 February 1982

Case 55/81

Georges Vermaut v
Office National des Pensions pour Travailleurs Salariés

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 17 December 1981)

Social security for migrant workers - Insurance covering old age and death - Aggregation of periods of insurance - Periods of less than a year completed under the legislation of another Member State - Taking into account of such periods - Requirement by the competent Member State of contributions corresponding to such periods - Not permitted

(Regulation No. 1408/71 of the Council Art. 48(2))

1. Pursuant to Article 48(2) of Regulation No. 1408/71 the national institution competent in retirement pension matters must take account of periods of insurance of less than one year completed by the worker under the legislation of other Member States even if the right to a pension arises under national legislation alone.

2. A Member State is not entitled to require the payment by the worker of contributions corresponding to the periods of insurance referred to in Article 48 of Regulation No. 1408/71 and completed under the legislation of other Member States or the transfer of the contributions for those periods which may have been paid in such Member States.

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NOTE

The main action related to the refusal by the Office National des Pensions pour Travailleurs Salariés [National Pensions Office for Employed Persons] to take into consideration, in awarding a retirement pension, periods of employment of less than one year effected in Member States other than Belgium, with the result that the holder of that pension was prevented from being given the credit for the war years from 1940 to 1945, which is provided by the Belgian legislation.

The entitlement of the person concerned to a retirement pension was recognized solely on the basis of periods of insurance completed in Belgium. No account was taken of the periods of employment of ten months in London in 1938 and of eight months in Heidelberg in 1939, which were brought to an end when he was called up to serve in the Belgian army.

The National Pensions Office takes the view that periods of less than a year do not have to be taken into consideration in order to determine apportionment of the pension.

This dispute led the Tribunal du Travail [Labour Tribunal], Liège, to refer two questions to the Court;

1. By the first question, the national court asks whether the institution competent in retirement pension matters must take account of periods of insurance of less than one year completed under the legislation of two Member States in which those periods do not confer any pension rights, or whether that institution may grant the pension solely on the basis of Belgian legislation without taking into consideration periods of insurance completed in those two States.

The Court ruled in reply that:

"Pursuant to Article 48 (2) of Regulation No. 1408/71, the national institution competent in retirement pension matters must take account of periods of insurance of less than one year completed by the worker under the legislation of other Member States, even if the right to a pension arises under national legislation alone".

2. By its second question, the Tribunal du Travail asks whether a Member State is entitled, on the ground that its national legislation subjects the grant of a pension to payment of contributions, to require payment by the worker of contributions corresponding to the periods of insurance referred to in Article 48 of Regulation No. 1408/71 and completed under the legislation of other Member States or request transfer of contributions relating to those periods which may have been paid in those Member States.

The Court ruled that:

"A Member State is not entitled to require the payment by the worker of contributions corresponding to the periods of insurance referred to in Article 48 of Regulation No. 1408/71 and completed under the legislation of other Member States or the transfer of the contributions for those periods which may have been paid in such Member States".

Judgment of 18 February 1982

Case 77/81

Zuckerfabrik Franken GmbH v Federal Republic of Germany

(Opinion delivered by Mr Advocate General Reischl on 21 January 1982)

Agriculture - Common organization of the markets - Sugar - Denaturing premium - Conditions for grant - Use of the denatured sugar for animal feed - Use otherwise than for that purpose by third parties - Liability of the recipient of the premium certificate

(Regulation (EEC) No. 2049/69 of the Council; Regulation (EEC) No. 100/72 of the Commission)

Recipients of denaturing premium certificates under Regulation No. 100/72 are required, in accordance with the provisions of that regulation and those of Regulation No. 2049/69, to use the denatured sugar exclusively for animal feed.

National rules which provide that such persons are liable for any use otherwise than for the intended purpose by third parties do not conflict with Community law.

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NOTE

The Verwaltungsgericht [Administrative Court], Frankfurt am Main, referred to the Court a question for a preliminary ruling on the interpretation of Regulation No. 100/72 laying down detailed rules on the denaturing of sugar for animal feed.

The dispute is between a German company running a sugar factory which, having obtained denaturing premium certificates for 114 500 tonnes of sugar, carried out the denaturing and received the denaturing premium provided for by the said regulation and the Federal Republic of Germany which claims the repayment of the said premium as required by German law, mainly on the grounds that that denatured sugar was used not for the feeding of bees but as core-binder for foundries.

The plaintiff in the main action sold the denatured sugar to an agricultural dealer, pointing out that the sugar was to be used for animal feed, but the dealer re-sold it to an undertaking which used it for other purposes and thus led the Federal Republic of Germany to demand the repayment of the premium.

The national court takes the view that under German law a premium which has been unduly paid must be returned, but is in doubt as to whether this premium was unduly received by the plaintiff in the main proceedings, for the latter fulfilled all the conditions to which payment of the premium is subject under Community law, since Regulation No. 100/72 does not clearly state that the undertakings concerned are obliged to use the product for the purpose intended.

The court making the reference submitted the following question to the Court:

> "Is the recipient of a denaturing premium certificate under Regulation (EEC) No. 100/72 of the Commission of 14 January 1972 laying down detailed rules on the denaturing of sugar for animal feed (Official Journal, English Special Edition 1972 (I), p. 21) obliged by the wording of Article 14 (1) (b) thereof to use the denatured sugar only for animal feed and is he liable for any use otherwise than for that purpose by third parties?"

The first part of the question

An interpretation is required of the wording of the provisions of Regulation No. 100/72.

From a study of the wording it is clear that, although the Community legislature does not expressly state that there is a duty to use the product for the purpose intended, it has nevertheless required the Member States to carry out the controls necessary to ensure that it is used for that purpose, since they must intervene after the denaturing to ensure that it is used for that purpose.

All the provisions on the subject show that in laying down these rules the Community legislature has a dual purpose: to relieve congestion on the sugar market and to dispose of some of the excess sugar by diverting it by denaturing towards animal feed.

The second part of the question

The question is in fact whether national rules providing that a person who has received a denaturing premium must repay it if the denatured sugar was not used for animal feed, even if it is a third party who is responsible for the use leading to the repayment of the premium, are applicable to Community law.

It follows from the general logic of the Community provisions that it is for the Member States to adopt all measures necessary to ensure that that denatured sugar is used only for animal feed.

The national authorities therefore had discretion to lay down sanctions intended to ensure that the Community provisions were respected. That power does not conflict with the Community provisions applicable in this case and does not infringe the principle of legal certainty.

The Court ruled that:

"Recipients of denaturing premium certificates under Regulation No. 100/72 of the Commission (Official Journal, English Special Edition 1972 (I), p. 21) are required to use the denatured sugar exclusively for animal feed. They are liable for any use otherwise than for that purpose by third parties".

Judgment of 2 March 1982

Case 6/81

Industrie Diensten Groep B.V. v J.A. Beele Handelmaatschappij B.V.

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 25 November 1981)

Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Restraining precise imitation - Imported product almost identical to another product already marketed in the same Member State - Judgment restraining sale - Permissibility

(EEC Treaty, Art. 30)

The rules of the EEC Treaty on the free movement of goods do not prevent a rule of national law which applies to domestic and imported products alike, from allowing a trader, who for some considerable time in the Member State concerned has marketed a product which differs from similar products, to obtain an injunction against another trader restraining him from continuing to market in that Member State a product coming from another Member State in which it is lawfully marketed but which for no compelling reason is almost identical to the first-mentioned product and thereby needlessly causes confusion between the two products.

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NOTE

The Gerechtshof [Regional Court of Appeal], The Hague, referred to the Court for a preliminary ruling a question concerning the interpretation of the Treaty rules on the free movement of goods.

The question arose in the course of litigation between a Netherlands undertaking which was the sole importer of cable conduits manufactured in Sweden and marketed in the Netherlands since 1963, and another Netherlands undertaking which since 1978 had marketed in the Netherlands cable conduits manufactured in the Federal Republic of Germany.

According to the file on the case the Swedish cable conduits had formerly enjoyed patent protection, inter alia in the Federal Republic of Germany and in the Netherlands, and manufacturing of the German cable conduits as well as importation of them into the Netherlands commenced after the expiry of the patents in question.

The first of the above-mentioned undertakings applied for a court order, based on its submission that the German cable conduits were a servile imitation of the Swedish cable conduits, restraining the defendant from marketing the German cable conduits, or causing them to be marketed, in the Netherlands.

The order was granted by the President of the Arrondissementsrechtbank [District Court] but an appeal was made on the ground that the cable conduits sold by the appellant had been marketed normally in another Member State and that therefore the respondent's action constituted an infringement of Articles 30 to 36 of the EEC Treaty.

On that basis the national court referred the following question to the Court for a preliminary ruling:

"Assuming that:

(a) A trader, A, markets products in the Netherlands which are no longer covered by any patent and which for no compelling reason are practically identical with products which have been marketed for a considerable period of time in the Netherlands by another trader, B, and which are different from similar kinds of articles, and in so doing Trader A needlessly causes confusion;

(b) Under Netherlands law trader A is thereby competing unfairly with trader B and acting unlawfully;

(c) Netherlands law gives trader B the right to obtain an injunction on that ground restraining trader A from continuing to market the products in the Netherlands;

(d) The products of trader B are manufactured in Sweden and those of trader A in the Federal Republic of Germany;

(e) Trader A imports his products from the Federal Republic of Germany in which those products are lawfully put on the market by someone other than trader B, the Swedish manufacturer, someone who is associated with one of them or by someone who is authorized to do so by one of them;

do the rules contained in the EEC Treaty on the free movement of goods, notwithstanding the provisions of Article 36 thereof, then prevent trader B from obtaining such an injunction against trader A?"

From the file on the case it appeared that the rule of Netherlands law which was invoked in the question was essentially a product of case-law. As the Commission observed, no attempt has yet been made at Community level to harmonize national laws on protection against servile imitations.

The Gerechtshof appeared to be willing to uphold the prohibition of the marketing in the Netherlands of products which it assumed to have been marketed in the normal way in another Member State.

Such a prohibition was an obstacle to the free movement of goods, the Court held. In its judgment of 20 February 1979, the so-called Cassis de Dijon case, and that of 17 June 1981, Commission v Ireland, it held that

in the absence of common rules relating to the production and marketing of products, obstacles to free movement within the Community resulting from disparities between the national laws must be accepted in so far as those provisions, applicable without distinction to both national and imported goods, might be considered to be necessary in order to satisfy mandatory requirements relating inter alia to the protection of consumers and the guarantee of fairness in commercial transactions.

It was therefore necessary to consider whether protection against imitation met those conditions.

A national rule of law prohibiting servile imitations of other products liable to create confusion was in fact of such a nature as to protect the consumer and guarantee fairness in commercial transactions, aims which were in the public interest and which in the light of the dicta of the Court referred to above might justify the existence of obstacles to the free movement of goods within the Community which were the result of disparities between national laws on marketing.

In reply to the question referred to it the Court ruled as follows:

"The rules of the EEC Treaty on the free movement of goods do not prevent a rule of national law which applies to domestic and imported products alike from allowing a trader, who for some considerable time in the Member State concerned has marketed a product which differs from similar products, to obtain an injunction against another trader restraining him from continuing to market in that Member State a product coming from another Member State in which it is lawfully marketed but which for no compelling reason is almost identical to the first-mentioned product and thereby needlessly causes confusion between the two products".

Judgment of 2 March 1982

Case 94/81

Commission of the European Communities v
Italian Republic

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 3 February 1982)

Failure of a State to fulfil its obligations - Cosmetics

Member States - Obligations - Implementation of directives - Failure to comply - Justification - Not possible

(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives.

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NOTE

The Commision of the European Communities brought an action for a declaration that the Italian Republic had failed to fulfil its obligations under the Treaty by failing to adopt within the prescribed period the provisions needed to comply with Council Directive No. 76/768 on the approximation of the laws of the Member States relating to cosmetic products.

The Italian Government sought to justify its omission on the ground that it had been necessary to refer the question of the implementation of the directive to the legislature and owing to the premature dissolution of parliament it had been difficult to bring the procedure to its conclusion.

According to the well-established case-law of the Court, a Member State may not plead provisions, practices or circumstances in its internal legal system in order to justify a failure to comply with obligations under Community directives.

The Court declared that:

"By failing to adopt within the prescribed period the provisions needed to comply with Council Directive No. 76/768 of 27 July 1976 on the approximation of the laws of the Member States relating to cosmetics the Italian Republic has failed to fulfil its obligations under the Treaty".

Judgment of 3 March 1982

Case 14 and 111/81

Alphasteel Limited v Commission of the European Communities

(Opinion delivered by Mr Advocate General Reischl on 29 October 1981)

1. Procedure - Decision replacing contested decision while action in progress - New factor - Amendment of pleadings

2. Measures adopted by the institutions - Withdrawal of unlawful measures - Conditions

3. ECSC - Production - Quota system - Concomitant adoption of measures concerning imports from non-member countries - Commission's power of appraisal

   (ECSC Treaty, Art. 58 (1))

4. Measures adopted by the institutions - Decisions - Duty to state reasons - Limits

5. ECSC - Production - Quota system - Established on an equitable basis - Commission's freedom of choice - Taking into account of undertakings' actual production - Permissibility - Production capacity of undertakings - Exclusion justified

6. ECSC - Production - Quota system - Purpose - To compensate for distortions of competition attributable to State subsidies - No

   (ECSC Treaty, Art. 58)

7. ECSC - Production - System of production quotas for steel - Established on an equitable basis - Choice of a particular period of reference - Discrimination against certain undertakings - None - Application of relief clause in cases of hardship

   (ECSC Treaty, Art 58; Decision No. 2794/80, Art.14)

8. ECSC - Production - System of production quotas for steel - Established on an equitable basis - Taking into account of undertakings' reference production - Grounds for adjustment - Participation in a voluntary delivery programme - Not a sanction against other undertakings

(Decision No. 2794/80, Art. 4 (3))

9. ECSC - Production - System of production quotas for steel - Established on an equitable basis - Taking into account of undertakings' reference production - Grounds for adjustment - Participation in a voluntary delivery programme - Principle that legitimate expectations must be protected - Breach - None

(Decision No. 2794/80, Art. 4 (3))

1. An individual decision which replaces a previous decision having the same subject-matter while an action is in progress must be regarded as a new factor which allows the applicant to amend his pleadings. It would not be in the interests of the due administration of justice and the requirements of procedural economy to oblige the applicant to make a fresh application to the Court. Moreover, it would be inequitable if the institution were able, in order to counter criticisms of a decision contained in an application to the Court, to amend the contested decision or to substitute another for it and to rely in the proceedings on such an amendment or substitution in order to deprive the other party of the opportunity of extending his original pleadings to the later decision or of submitting supplementary pleadings directed against that decision.

2. The withdrawal of an unlawful measure is permissible, provided that the withdrawal occurs within a reasonable time and provided that the institution from which it originates has sufficient regard to how far persons to whom the measure was addressed might have been led to rely on the lawfulness thereof.

3. Under the terms of Article 58 (1) of the ECSC Treaty the Commission has power to take "to the necessary extent" the measures provided for in Article 74 at the same time as any measure taken on the basis of Article 58. The appraisal of the necessity of taking such measures is a matter for the Commission, subject to the Court's power to review the lawfulness of the Commission's exercise of its discretion.

4. Although the Commission has a duty to set out, in a concise but clear and relevant manner, the principal issues of law and fact upon which its decisions are based, so that the reasoning which led it to adopt them may be understood, it is not required to discuss all the objections which might be raised against its decisions; nor may it be required to indicate its reasons for not adopting measures other than those contained in the decisions, where the adoption of those other measures was a matter for its discretion.

5. Article 58 (2) of the Treaty does not restrict the Commission's freedom to choose the basis upon which the quotas may be equitably determined in a given economic situation. There are no reasonable grounds for denying that the Commission's choice of the criterion based on undertakings' actual production may constitute an "equitable basis" within the meaning of Article 58 (2). Indeed, that criterion, as adjusted by Article 4 of Decision No. 2794/80, constitutes, in the first place, an objective basis of assessment which avoids the uncertainties inherent in determining a factor which is partly conjectural, such as production capacity; secondly, it enables total production to be reduced without altering the positions of the undertakings on the market as between each other.

6. Article 58 is not designed to compensate for distortions of competition attributable to State subsidies, for which the Commission has other means of action at its disposal.

7. The fact that undertakings were allowed to have quotas calculated on the basis of their best performance during the period of reference fixed by Decision No. 2794/80 does not amount to discrimination against undertakings whose recent equipment was not fully in operation when that period began. If the quotas thus allocated to them give rise to difficulty, such undertakings may submit a request to the Commission for an adjustment pursuant to Article 14 of the general decision. That article is specifically designed to provide relief; its usefulness and value are undeniable and it enables the effects of other provisions of the general decision to be adjusted as and when appropriate.

8. Article 4 (3) of Decision No. 2794/80 was designed to take account of the position of certain undertakings which had been placed at a particular disadvantage owing to their participation in a voluntary delivery programme. That in no way constitutes a sanction against other undertakings and the provision may not therefore be considered to be in breach of the principle of nulla poena sine lege.

9. Article 4 (3) of Decision No. 2794/80 did not offend against the principle of the protection of legitimate expectation, for the undertakings which did not participate in voluntary delivery programmes could not reasonably expect to continue to enjoy, after the introduction of a quota system, the competitive advantage which they had had over undertakings which did participate in such programmes.

NOTE

Alphasteel sought the annulment of the Commission's individual decision fixing the applicant's production quotas for the first and second quarters of 1981. The principal submission was that the relevant general decision, Decision No. 2794/80 establishing a system of steel production quotas, was unlawful.

The applicant claimed that the Commission ought to have considered whether the adoption of measures of commercial policy as provided for in Article 74 of the ECSC Treaty was called for. The Court stated that in the words of Article 58 of the ECSC Treaty,however, the Commission had the power to adopt such measures "to the necessary extent". The degree of necessity was a matter for the discretion of the Commission, subject to the Court's power to review the legality of the exercise of such power. The applicant produced no evidence in support of his submission that the Commission misused its discretionary powers.

The applicant maintained that the general decision was incompatible with Article 58 (2) of the ECSC Treaty,which stipulates that quotas must be determined "on an equitable basis". It must be noted, however, the Court stated, that that provision did not restrict the Commission's freedom of choice in selecting what basis should be used in order to fix the quotas fairly. It could not reasonably be argued that the Commission's choice of the undertakings' actual production as the criterion was not capable of providing "an equitable basis" within the meaning of Article 58 (2), since that criterion represented an objective standard on the basis of which general production might be reduced without altering the respective market positions of the undertakings.

As to the applicant's argument that there might be justification for altering the respective market positions of State-subsidized undertakings working with antiquated plant and a large number of employees,as compared with undertakings which are endeavouring to be efficient, suffice it to say that it was not the intention of Article 58 to rectify competitive imbalances created by State subsidies for which the Commission had other means at its disposal.

Finally, the applicant took exception to the fact that only undertakings which participated in a previous voluntary delivery programme were permitted to increase their reference production. The result was to confer ex post facto a coercive character on the measures which they did not have, a procedure repugnant to the principle nulla poena sine lege. According to the Court, the purpose of that option, however, was to compensate for the disadvantages suffered by the undertakings in question. It in no way penalized other undertakings and therefore there was no reason to consider that there had been a breach of the principle of nulla poena sine lege.

Furthermore, those undertakings which did not participate in voluntary delivery programmes could not reasonably expect to maintain, after the introduction of the quota system,the competitive advantage they enjoyed over undertakings which had participated in such programmes. Hence the Commission had not frustrated the legitimate expectations of those concerned.

On those grounds, the Court dismissed both the applications lodged by Alphasteel.

Judgment of 4 March 1982

Case 182/80

H.P. Gauff Ingenieure GmbH & Co. KG v
Commission of the European Communities

(Opinion delivered by Mrs Advocate General Rozès
on 29 October 1981)

Public contracts of the European Communities - Implementation of projects financed by the European Development Fund in the ACP countries - Invitations to tender or mutual agreement contracts - Eligibility of applicants - Refusal of the Commission to decide the eligibility of an undertaking - Application for a declaration that a measure is void and for failure to act - Inadmissibility

(EEC Treaty, Art. 173, second para., and Art. 175; Art 25 of Protocol No. 2 to the Convention of Lomé of 2 February 1975)

Neither Article 25 of Protocol No. 2 to the Convention of Lomé of 28 February 1975 on the application of financial and technical co-operation concerning the award of contracts within the framework of the European Development Fund (the Fund) nor any other relevant provision empowers any department of the Commission to define the latter's position, by way of a decision of general scope, on the eligibility of an interested party for the award of the contracts in question.

In the absence of such a power a letter from an officer of the Commission stating that it was impossible to provide an undertaking with the assurances in principle which it requested regarding its admission to participate in the projects financed by the Fund may not be validly considered as a decision within the meaning of the second paragraph of Article 173 of the EEC Treaty and accordingly cannot give rise to a review by means of the proceedings under that provision.

The same considerations also entail the finding that there is no failure to act, capable of forming the subject of the proceedings provided for in the third paragraph of Article 175 of the EEC Treaty, which may be imputed to the Commission.

NOTE

The application by Gauff, an undertaking specializing in transport and hydraulic equipment and pursuing its activities in the ACP States, particularly in projects financed by the European Development Fund ("the Fund"),sought the annulment of the defendant's decision that the applicant was not eligible to tender for, or be directly awarded, public service contracts financed by the Fund, and alternatively a declaration that the defendant was bound to notify the applicant formally whether or not it was so eligible, together with payment by the defendant to the applicant of DM 1 by way of damages.

The applicant complained that the Commission had unlawfully prevented it from bidding for contracts to carry out projects financed by the Fund on the ground that its director had been implicated in the bribery of an official of the Commission.

The application for annulment and the action for failure to act

Neither Article 25 of Protocol No. 2 to the Lomé Convention on the application of financial and technical co-operation, which concerns the award of EDF contracts, nor for that matter any other of the relevant provisions, empowers a department of the Commission to decide by way of a decision of general application on the eligibility or otherwise of a party to participate in the award of the contracts in question.

In the absence of such powers the Director General of the Commission's Legal Department had no authority to adopt a decision such as that sought by the applicant.

Since no such power was recognized at law the letter of 20 June 1980 from the Director General of the Legal Department could not properly be considered a decision within the meaning of the second paragraph of Article 173 of the Treaty and was not therefore subject to review by means of the action provided for in that provision, nor could it be the subject-matter of an action for failure to act.

The claim for compensation

No administrative fault or omission involving liability could be imputed to the Commission, even if the applicant undertaking had suffered damage and if a causal link could be established between such damage and the conduct of the Commission.

The Court therefore dismissed the application.

Judgment of 4 March 1982

Case 38/81

Effer S.p.A. v Hans-Joachim Kantner

(Opinion delivered by Mr Advocate General Reischl on 3 December 1981)

Convention on Jurisdiction and the Enforcement of Judgments - Jurisdiction in matters relating to a contract - Scope - Dispute between the parties as to the existence of the contract - Jurisdiction extends to that question

(Convention of 27 September 1968, Art. 5 (1))

In the cases provided for in Article 5 (1) of the Convention, of 27 September 1968, the national court's jurisdiction to determine questions relating to a contract includes the power to consider the existence of the constituent parts of the contract itself, since that is indispensable in order to enable the national court in which proceedings are brought to examine whether it has jurisdiction under the Convention. Therefore the plaintiff may invoke the jurisdiction of the courts of the place of performance in accordance with Article 5 (1) of the Convention, even when the existence of the contract on which the claim is based is in dispute between the parties.

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NOTE

The Bundesgerichtshof [Federal Court of Justice] referred to the Court for a preliminary ruling a question concerning the interpretation of Article 5 (1) of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as "the Convention"), which reads as follows:

> "A person domiciled in a Contracting State may, in another Contracting State, be sued:
>
> 1. In matters relating to a contract, in the courts for the place of performance of the obligation in question;
>
> ...."

The question arose in the course of a dispute between Effer S.p.A., of Bologna, and Mr Kantner, a patent agent of Darmstadt.

Effer manufactures cranes which are marketed in Germany by Hykra. When Effer invented a new apparatus it was necessary to establish whether the sale thereof would infringe existing patents. Mr Kantner was engaged to make the necessary inquiries in Germany.

The point at issue between the parties to the main action was whether Hykra, which subsequently went into liquidation, had commissioned Mr Kantner on behalf of Effer, or on its own behalf.

In order to obtain payment of his fees Mr Kantner brought an action before the German court in December 1974. Effer denied that any contractual relationship had been established between itself and the patent agent and claimed that the German courts had no jurisdiction in the matter.

As a result of the dispute the following question was referred for a preliminary ruling:

> "May the plaintiff invoke the jurisdiction of the courts of the place of performance in accordance with Article 5 (1) of the Convention even when the existence of the contract on which the claim is based is in dispute between the parties?"

Examination of the Convention's provisions, especially the preamble, revealed that its principal aim was to provide better legal protection within the Community for the persons established therein.

Accordingly the Court's ruling was as follows:

> "The plaintiff may invoke the jurisdiction of the courts of the place of performance of the contract in accordance with Article 5 (1) of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters even when the existence of the contract on which the claim is based is in dispute between the parties".

Judgment of 11 March 1982

Case 93/81

Institut National d'Assurance Maladie-Invalidité
v Peter Knoeller

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 4 February 1982)

Social security for migrant workers - Benefits - Scrutiny of claims - Form E 26 - Legal significance - Supplementary information without a formal amendment - Permissibility

(EEC Treaty, Arts. 48 to 51; Regulation No. 4 of the Council of the EEC, Arts. 33 and 34)

The legal significance of Form E 26 must be appraised in such a way as not to jeopardize the effectiveness of Articles 48 to 51 of the Treaty and the regulations concerning the rights of migrant workers in the field of social security.

The said form is not exhaustive in the sense that it does not preclude the information which it contains from being subsequently explained or supplemented by official documents even if they do not constitute an amendment of the form previously sent.

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NOTE

The Belgian Cour de Cassation referred to the Court of Justice for a preliminary ruling a question relating to the interpretation of Aritlces 33 and 34 of Regulation No. 4 of the Council of the European Economic Community concerning social security for migrant workers.

The question seeks to determine whether the information entered on Form E 26, the model of which was drawn up by the Administrative Commission set up by Regulation No. 3 of the Council of the European Economic Community, may be explained subsequently by other documents.

Without its being necessary to set out at length the facts which led the national court, before which the main action was brought, to refer the question of interpretation to the Court of Justice, suffice it to record that the Court of Justice stated that Articles 33 and 34 of Regulation No. 4, and the rules adopted by the Adminstrative Commission as regards the form in question, must be interpreted in the light of Articles 48 to 51 of the EEC Treaty which the regulations adopted in the field of social security have as their basis, their framework and their bounds.

Those articles are aimed in effect at encouraging the free movement of workers within the Common Market by allowing them inter alia, to avail themselves of rights arising from periods of work completed in different Member States. The legal status of Form E 26 must therefore be adjudged in such a way as not to jeopardize the effectiveness of those articles and those regulations concerning the rights of migrant workers in the field of social security.

The Court ruled that:

"The Form provided for by Article 34 of Regulation No. 4 of the Council of the European Economic Community of 3 December 1958 may be supplemented or explained subsequently by other information even if that information does not consist of a rectification of the form previously sent".

Judgment of 11 March 1982

Case 129/81

Fratelli Fancon v Società Industriale Agricole Tresse

(Opinion delivered by Advocate General Sir Gordon Slynn on 4 February 1982)

Common Customs Tariff - Tariff headings - Residues resulting from the extraction of vegetable oils within the meaning of heading 23.04 - Flour extracted from soya - Product covered by the common organization of the market in oils and fats

(Regulation No. 136/66/EEC of the Council, Art. 1 (2))

Flour extracted from soya must be classified in heading ex 23.04 of the Common Customs Tariff and is therefore included among the products listed in Article 1 (2) of Regulation No. 136/66 on the establishment of a common organization of the market in oils and fats.

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NOTE

The Corte Suprema di Cassazione [Supreme Court of Cassation] referred to the Court of Justice a question relating to the interpretation of Article 1(2) of Regulation No. 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats.

Article 1(2) of the regulation lists the products in the sector of oil seeds and oleaginous fruit, which come within that provision, by classifying them under a number in the Common Customs Tariff.

The parties to the main proceedings are two Italian undertakings, one of which bought from the other Brazilian flour extracted from soya.

The solution of the dispute depends on the nature of the product at issue. In effect, if it is covered by a common organization of the market, the Member States may no longer interfere, through national provisions adopted unilaterally (in this case Decree-Law No. 425), in the machinery of price-formation as established under the common organization.

After an examination of the various tariff headings in question, the Court ruled that flour extracted from soya must be classified under heading Ex 23.04 of the Common Customs Tariff and is therefore included among the products listed in Article 1(2) of Regulation No. 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats.

Judgment of 23 March 1982

Case 53/81

D.M. Levin v Staatssecretaris van Justitie

(Opinion delivered by Advocate General Sir Gordon Slynn on 20 January 1982)

1. Free movement of persons - Worker - Activity as an employed person - Concepts - Restrictive interpretation - Not possible

(EEC Treaty, Art. 48)

2. Free movement of persons - Worker - Concept - Effective and genuine pursuit of activity as an employed person - Immaterial

(EEC Treaty, Art. 48)

3. Free movement of persons - Worker - Motives prompting search for employment in another Member State - Of no account as regards right to enter and reside

(EEC Treaty, Art. 48)

1. The concepts of "worker" and "activity as an employed person" define the field of application of one of the fundamental freedoms guaranteed by the Treaty and, as such, may not be interpreted restrictively.

2. The provisions of Community law relating to freedom of movement for workers also cover a national of a Member State who pursues, within the territory of another Member State, an activity as an employed person which yields an income lower than that which, in the latter State, is considered as the minimum required for subsistence, whether that person supplements the income from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support lower than the said minimum, provided that he pursues an activity as an employed person which is effective and genuine.

3. The motives which may have prompted a worker of a Member State to seek employment in another Member State are of no account as regards his right to enter and reside in the territory of the latter State provided that he there pursues or wishes to pursue an effective and genuine activity.

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NOTE

The Raad van State [Council of State] of the Netherlands referred to the Court of Justice for a preliminary ruling three questions concerning the interpretation of Article 48 of the Treaty and of certain provisions contained in Community directives and regulations on the free movement of persons within the Community.

The facts were as follows:

The appellant in the main action, Mrs Levin, who is of British nationality and whose spouse is a national of a non-member country, applied for a residence permit in the Netherlands. Her application was rejected, on the basis of the law in the Netherlands, on the ground that she had no occupation in the Netherlands and therefore could not be regarded as a "favoured EEC citizen" within the meaning of the Netherlands law.

Mrs Levin appealed against that decision and brought an action claiming that in the meantime she had taken up paid employment in the Netherlands and that in any case she and her husband had property and income more than sufficient to support themselves, even without employment.

The first and second questions

The national court asked in essence whether the provisions of Community law concerning the free movement of workers covered a national of a Member State whose employment in another Member State produced an income which was below the minimum subsistence level defined by the laws of the Member States in which he worked.

In particular, the court asked whether such persons were covered by the provisions if they either supplemented the income from employment by other income so as to achieve that minimum, or made do with means below that minimum.

Article 48 of the Treaty states that freedom of movement for workers is guaranteed within the Community. It requires the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

Whilst the rights deriving from the principle of free movement of workers and, more particularly, the right to enter and stay in a Member State, are thus linked to the fact of being a worker or a person pursuing or intending to pursue paid employment respectively, the terms "worker" and "paid employment" are not expressly defined in any of the relevant provisions.

The Governments of the Netherlands and of Denmark submitted that the provisions in Article 48 of the Treaty could be relied upon only by those whose earned income was not less than what was considered by the legislation of the member State in which they worked as necessary for subsistence, or whose working hours were not less than the normal working hours for full time work in the sector in question. National criteria must be applied in order to decide what constituted both the minimum wages and the minimum working hours.

The Court re-iterated the principle laid down in a previous decision (Judgment of 19 March 1964, Hoekstra (née Unger)) that "worker" and "paid employment" may not be defined by reference to the laws of the Member States but have a scope which is determined by Community law; were it otherwise the rule on the free movement of workers could not be applied.

The term "worker" and "paid employment" must therefore be explained in the light of the principles obtaining within the Community legal order.

The recitals in the preamble to Regulation No. 1612/68 contain a general confirmation of the right of all the workers of the Member States to pursue their chosen occupation within the Community irrespective of whether they are permanent, seasonal or frontier workers or persons who pursue their activities for the purpose of providing services.

"Worker" and "paid employment" must be construed in such a manner that the rules on the free movement of workers extend to include persons who are employed or intend to take up employment only on a part-time basis.

It should be noted, however, that although part-time work is not excluded from the Community rules the occupation must be a real and genuine one, activities which are so minimal that they may be considered purely marginal and accessory being excluded.

The Community rules guarantee freedom of movement only for persons pursuing or intending to pursue a gainful occupation.

Third question

The question asks in essence whether the right to enter and stay in a Member State may be denied to a worker whose arrival or stay in that country is principally directed to ends other than the pursuit of paid employment as defined in the reply to the first two questions.

Article 48 (3) of the Treaty states that workers enjoy the right to move freely within the territory of Member States "for [the] purpose of accepting offers of employment actually made. Workers enjoy the right to stay in a Member State "for the purpose" of employment there.

Those expressions merely reflect the requirement inherent in the principle of freedom of movement for workers that the advantages conferred by these provisions of Community law in order to constitute such freedom may be claimed only by those who actually pursue or genuinely intend to pursue paid employment. They do not imply, however, that the enjoyment of such freedom may be made to depend upon the motives of the national of a Member State for seeking to enter or stay in another Member State provided that he pursues or intends to pursue there actual and genuine paid employment.

In reply to the questions which were referred to it the Court ruled as follows:

"1. The provisions of Community law relating to freedom of movement for workers also covers a national of a Member State who pursues in the territory of another Member State the activity of an employed person which yields an income lower than that which in the last-mentioned State is considered as the minimum required for subsistence, whether that person supplements the income derived from his activity as an employed person with other income so as to arrive at that minimum or is satisfied with means of support which are lower than that minimum, provided that he pursues an actual and genuine activity as an employed person.

2. The motives which may have prompted a worker of a Member State to seek employment in another Member State are immaterial as far as his right to enter and stay in the territory of the last-mentioned State are concerned, provided that he pursues or wishes to pursue an actual and genuine activity."

Judgment of 23 March 1982

Case 79/81

Margherita Baccini v Office National de l'Emploi

(Opinion delivered by Mr Advocate General P. VerLoren van Themaat on 10 February 1982)

1. Social security for migrant workers - Community rules - Restriction of advantages resulting from the application of Community regulations - Maintenance of advantages obtained under national legislation alone

   (EEC Treaty, Arts. 48 to 51)

2. Social security for migrant workers - Benefits - National rules against overlapping - Unemployment benefit - Benefit subject under national legislation to fitness for work - Fitness for work recognized - Refusal to grant allowance because of an invalidity pension granted by another Member State - Not permissible

   (EEC Treaty, Art. 51; Regulations Nos. 1408/71, Art. 12 (2), and 574/72 of the Council)

1. Although restrictions may be placed on migrant workers as a counterpart to the advantages which they derive under the Community regulations and which they could not obtain without them, the aim of Articles 48 to 51 of the EEC Treaty would not be achieved if the effect of the application of those regulations were to withdraw or reduce the social security advantages which a worker enjoys under the legislature of one Member State alone.

2. Article 51 of the Treaty and Regulations Nos. 1408/71 and 574/72 of the Council must be interpreted as meaning that where, under the national legislation of a Member State, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said Member State, those authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another Member State of an aggregated and apportioned invalidity pension determined in accordance with Community rules.

NOTE

The Cour du Travail [Labour Court], Mons (Belgium), referred to the Court of Justice for a preliminary ruling a number of questions concerning social security for migrant workers. The parties to the main action were Mrs Baccini and the Office National de l'Emploi [National Employment Office].

Mrs Baccini, who is of Italian nationality, worked first in Italy and subsequently in Belgium. In the latter country she was paid an invalidity allowance from 5 July 1973.

As required by the Community regulations the Institut National d'Assurance Maladie-Invalidité informed the Istituto Nazionale della Previdenza Sociale of Mrs Baccini's invalidity.

Regulation No. 1408/71 [Art. 40 (4)] states that "a decision taken by an institution of a Member State concerning the degree of invalidity of the claimant shall be binding on the institution of any other Member State concerned, provided that the concordance between the legislations of these States on conditions relating to the degree of invalidity is acknowledged in Annex IV".

The Italian institution awarded Mrs Baccini an invalidity pension from 1 August 1974 which took into account the periods of work she had completed in Italy and in Belgium.

Subsequently the medical officer of the competent Belgian institution certified that Mrs Baccini was no longer unfit for work and payment of the Belgian invalidity allowance ceased. However, she was allowed to draw Belgian unemployment benefit, which she did from 28 April to 4 June 1975 and then from 1 September 1977.

The Belgian legislation provides that a worker in receipt of allowances paid under a foreign sickness and invalidity insurance scheme by reason of a degree of incapacity for work of at least 50% is not entitled to receive unemployment benefit on the ground of being unfit for work.

On the basis of those provisions the head of the Belgian insurance institution denied Belgian unemployment benefit to Mrs Baccini and sought to recover the payments she had already received.

As a result of the dispute the Cour du Travail, Mons, requested a preliminary ruling on questions which were in substance as follows:

First, whether Article 51 of the EEC Treaty and Regulations Nos. 1408/71 and 574/72 must be interpreted as meaning that it is in accordance with the aims of the Treaty for a migrant worker to be prohibited by national rules prohibiting the overlapping of benefits from receiving unemployment benefit in a State in which he is no longer considered to be unfit for work on the ground that he is drawing, in another Member State, an apportioned invalidity pension calculated under the Community regulations;

Secondly whether, if the first question is answered in the affirmative, such a situation is not "itself the result of the enjoyment of the invalidity pension under Regulation No. 1408/71 so that the regulation does not provide the security required by Article 51 of the Treaty and is contrary to the objectives of the Treaty".

The Court ruled in reply that:

"Article 51 of the EEC Treaty, 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 fixing the procedures for implementing that regulation must be interpreted as meaning that where, under the national legislation of a Member State, the right of a migrant worker to unemployment benefit depends on his fitness for work and such fitness for work has been accepted by the competent authorities of the said Member State, such authorities may not refuse the worker in question unemployment benefit on the ground that he is in receipt in another Member State of an aggregated and apportioned invalidity pension determined in accordance with Community rules".

Judgment of 23 March 1982

Case 102/81

Nordsee Deutsche Hochseefischerei GmbH v
Reederei Mond Hochseefischerei Nordstern AG & Co. KG and
Reederei Friedrich Busse Hochseefischerei Nordstern AG & Co. KG

(Opinion delivered by Mr Advocate General Reischl on 2 February 1982)

Preliminary questions - Reference to the Court - National court or tribunal within the meaning of Article 177 of the Treaty - Concept - Arbitration tribunal - Exclusion - Conditions - Questions of Community law raised before the arbitration tribunal - Examination by the national courts - Right of reference to the Court by the latter

(EEC Treaty, Art. 177)

An arbitrator who is called upon to decide a dispute between the parties to a contract under a clause inserted in that contract is not to be considered as a "court or tribunal of a Member State" within the meaning of Article 177 of the Treaty where the contracting parties are under no obligation, in law or in fact, to refer their disputes to arbitration and where the public authorities in the Member State concerned are not involved in the decision to opt for arbitration and are not called upon to intervene automatically in the proceedings before the arbitrator.

If in the course of arbitration resorted to by agreement between the parties questions of Community law are raised which the ordinary courts may be called upon to examine either in the context of their collaboration with arbitration tribunals or in the course of a review of an arbitration award, it is for those courts to ascertain whether it is necessary for them to make a reference to the Court of Justice under Article 177 of the Treaty in order to obtain the interpretation or assessment of the validity of provisions of Community law which they may need to apply in exercising such functions.

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NOTE

The arbitrator in a dispute between three undertakings, all incorporated under German law and established in Bremerhaven, referred to the Court for a preliminary ruling two questions concerning the interpretation of Article 177 of the Treaty and the interpretation of the Council regulations concerning aid from the Guidance Sector of the European Agricultural Guidance and Guarantee Fund ("the Fund") respectively.

The main dispute concerned performance of a contract entered into in 1973 by a number of German shipbuilders. The contract concerned a project for building factory-ships for fishing and its purpose was to apportion among the contracting parties all aid received by them from the Fund.

Of the nine applications submitted for aid the Commission finally accepted only six, the others being rejected.

One of the undertakings participating in the building project sought payment from two of the other undertakings of the amounts to which it was entitled under the contract of 27 June 1973.

A dispute arose on the subject and was submitted for arbitration. Included in the contract of 1973 was a clause stating that in the event of disagreement between the parties a final decision was to be given by an arbitrator, all recourse to the ordinary courts being excluded.

During the arbitration hearing the defendants claimed that the 1973 contract was void in so far as it arranged for aid from the Fund to go to the building of ships in respect of which the Commission had not granted such aid.

The arbitrator was of the opinion that under German law, whether a contract to share aid from the Fund was valid depended on whether such sharing amounted to an irregularity within the meaning of the relevant Community regulations. He referred the matter to the Court for a preliminary ruling.

Applicability of Article 177

Since the arbitration body which referred to the Court for a preliminary ruling was established pursuant to a contract between private individuals the question arose whether it could be considered as a court or tribunal of one of the Member States within the meaning of Article 177 of the Treaty.

The first question asked by the arbitrator was as follows:

> "Is a German arbitration court which must decide not according to equity but according to law and whose decision has the same effects as regards the parties as a definitive judgment of a court of law (Article 1040 of the Zivilprozessordnung [rules of civil procedure]) authorized to make a reference to the Court of Justice of the European Communities for a preliminary ruling pursuant to the second paragraph of Article 177 of the EEC Treaty?"

It is true, the Court stated, that there are certain similarities between the activities of the arbitration body in question and those of an ordinary court or tribunal, inasmuch as the arbitration is provided for within the framework of the law, the arbitrator must decide matters according to law and his award is binding on the parties and may be the subject of an order for enforcement.

The first important point to note, however, is that when the contract was entered into in 1973 the parties were free to elect to have their disputes resolved by the ordinary courts, or to opt for arbitration by inserting a clause to that effect in the contract.

The second point is that the German public authorities were not involved in the decision to opt for arbitration and that they are not called upon to play a rôle in the proceedings before the arbitrator.

The link between the arbitration procedure in this instance and the organization of legal remedies through the courts in the Member States in question is therefore not sufficiently close for the arbitrator to be considered as a "court or tribunal of a Member State" within the meaning of Article 177.

The Court declared that it had no jurisdiction to give a ruling on the questions referred to it by the arbitrator.

Judgment of 25 March 1982

Case 45/81

Alexander Moksel Import-Export GmbH & Co. Handels KG v
Commission of the European Communities

(Opinion delivered by Mr Advocate General VerLoren van Themaat on 4 February 1982)

Measures adopted by institutions - Regulation No. 3318/80 - Legal nature

(EEC Treaty, Art. 189; Commission Regulation No. 3318/80)

It must be deduced from its purpose, from the framework of the regulations of which it forms part and also from its very nature that Regulation No. 3318/80 temporarily suspending the advance fixing of export refunds for beef meat products is indeed a regulation which is of general application; the nature of such a measure as a regulation is not called in question by the sole fact that it may be possible to determine the number or even the identity of certain traders concerned.

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Judgment of 31 March 1982

Case 25/81

C.H.W. v G.J.H.

(Opinion delivered by Mrs Advocate General Rozès on 27 January 1982)

1. Convention on Jurisdiction and the Enforcement of Judgments - Scope - Application for interim measures relating to a dispute concerning the proprietary relationships between spouses - Exclusion - Conditions

   (Convention of 27 September 1968, Art. 1)

2. Convention on Jurisdiction and the Enforcement of Judgments - Scope - Provisional or protective measures relating to excluded matters - Inclusion - None

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

3. Convention on Jurisdiction and the Enforcement of Judgments - Prorogation of Jurisdiction - Appearance of defendant before the court seised - Appearance not only to contest the jurisdiction but also to make submissions on the substance - Appearance not conferring jurisdiction

   (Convention of 27 September 1968, Art. 18)

1. An application for provisional measures to secure the delivery up of a document in order to prevent it from being used as evidence in an action concerning a husband's management of his wife's property does not fall within the scope of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters if such management is closely connected with the relationship resulting directly from the marriage bond.

2. Article 24 of the Convention of 27 September 1968 may not be relied on to bring within the scope of the Convention provisional or protective measures relating to matters which are excluded from it.

3. Article 18 of the Convention of 27 September 1968 must be interpreted as meaning that it allows the defendant not only to contest the jurisdiction but to submit at the same time in the alternative a defence on the substance of the action without however losing the right to raise an objection of lack of jurisdiction.

NOTE

The Hoge Raad [Supreme Court] of the Netherlands submitted to the Court a number of questions on the interpretation of the provisions of the Convention on Jurisdiction in Civil and Commercial Matters of 27 September 1968.

The questions arose in proceedings between two spouses of Netherlands nationality, domiciled in Belgium, regarding the husband's management of his wife's property.

The wife sought to produce in evidence a document drawn up by the husband bearing the word "codicil", the provisions of which were intended to exempt the wife's property from any charges resulting from management of it by the husband and the husband applied to the court for an order that the document should be returned to him and that its use in evidence should be prohibited.

The national court asked, essentially, whether, under the second paragraph of Article 1 of the Convention, an application for a provisional measure concerning the return of a document bearing the word "codicil" likely to be used in evidence in proceedings relating to a husband's management of property owned by his wife must be excluded from the application of the Convention as relating either to "wills and succession" or to "matrimonial régimes".

The trial court also asked the Court of Justice for an interpretation of the concept of "provisional or protective measures" contained in Article 24 of the Convention and for an interpretation of Article 18 of that Convention.

In answer to those questions, the Court ruled that:

(1) An application for provisional measures intended to secure the return of a document in order to preclude its use as evidence in proceedings concerning a husband's management of his wife's property does not fall within the field of application of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 if such management is closely connected with property relationships directly resulting from the marriage bond.

(2) Article 24 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commerical Matters of 27 September 1968 may not be relied upon to bring within the field of application of that Convention provisional or protective measures relating to matters which are excluded from it.

(3) Article 18 of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 must be interpreted as enabling a defendant not only to challenge the jurisdiction of the court but at the same time to submit, in the alternative, a defence on the substance of the case, without thereby losing the right to raise the objection of lack of jurisdiction.

Judgment of 31 March 1982

Case 75/81

Joseph Henri Thomas Blesgen v Belgian State

(Opinion delivered by Mr Advocate General Reischl on 9 February 1982)

Free movement of goods - Quantitative restrictions - Measures having equivalent effect - Prohibition on offering certain spirits for consumption on the premises in places open to the public - Prohibition on keeping spirits on premises appurtenant to the establishment open to the public - Permissibility

(EEC Treaty, Art. 30)

The concept in Article 30 of the EEC Treaty of measures having an effect equivalent to quantitative restrictions on imports is to be understood as meaning that the prohibition laid down by that provision does not cover a national measure applicable without distinction to domestic and imported products which prohibits the consumption, sale or offering even without charge of spirituous beverages of a certain alcoholic strength for consumption on the premises in all places open to the public as well as the stocking of such drinks on premises to which consumers are admitted or in other parts of the establishment or in the dwelling appurtenant thereto, in so far as the latter prohibition is complementary to the prohibition of consumption on the premises.

Since it does not affect other forms of marketing of the spirits referred to and since the restrictions which it imposes make no distinction whatsoever based on the nature or origin of the spirits such a national measure has in fact no connexion with the importation of the products and for that reason is not of such a nature as to impede trade between Member States.

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NOTE

The Belgian Court of Cassation submitted to the Court of Justice a number of questions on the interpretation of Articles 30 to 36 of the EEC Treaty (free movement of goods) to enable it to decide whether certain provisions of the Belgian Law of 29 August 1919 regarding the rules on alcohol were compatible with Community law.

The questions arose in criminal proceedings brought by the Belgian authorities against a restaurant proprietor charged, under the above-mentioned Law, with the offence of holding stocks of and serving in his restaurant spirits whose alcoholic strength exceeded 22° at a temperature of 15°C.

The defendant contended that even though the provisions of the Law of 1919 were applied both to national and to imported products without distinction they constituted measures having an effect equivalent to quantitative restrictions on imports of spirits, contrary to Article 30 of the EEC Treaty.

Those measures could not be justified on any of the grounds set forth in Article 36, since the protection of health and life of humans did not constitute a case of certain, present necessity.

Accordingly the Court of Cassation asked the Court, essentially, whether the concept of measures having an effect equivalent to quantitative restrictions contained in Article 30 of the EEC Treaty also extended to measures prohibiting the consumption, with or without charge, and the holding of stocks on all premises open to the public and in other parts of the establishment and in any adjoining dwelling, of spirits whose alcoholic strength exceeds 22°, even if that prohibition is applied without distinction to national and imported products and is not intended to protect national production.

According to the Belgian Government, the Law in question does not fall within the prohibition contained in Article 30 of the EEC Treaty, since it has no restrictive effect on trade within the Community and there is no discrimination between imported products and national products.

The Law of 1919 is of general application and is one of the measures intended to combat alcoholism and to protect young people from the harmful effects of alcohol. It constitutes a legitimate political and social measure which is consonant with the objectives pursued by the Treaty, which are in the general interest.

Under Article 30 of the EEC Treaty, all measures having an effect equivalent to quantitative restrictions on imports are prohibited, as are all measures having an equivalent effect on trade between Member States. In consequence, the Community provisions prohibit any measure which is likely directly, indirectly, actually or potentially to restrict trade within the Community.

According to Article 3 of Directive No. 70/50/EEC of the Commission, the prohibition contained in Article 30 of the Treaty extends to national measures governing the marketing of products, even if they apply without distinction to national products and to imported products, where their restrictive effect on the free movement of goods exceeds the effects intrinsic to trade rules.

That is however not the case where a legislative provision relates to the sale of spirits with a high alcoholic content with a view to their consumption on the premises in all places accessible to the public and does not relate to other methods of marketing those beverages. Moreover, the restrictions imposed on the sale of the spirits concerned do not make any distinction as to their nature or origin.

A legislative measure of that kind therefore does not in fact have any connexion with the importation of the products and accordingly is not such as to restrict trade between Member States. The same considerations apply equally to the prohibition on the holding of stocks of the beverages in question on premises adjoining an establishment accessible to the public.

The Court ruled as follows:

"The concept in Article 30 of the EEC Treaty of measures having an effect equivalent to quantitative restrictions on imports is to be understood as meaning that the prohibition laid down by that provision does not cover a national measure applicable without distinction to national and imported products which prohibits the consumption, sale or offering even without charge of spirits of a certain alcoholic strength for consumption on the premises in all places open to the public as well the stocking of such beverages on premises to which consumers are admitted or in other parts of the establishment or in any adjoining dwelling, in so far as the latter prohibition is complementary to the prohibition of consumption on the premises".

ANALYTICAL TABLE

FAILURE OF A MEMBER STATE TO FULFIL AN OBLIGATION

FREE MOVEMENT OF GOODS

FREE MOVEMENT OF PERSONS

FREEDOM TO PROVIDE SERVICES

INTERNATIONAL AGREEMENTS

MEASURES ADOPTED BY INSTITUTIONS

PROCEDURE

SOCIAL POLICY

SOCIAL SECURITY FOR MIGRANT WORKERS

TAX PROVISIONS

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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 International Services Branch of the Court of Justice of the European Communities, L - 2920, 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 2 250 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
FRANCE	Editions A. Pedone, 13 Rue Soufflot, 75005 Paris
FEDERAL REPUBLIC OF GERMANY	Carl Heymann's Verlag, 18-32 Gereonstrasse, 5000 Köln 1
GREECE	
IRELAND	Stationery Office, Beggar's Bush, Dublin 4
ITALY	CEDAM - Casa Editrice Dott. A. Milani, 5 Via Jappelli, 35100 Padova (M 64194)
LUXEMBOURG	Office for Official Publications of the European Communities, L 2985 Luxembourg
NETHERLANDS	N.V. Martinus Nijhoff, 9 Lange Voorhout, 's-Gravenhage
UNITED KINGDOM	Hammick, Sweet & Maxwell, 16 Newman Lane, Alton, Hants, GU 34 2PJ
OTHER COUNTRIES	Office for Official Publications of the European Communities, L - 2985 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, L - 2985, Luxembourg.

C. GENERAL LEGAL INFORMATION AND DOCUMENTATION

I. Digest of case-law relating to the European Communities

The Court of Justice has commenced publication of the "Digest of case-law relating to the European Communities" which will present in systematic form all the case-law of the Court of Justice of the European Communities and also a selection of decisions given by the courts of Member States. Its design follows that of the "Repertoire de la Jurisprudence relative aux Traités instituant les Communautés Européennes/ Europäische Rechtsprechung" prepared by H.J. Eversen and H. Sperl until 1976 (English edition 1973 to 1976 by J. Usher). The Digest will be produced in all the languages of the Community. It will be published in loose-leaf binders and periodical supplements will be issued.

The Digest will be made up of four series, concerning the following fields, which will appear and may be purchased separately:

A Series : Cases before the Court of Justice of the European Communities, excluding matters dealt with in the C and D Series.

B Series : Cases before the courts of Member States, excluding matters dealt with in the D Series.

C Series : Cases before the Court of Justice of the European Communities concerning officials of the European Communities.

D Series : Cases before the Court of Justice of the European Communities and before the courts of Member States concerning the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters. (This series replaces the "Synopsis of case-law" published in successive parts by the Documentation Branch of the Court which has now been discontinued).

The first part of the A Series will be published during 1982, starting with the French language edition. This part will contain the decisions of the Court of Justice of the European Communities given during the period 1977 to 1979. Periodical supplements will be published.

The first part of the D Series will appear in Autumn 1981.

It relates to the case-law of the Court of Justice of the European Communities from 1976 to 1979 and the case-law of courts of the Member States from 1973 to 1978. The first supplement will deal with the 1980 case-law of the Court of Justice and the 1979 case-law of national courts.

The price of the first part of the D Series (about 700 pages, binder included) is:

Bfr	2 000	Lit	63 000
Dkr	387	Hfl	136
FF	290	DM	123
Dr	3 000	£stg	25.60
£Ir	33.40	US$	55

The price of the subsequent parts will be fixed on the basis of the price of the first part.

Orders should be sent either to the Office for Official Publications of the European Communities, 5 Rue du Commerce, L-2985, Luxembourg, or to one of the addresses given under B1 above.

II. 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 (L - 2920, 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 of Justice of the European Communities

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. No Greek version is available.

The first three documents are published in all the official languages of the Community.

III. Publications by the Library of the Court of Justice

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.

The period of collection and compilation covered by the Bulletins which have already appeared is from February 1976 to June 1980 (multilingual).

No. / Currency	1977/1	1978/1	1978/2	1979/1	79/80
Bfr	100	100	100	100	100
FF	10	14	14.60	14.50	14.50
Lit	1 250	2 650	2 800	3 000	3 000
Hfl	7.25	7	6.90	6.85	6.80
DM	8	6.50	6.25	6.25	6.10
Dkr	16	17.25	18	19.50	20
£stg	1.10	1.70	1.60	1.50	1.30
£Ir	-	-	-	1.70	1.70

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 (L - 2920, Luxembourg), by registered post.

Any lawyer who is entitled to practice 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
Carnival Monday	variable
Maundy Thursday	variable
Good Friday	variable
Easter Monday	variable
Extra day in compensation for May Day	3 May
Ascension Day	variable
Whit Monday	variable
Luxembourg National Day	23 June
Assumption	15 August
Schobermesse	30 August
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

BELGIUM

73 Rue Archimède
1040 Brussels (Tel. 7350040)

DENMARK

4 Gammel Torv
Postbox 144
1004 Copenhagen (Tel. 144140)

FEDERAL REPUBLIC OF GERMANY

22 Zitelmannstrasse
5300 Bonn (Tel. 238041)

102 Kurfürstendamm
1000 Berlin 31 (Tel. 892 40 28)

FRANCE

61 Rue des Belles Feuilles
75782 Paris CEDEX 16 (Tel. 5015885)

GREECE

2, Vassilissis Sofias
T.K. 1602
Athens 134 (Tel. 743982)

IRELAND

39, Molesworth Street
Dublin 2 (Tel. 712244)

ITALY

29 Via Poli
00187 Rome (Tel. 6789722)

61 Corso Magenta
20100 Milan (Tel. 803171 ext. 210)

LUXEMBOURG

Jean Monnet Building
Centre Européen
Luxembourg-Kirchberg (Tel. 43011)

NETHERLANDS

29 Lange Voorhout
The Hague (Tel. 469326)

UNITED KINGDOM

20, Kensington Palace Gardens
London W8 4QQ (Tel. 7278090)

4, Cathedral Road
P.O. Box 15
Cardiff CF1 9SC (Tel. 371631)

7, Alva Street
Edinburgh EH2 4PH (Tel. 2252058)

Windsor House, Block 2, 20th floor
9/15 Bedford Street,
Belfast

II. NON-MEMBER COUNTRIES

CANADA

Inn of the Provinces
Office Tower (Suite 1110)
350 Sparks Street
Ottawa Ont. KIR 7S8
(Tel. (613) 2386464)

CHILE

1177 Avenida Ricardo Lyon
Casilla 10093
Santiago 9 (Tel. 250555)

JAPAN

Kowa 25 Building
8-7 Sanbancho
Chiyoda-Ku
Tokyo 102 (Tel. 2390441)

PORTUGAL

35 rua da Sacramento à Lapa
1200 Lisbon (Tel. 66 75 96)

SPAIN

Oficina de Prensa e
Información CE
Centro Serrano 41, 5° Piso
Madrid 1

SWITZERLAND

Case Postale 195
37-39 Rue de Vermont
1211 Geneva 20 (Tel. 349750)

THAILAND

10th floor Thai Military Bank
Building
34, Phya Thai Road
Bangkok (Tel. 282 1452)

TURKEY

13, Bogaz Sokak, Kavaklidere
Ankara (Tel. 276145)

USA

2100 M Street, NW, Suite 707
Washington DC 20037
(Tel. 202.8629500)

1, Dag Hammarskjöld Plaza
245 East 47th Street
New York NY 10017
(Tel. 212.3713804)

VENEZUELA

Quinta Bienvenida, Valle Arriba,
Calle Colibri, Distrito Sucre
Caracas (Tel. 925056)


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