Information on the Court of Justice of the European Communities

N. XIX

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INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. XIX

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

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INFORMATION ON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Complete list of publications giving information on the Court:

I. Information on current cases (for general use)

1. Hearings of the Court

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

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

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

3. Judgments and opinions of Advocates-General

Photocopies of these documents are sent to the parties and may be obtained on request by other interested persons, after they have been read and distributed at the public hearing. Free of charge. Requests for judgments should be made to the Registry. Opinions of the Advocates-General may be obtained from the Press and Information Branch. As from

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

II. Technical information and documentation

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

1. Reports of Cases before the Court

The Reports of Cases before the Court are the only authentic source for citations of judgments of the Court of Justice. The volumes for 1954 to 1961 and 1970 to 1972 are published in Dutch, French, German and Italian; the volumes for 1973 onwards are also published in English and in Danish. An English edition of the volumes for 1954-72 will be completed by the end of 1977, the volumes for 1962-70 inclusive having already been published.

2. Legal publications on European integration (Bibliography)

New edition in 1966 and supplements.

3. Bibliography of European case-law

Concerning judicial decisions relating to the Treaties establishing the European Communities. 1965 edition with supplements.

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

New edition published in 1975.

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

1'OFFICE DES PUBLICATIONS DES COMMUNAUTÉS EUROPÉENNES,
5, Rue du Commerce, Case Postale 1003, Luxembourg.

and from the following addresses:

Belgium:	Ets. Emile Bruylant, Rue de la Regence 67, 1000 BRUSSELS
Denmark:	J. H. Schultz' Boghandel, Møndergade 19, 1116 COPENHAGEN K
France:	Editions A. Pedone, 13, Rue Soufflot, 75005 PARIS
Germany:	Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 KÖLN 1
Ireland:	Messrs. Greene & Co., Booksellers, 16, Clare Street, DUBLIN 2
Italy:	Casa Editrice Dott. A. Milani, Via Jappelli 5, 35100 PADUA M. 64194
Luxembourg:	Office des publications officielles des Communautés européennes, Case Postale 1003, LUXEMBOURG
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, 's GRAVENHAGE
United Kingdom:	Sweet & Maxwell, Spon (Booksellers) Limited, North Way, ANDOVER, HANTS, SP10 5BE
Other Countries:	Office des Publications officielles des Communautés européennes, Case Postale 1003, LUXEMBOURG

B. Publications issued by the Press and Legal Information service of The Court of Justice

1. Information on the Court of Justice

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

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

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

3. General booklet of information on the Court of Justice

These three documents are published in the six official languages of the Community while the general booklet is also published in Spanish. They may be ordered from the information offices of the European Communities at the addresses given on page 1. They may also be obtained from the Information Service of the Court of Justice, B.P. 1406, Luxembourg.

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

Répertoire de la jurisprudence relative aux traités instituant les Communautés européennes

Europäische Rechtsprechung

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

The German and French editions are available from:

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

As from 1973 an English edition has been added to the complete French and German editions. The first volume of the English series is on sale from:

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

III. Visits

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

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

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

* * *

Public holidays in Luxembourg

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

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

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IV. Composition of the Court of Justice of the European Communities

(Order of precedence)

R. LECOURT, President
H. KUTSCHER, President of Second Chamber
H. MAYRAS, First Advocate-General
A. O'CAOIMH, President of First Chamber
A. M. DONNER, Judge
A. TRABUCCHI, Advocate-General
J. MERTENS DE WILMARS, Judge
P. PESCATORE, Judge
M. SØRENSEN, Judge
J.-P. WARNER, Advocate-General
LORD MACKENZIE STUART, Judge
G. REISCHL, Advocate-General
F. CAPOTORTI, Judge

	First Chamber	Second Chamber
Presidents of Chambers:	A. O'CAOIMH	H. KUTSCHER
Judges:	A. M. DONNER	P. PESCATORE
	J. MERTENS DE WILMARS	M. SØRENSEN
	F. CAPOTORTI	LORD MACKENZIE STUART
Advocates-General:	J.-P. WARNER	H. MAYRAS, First Advocate-General
	G. REISCHL	A. TRABUCCHI

V. Summary of types of procedure before the Court of Justice

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

A. References for preliminary rulings

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

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

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

B. Direct actions

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

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

The application must contain:

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

The application should also be accompanied by the following documents:

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

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

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

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

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

* * *

Funeral oration for Walter Strauss delivered by the President, Robert Lecourt on 20 January 1976

The list of those who have honoured our Court and who have passed away is already long.

It is not yet 24 years since our institution came into existence, and now it is in mourning for the tenth time: Walter Strauss is no longer with us.

For seven years he shared in our work, enriched our discussions with his experience and contributed to the development of the case-law of the Court at a time of vital importance in the judicial history of the Community.

But he had experience of far wider fields of cultural activity.

Legal, economic and historical studies pursued at the Universities of Freiburg im Breisgau, Heidelberg, Munich and Berlin gave him a solid basic education. Thanks to them he became Referendar and Doctor of Laws at the University of Heidelberg at the age of 24.

This laid the foundation of a working life which was remarkable both for its diversity and for its unity. For nearly half a century the lawyer in him was in competition with the economist: the man of study with the man of action.

We find him, first, from 1924 to 1926, attached to the Chamber of Commerce and Industry in Berlin. In 1927, he became an auxiliary judge in that same city. But for only a short while. Two years later we find him established in the Ministry for Economic Affairs. Established? It was not to be, since in 1935 he was ostracized and dismissed.

He then had the courage to face a complete and difficult change. Having been forced to abandon the Civil Service, which was now barred to him, he plunged, at the age of 35, into the uncertainties of an independent profession, as an expert and independent adviser to groups of lawyers and to ecclesiastical organizations. He spent eleven years in this way before the possibility finally arose to devote himself once more to the public service.

But these trials had both strengthened his character and widened his experience. In 1946 he became Secretary of State with responsibility for the Land of Hesse. One year later he became Assistant Director of the Economic Administration of the Bizone and, in 1949, Head of the latter's Legal Service. Economics and law, the public and private sectors thus prepared him for the positions of authority which awaited him thereafter.

Fresh duties were laid upon him, first of a national character, as Secretary of State at the Federal Ministry of Justice, a post which he occupied for 14 years, from 1949 to 1963, then at a European level, as Judge at the Court of Justice of the European Communities, with effect from that last date.

He arrived at the Court at a time when cases arising from the Treaty of Rome were beginning to proliferate and when questions referred for preliminary rulings were beginning to show a rate of increase which since then has never failed. However, it was also a period during which our Court was required to consider the first of a line of cases through which certain of the fundamental principles of Community law were first stated, in particular, those of direct effect and primacy. Finally, it was also during that period that the first cases concerning competition came before the Court, these being cases in which our colleague felt particularly at ease, owing to the extent to which they reflected both his taste, his education and his experience. When he left the Court in 1970 it had, with his participation, traced the broad outlines of a case-law which has been unfailingly followed since then by the courts of the various Member States.

Having left our Court, Walter Strauss returned to it only too rarely, on ceremonial occasions. One felt that he was worried about his health and failing sight.

We received the news of his death with sadness a few days ago. He was in his 76th year.

Mr Strauss enjoyed the friendship of everyone in the institution. He leaves in their minds an image of uprightness, distinction, discretion and also of courage in adversity.

To Mrs Strauss, whose personal qualities were much in evidence during her presence here, the Members and staff of the Court convey their heartfelt sympathy and condolences. Their memory of her husband is of a man whose whole life was devoted to the service of others.

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Address delivered by the President, Robert Lecourt
at the formal session on 3 February 1976
(Departure of Judge Monaco)

When he arrived amongst us the Court had just established the first milestones along the course of the future case-law of the Economic Community. Now, as he leaves us, the jurisdiction of our Court covers three Communities, nine Member States and, since a matter of a few weeks, the subject-matter of a judicial Convention of great promise.

When he sat with us here for the first time the integration of Community law was a matter of discussion even in his own country. At the time of his departure the Constitutional Court of that country is proclaiming the primacy of Community law and many courts of that State are giving intelligent impetus to a constant flow of questions referred for preliminary rulings.

The time between these events has been spanned by the presence, contribution and activity as Judge at the Court of Justice of the European Communities of our colleague Professor Riccardo Monaco.

We were well aware that even the most efficient of collegiate bodies must be constantly renewed. But we were taken by surprise to learn that the International Institute for the Unification of Private Law should so soon choose from amongst the members of this Court its future Secretary General. Could it be that this new transfer of duties - the second within a year - will lend credence to the idea that the Court may be destined to be a rich source on which to draw? The honour which this attitude would bestow could not, however, soften the sorrow which it feels at each new departure.

Indeed, what a charming personality is now leaving us. A professional training which has made him one of the leading experts in international law, a flair both for private and for public law which is in the tradition of the Italian internationalists of his generation, a long acquaintance with the work of the courts where the law comes face to face with everyday life, an experience of international affairs in which his insights have often been used by his Government, all this enriched by the publication of many works, covered with international renown, enlivened by the resources of a fertile mind, the versatility of a finely-tuned dialectical sense, an extreme good nature and a willingness to seek reconciliations while maintaining the objectives which he has set himself: such is Riccardo Monaco who, as a Member of the Court since 1964, has contributed to the development of a body of Community and social case-law which will always remain implanted in the judicial life of the nine Member States.

A university professor, judge and diplomat: his life has revolved around these three vocations. The Court could only profit from any choice which it might make between them.

If the Court had to highlight, within the very spirit of the authors of the Treaties, the position, the originality, the power, the motive force of Community law it could turn to the Doctor of Laws of the University of Turin who had passed through all stages of university teaching as a holder of a chair of Cagliari, Modena and Turin and professor of international organizations and later of international law at the faculty of political science in Rome.

If it had to marry the law to a complex factual situation, temper its rigour to the requirements of fairness or exercise a fine sense of what is possible the Court could profit from the experience of the former judge of Turin who, having played an active part in the working of the Commission for the Reform of the Legal Codes with the Italian Ministry of Justice, was a member of the Consiglio di Stato, which he left with the title of Honorary President of Section.

If it had to situate Community law in the context of international law the Court could benefit from the contribution of a man who was, respectively, legal adviser to the Italian Ministry for Foreign Affairs, head of the Treaties Department and head of the Diplomatic Legal Service, Governmental Delegate to many international conferences and a member of the Italian delegation to the General Assembly of the United Nations.

The value of a court of law depends upon the coincidence, at an ideal point, of the qualifications of its members and of their human qualities. I mean by this that apart from the contributions made by our colleague in knowledge and experience he was extremely valuable to the Court in that he placed at its disposal the fruits of an active life which has developed in him a spirit of initiative, a feeling for dialogue and the art of constructive compromise which, out of respect for the opposing party, consists in refraining from imposing one's opinion and knowing how, where it is impossible to obtain the whole, to be satisfied with the essentials.

It is not therefore surprising that today the organization which has called him from us has exercised a kind of right of pre-emption over so many values as sound as these, which have, moreover, been endorsed by so many illustrious bodies to which he has belonged and of which he remains an active member, such as the Institute of International Law, the Permanent Court of Arbitration, the Committee on Legal Co-operation of the Council of Europe, of which he was President, the Appeals Council of UNESCO, of which he was also President, quite apart from the various Italian bodies concerned with co-operation with Greece, Germany and the United States, for example.

My dear colleague, you have spent eleven years with us at a stage in the development of the Court where you were able to be the most useful to it. You arrived here at a time when the case-law arising from the Treaty of Rome was taking root. You leave us at a time when the consolidation both of Community law and of legal co-operation appears to be fully assured. You have taken your rightful part in obtaining these results - to such an extent indeed that, at the announcement of your impending departure, for a matter of four months destiny seemed to be suspended as if wishing to hold you back.

How is it possible not to combine with our appreciation of the contribution which you have made to the Court a sense of sadness at your departure? Our sadness is all the stronger for your warmth of manner and the tender good nature of Mrs Monaco at your side.

However, our thoughts must be for the future: we must have in mind the fresh duties which you will be exercising in the cause of the unification of private law. You go with our very best wishes and hope that those duties will bring you to that exalted plane which is the meeting place for those who believe in effective legal co-operation so that man may finally discover, in this bitter and divided world, the paths - which in its sphere the Court of Justice is attempting to establish - towards a fuller measure of unity, justice and peace.

* * *

Address delivered by Judge Riccardo Monaco
at the formal hearing on 3 February 1976

Mr President,
Members of the Court,
Mr Registrar,
Your Excellencies,
Representatives of the other institutions of the Communities,
Ladies and Gentlemen,

My first sentiment at this moment is gratitude to you, Mr President, for the words of high praise, perhaps even too high, which you have spoken of me; and also the great satisfaction I feel in seeing gathered here so many eminent persons, high officials in the Communities and friends whose presence gives me particular pleasure.

When I arrived here, more than eleven years ago, I was well aware that I was seeing the realization of one of my most cherished aspirations because the European ideal I had nurtured for many years was crowned by my appointment to a high and entirely new judicial office. I reached a pinnacle in my career.

Today on my departure I see the most important period in my legal and judicial life draw to a close.

Thanks to the spiritual and technical help which you have lavished on me, Mr President and dear colleagues, I leave richened and strengthened in my European idealism; now more than ever I believe that the ideal of constructing a united Europe which we have pursued together is a question of faith rather than of science and reason since, faced with apparently insuperable difficulties, only faith can sustain the will of man.

In this spirit Luxembourg represents for me far more than the glorious period when I took part in the work of the Court of Justice. Indeed long before my appointment as judge, this city was closely bound up with the course of my life. Since 1952 when I came with a devotion resembling that of a disciple to present my best wishes to President Pilotti, that eminent jurist and grand old man whom the older ones amongst us will certainly recall, and in the following years when I was called on by the early committees of experts of the European Coal and Steel Community; or when in a context closer to Community law, I was invited as the Italian representative to take part in the drafting of the first Rules of Procedure of the Court; or when I had the honour, as Agent of my Government, of pleading before the Court in the first cases before it; and more recently, in following all the stages of European construction and in finding that the work of the Court played a fundamental rôle, my trips to Luxembourg have been very frequent and have represented milestones in my career.

As the Court grew larger and moved from the small Villa Vauban to the Côte d'Eich and finally to this great palace, I have seen the city of Luxembourg grow larger and more modern within this Europe for which I believe I have fought the good fight at the side of my colleagues.

When I think of the long legal path we have trodden together, it is with deep feeling that I recall the figures of judges and of Advocates-General who are no longer at the Court with us and of whom some are unfortunately no longer alive. There is no need to say any more as their memory is writ large in the annals of the Court as each one has been honoured and commemorated by our Presidents.

However I do not wish to give the impression that we are here to remember an aging lawyer since, as the President has just said, I shall continue my task in Rome, my adopted home, undertaking work not so very different from my work here as judge since its final aim is also the unification of law.

Since I shall retain the European faith which I have cherished for thirty years, I shall attempt to involve the Institute where I shall be working in future in drawing closer together various legal systems in Europe.

Clearly Luxembourg represents an important part of my life; therefore my first duty is to express my feelings of profound respect to the Grand Ducal family which has received us with such kindness on many occasions; to the members of the Luxembourg Government with whom we have had the most cordial contacts; to the authorities of the Grand Duchy of Luxembourg with whom I have maintained most friendly relations.

Mr President, you have traced in a most impressive way the portrait of one who today, with great emotion and gratitude, is leaving you and once again I thank you.

I should also like to thank your wife Marguerite whose kindness is equalled only by her warm-heartedness.

I must also express my gratitude to my colleagues and to their wives - I cannot name them all individually. Throughout the years, and today once again by their presence and their friendliness, they have made our meetings more agreeable and have helped to make my stay here particularly enjoyable.

My gratitude must also go to the Registrar, one of my oldest friends, and I also convey my best wishes to his wife, Antoinette.

As to the officials at the Court of Justice I hope they know that I am well aware that it is due to them and to their work that during my stay I have been able to carry out my task. Miss Maggioni deserves special mention for having helped me so many times in my research into theory and decided cases.

I should now like to make special mention of the invaluable assistance given by my immediate collaborators: Mr Neri who faithfully interpreted my ideas - and also his own - thus producing sometimes a fine synthesis to submit to the Court; Mrs Franzosini who ensured for this long period the smooth running of my chambers; Mrs Roseren who in the last few years has made a valued contribution to our team. Particular thanks must also go to Mr Natante who has driven me faithfully and in complete safety not only in Luxembourg but throughout Europe.

My departure is a sad occasion for me but I leave confident that my task here at the Court will be maintained as my place is being taken by a colleague, Professor Capotorti, whom I have known for many years and of whose value and capacities I have the highest opinion.

At every leavetaking one promises to return soon, as long-established habits of life and work are not so easily broken. May I too make that promise in the certitude that I shall keep it? I can indeed and I reaffirm that I shall retain in my memory and in my heart all the benefits I have received from the Court and all that I have learned from you Mr President and from my well-loved colleagues.

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Speech delivered by the President, Robert Lecourt
at the formal session on 3 February 1976
(In welcome of Mr Capotorti)

In filling the place left vacant by the departure of Professor Monaco, the Member States have chosen one whose career has been similar to that of his predecessor at this Court. Like Professor Monaco, he is a product of the university world, like him, he has many publications to his name, and like him, he has been very active in the international sphere. He thus emerges, from the main highlights to be discerned in his career, as one who will carry on where the member to whom we have just said farewell has left off. Such unchanging change is surely something full of advantages for a Court such as ours.

Having the fine sense of timing to make his arrival amongst us coincide - to within a few days - with the achievement of his half century, Mr Francesco Capotorti brings us his threefold experience as a university professor - from a highly regarded university -, as an author - whose writings are greatly esteemed - and as a practising lawyer familiar with the ways of the highest international tribunals.

He was born in Naples, and he was educated in that same city. It was at Naples that at the age of 20 - a record! - he obtained the degree of Doctor of Laws. It was at the University of Naples that, in the following year, he became as assistant lecturer. And when later, after having - at the age of 26 - obtained the "libera docenza" in international law, he goes to teach in other universities, it is with a solid background behind him acquired in the brilliant light of the famous Bay of Naples. Following Italian tradition, he had, like others before him, drunk at the wells of international law, both private and public.

His next step was to go to Cagliari, to a lectureship in the institutions of public law, and then international law. Two years later he was appointed first Professor of International Law at the University of Bari. He was to stay there for 13 years. But Naples could not fail to exercise its irresistible appeal over him. Hence it came about that in 1968 he was invited to take up a professorship at the University of that city on international organizations. The wheel seemed to have come full circle. But not for long! For all roads lead to Rome ... Thus from 1970 we find him teaching private international law there.

However promising this gradual rise in the university world may have been, it was in reality a preparation for another career with wider horizons.

Carried forward by the discipline of legal studies, for which people are enthusiastic at a time when distances are being reduced, when the interdependence of the nations is becoming the rule, and also when international problems are becoming more difficult, the inevitable happened and Mr Capotorti was forced to leave his own university.

Thus he went to teach abroad: at the University of Valladolid and at the School for International Civil Servants in Madrid, at the Academy of International Law at The Hague, and at the International Centre for European Studies and Research in Luxembourg. There thus already began to take shape within him, through his teaching, a Community outlook which he was to retain, and which was confirmed by his lectures at the University Institute for European Studies at Turin and became more and more apparent in his writings. For he has been a writer as well as a university professor.

He has written articles for legal magazines and for academic bodies. He has been on the academic committee of two important Italian publications on international law, and has taken part in the editing of a set of works on this particular subject. He has been a governor of the Italian Council for International Organization, and a member of numerous legal associations. He thus enlarged his horizon, already prepared by study and thought, towards wider objectives.

The number of articles which he published was indeed large. It must be said that his field was international law. Yet what a large variety of matters has occupied his mind! In his writings one again finds the disciplines of public international law and of private law running side by side. Nevertheless certain predilections are discernible: conflict of laws, company law, the acceptance of foreign judgments, international mandate, the rights of man and, as regards the Community legal order: the law on competition, the right of establishment, company law, and the uniform interpretation of the Treaties. What a wonderful array of studies from which the Court cannot fail to benefit!

It was thus quite natural that Italy should think of other openings for him than teaching.

Such openings arose first in his own country. He became a member of the Committee for Contentious Diplomatic Business at the Ministry for Foreign Affairs, a member of the Italian Consultative Committee on the Rights of Man, and a member of the Italian Commission for UNESCO. He took part in several important negotiations on behalf of the Italian Government, and was chairman of the working party on the European company.

He was to represent Italy at the United Nations, both in the General Assembly and in the various branches of activity of this organization. He was to be heard defending the Italian point of view successively in conferences on the rights of man and on the law of treaties, in the special committee for the definition of aggression, in the committee for the peaceful use of space outside the atmosphere, and in the commission for combatting discriminatory measures and for the protection of minorities. He has even been one of the rapporteurs of a symposium, organized at Oslo by the Nobel Institute, on the international protection of the rights of man.

So it is one with a mind open not just to the great international problems of our time but also to the special characeteristics of Community law who is joining our Court. Learning and action, theory and practice, all combine within him, and are moulded together by his wealth of experience. Might I add, digressing here for a moment, that this admirable breadth of understanding also applies, in a different way - certainly - but no less exactly, to Mrs Capotorti, who is an assistant in the Faculty of Medecine at Naples?

Our new colleague is arriving at the Court at a time when the trend of the matters in dispute before it is moving increasingly towards the kinds of problems of which he has made a special study. Thus it is that he is called upon to take up a new task.

He will find the task at once burdensome and exciting.

Burdensome? Yes, because the increasing number of cases means an increasing number of hearings and an increase in the work which follows them. Exciting? Yes, for he will be contributing to a long-term task to be accomplished through both firmness and wisdom; only in the next century will it be possible to say that it did or did not make its mark on the legal history of our time. Today it has only a reasonable chance of succeeding in doing this. Even so, this is the chance that those who have left us have worked for. My colleague, it is to that chance that, together with you, we shall be devoting our efforts.

Does any finer calling exist? Or one more worthy of being pursued by a man of your worth and of your stature? So it is that the Court takes pleasure in welcoming you.

* * *

Biographical note on Francesco CAPOTORTI

Born 9 February 1925 in Naples;

1945 - Graduated in Law at the University of Naples;

1946-1952 - Assistant lecturer at the University of Naples;

1951 - Lecturer in International Law;

1951-1954 - Teacher (on a temporary basis) of International Law at the University and the "Istituto Universitario Navale" (Naval University Institute) of Naples;

Since 1954 - Visiting lecturer in Public Law Bodies at the University of Cagliari;

1955 - Temporary lecturer in International Law at the University of Cagliari;

1955-1968 - Lecturer in International Law at the University of Bari;

1956-1968 - Director of the Institute of Public Law and Political Sciences at the University of Bari;

Since 1968 - Lecturer in International Organizations at the University of Naples;

Since 1970 - Director of the Institute of Public Law at the Faculty of Economics and Commerce of the University of Naples;

- Professor in Private International Law at the Faculty of Political Sciences of the University of Rome;

1962-1966 - Took part in the seminars on the Rights of Man organized by the United Nations;

1965 - One of the rapporteurs at the 2nd Vienna International Conference on the European Convention for the Protection of Human Rights;

1967 - One of the rapporteurs at the Symposium organized in Oslo by the Nobel Institute of Norway on the International Protection of Human Rights;

- Member of the Scientific Committee on various publications on International Law;

Biographical note on Francesco CAPOTORTI (cont'd)

- Member of the Italian delegation to the United Nations General Assembly (1960-1971), to the United Nations Conference on Human Rights (Teheran, 1968) and to the United Nations Conference on Treaty Law (Vienna 1968-69);

- Italian delegate to the United Nations Special Committee on the definition of aggression (1968-1971) and to the United Nations Legal sub-committee on outer space (1970-1971);

Since 1963 - Member of the United Nations sub-committee of experts for the struggle against discriminatory measures and the protection of minorities;

Since 1965 - Member of the Legal Advisers Council at the Ministry for Foreign Affairs;

- Author of many publications on International Law.

* * *

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of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 November 1975

Opinion 1/75

1. INTERNATIONAL AGREEMENTS - CONCLUSION BY THE EEC - OPINION OF THE COURT - ADMISSIBILITY OF REQUESTS FOR AN OPINION - AGREEMENT ENVISAGED - CONCEPT (EEC Treaty, second subparagraph, Art. 228 (1))

2. INTERNATIONAL AGREEMENTS - CONCLUSION BY THE EEC - OPINION OF THE COURT - ADMISSIBILITY OF REQUESTS FOR AN OPINION - COMPATIBILITY OF AN AGREEMENT WITH THE RULES OF THE TREATY - SUBSTANTIVE RULES AND RULES REGARDING THE EXERCISE OF POWERS (EEC Treaty, second subparagraph, Art. 228 (1))

3. INTERNATIONAL AGREEMENTS - CONCLUSION BY THE EEC - OPINION OF THE COURT - ADMISSIBILITY OF REQUESTS FOR AN OPINION - BROAD CRITERIA OF ADMISSIBILITY - TIME-LIMIT FOR REQUESTS - NONE (EEC Treaty, second subparagraph, Art. 228 (1))

4. COMMON COMMERCIAL POLICY - CONCEPT (EEC Treaty, Art. 113)

5. COMMON COMMERCIAL POLICY - IMPLEMENTATION - POWERS OF THE EEC - INTERNATIONAL AGREEMENTS - CONCLUSION (EEC Treaty, Arts. 112, 113, 114)

6. COMMON COMMERCIAL POLICY - IMPLEMENTATION - INTERNATIONAL AGREEMENTS - CONCLUSION - EXCLUSIVE POWER OF THE COMMUNITY (EEC Treaty, Arts. 113 and 114)

7. COMMON COMMERCIAL POLICY - IMPLEMENTATION - POSSIBILITY OF BURDENS AND OBLIGATIONS ON THE MEMBER STATES - UNILATERAL ACTION OF THE MEMBER STATES PROHIBITED - COMMON ACTION (EEC Treaty, Art. 113)

1. In its reference to an "agreement", the second subparagraph of Article 228 (1) of the Treaty uses the expression in a general sense to indicate any undertaking entered into by entities subject to international law which has binding force, whatever its formal designation.

2. The compatibility of an agreement with the provisions of the Treaty must be assessed in the light of all the rules of the Treaty, that is to say, both those rules which determine the extent of the powers of the institutions of the Community and the substantive rules.

3. The procedure whereby the opinion of the Court is obtained as to the compatibility with the Treaty of an international agreement concluded by the EEC must be open for all questions capable of submission for judicial consideration, either by the Court of Justice or possibly by national courts, in so far as such questions give rise to doubt either as to the substantive or formal validity of the agreement with regard to the Treaty.

   Precisely by reason of the non-contentious character of the procedure contained in the second subparagraph of Article 228 (1), the Treaty does not lay down a time-limit for the submission of a request for an opinion.

4. The field of the common commercial policy, and more particularly that of export policy, necessarily covers systems of aid for exports and more particularly measures concerning credits for the financing of local costs linked to export operations.

5. In the course of taking the measures necessary to implement the principles laid down in the provisions concerning the common commercial policy, and particularly those covered by Article 113 of the Treaty, the Community is empowered, pursuant to the powers which it possesses, not only to adopt internal rules of Community law, but also to conclude agreements with third countries pursuant to Article 113 (2) and Article 114 of the Treaty.

6. The provisions of Articles 113 and 114 concerning the conditions under which, according to the Treaty, agreements on commercial policy must be concluded show clearly that the exercise of concurrent powers by the Member States and the Community in this matter is impossible.

7. The "internal" and "external" measures adopted by the Community within the framework of the common commercial policy do not necessarily involve, in order to ensure their compatibility with the Treaty, a transfer to the institutions of the Community of the obligations and financial burdens which they may involve: such measures are solely concerned to substitute for the unilateral action of the Member States, in the field under consideration, a common action based upon uniform principles on behalf of the whole of the Community.

N o t e

On 14 July 1975 the Court of Justice received a request for an opinion submitted by the Commission of the European Communities pursuant to the second subparagraph of Article 228 (1) of the Treaty establishing the EEC according to which: "The Council, the Commission or a Member State may obtain beforehand the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty ...".

The object of the request was to obtain the opinion of the Court on the compatibility with the EEC Treaty of a draft "Understanding on a Local Cost Standard" drawn up under the auspices of the OECD, and more particularly on the question whether the Community had the power to conclude the said Understanding.

The Court gave the opinion that the Community has exclusive power to participate in the Understanding referred to in the request submitted by the Commission.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

28 October 1975

Rutili v Minister of the Interior

Case 36/75

1. WORKERS - FREEDOM OF MOVEMENT - LIMITATIONS - NATIONAL PUBLIC POLICY - SCOPE - NATIONAL PROVISIONS - INDIVIDUAL DECISIONS (EEC Treaty, Art. 48)

2. WORKERS - FREEDOM OF MOVEMENT - EQUALITY OF TREATMENT - FUNDAMENTAL PRINCIPLES - DEROGATION - NATIONAL PUBLIC POLICY - CONCEPT - STRICT INTERPRETATION (EEC Treaty, Arts. 7 and 48)

3. WORKERS - FREEDOM OF MOVEMENT - NATIONALS OF MEMBER STATES - RIGHTS - RESTRICTIONS - NATIONAL PUBLIC POLICY - THREAT - REALITY - GRAVITY (EEC Treaty, Art. 48)

4. WORKERS - FREEDOM OF MOVEMENT - LIMITATIONS - NATIONAL PUBLIC POLICY - MEMBER STATES - POWERS - LIMITS - NATIONALS OF MEMBER STATES - RIGHTS - SAFEGUARDS - RULES OF SUBSTANTIVE LAW - PERSONAL CONDUCT - EXERCISE OF TRADE UNION RIGHTS - PROCEDURAL PROVISIONS - NOTIFICATION - STATEMENT OF GROUNDS - LEGAL REMEDIES (EEC Treaty, Art. 48)

5. WORKERS - FREEDOM OF MOVEMENT - RIGHT OF RESIDENCE - PROHIBITION - RESTRICTION TO PART OF THE TERRITORY - EQUALITY OF TREATMENT (EEC Treaty, Arts. 7 and 48)

1. The expression "subject to limitations justified on grounds of public policy" in Article 48 concerns not only the legislative provisions adopted by each Member State to limit within its territory freedom of movement and residence for nationals of other Member States but concerns also individual decisions taken in application of such legislative provisions.

2. The concept of public policy must, in the Community context, and where, in particular, it is used as a justification for derogating from the fundamental principles of equality of treatment and freedom of movement for workers, be interpreted strictly, so that its scope cannot be determined unilaterally by each Member State without being subject to control by the institutions of the Community.

3. Restrictions cannot be imposed on the right of a national of any Member State to enter the territory of another Member State, to stay there and to move within it unless his presence or conduct constitutes a genuine and sufficiently serious threat to public policy.

4. An appraisal as to whether measures designed to safeguard public policy are justified must have regard to all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in this respect and, on the other, to ensure that the rights of persons subject thereunder to restrictive measures are protected.

   These limitations and safeguards arise, in particular, from the duty imposed on Member States to base the measures adopted exclusively on the personal conduct of the individuals concerned, to refrain from adopting any measures in this respect which service ends unrelated to the requirements of public policy or which adversely affect the exercise of trade union rights and, finally, unless this is contrary to the interests of the security of the State involved, immediately to inform any person against whom a restrictive measure has been adopted of the grounds on which the decision taken is based to enable him to make effective use of legal remedies.

5. Measures restricting the right of residence which are limited to part only of the national territory may not be imposed by a Member State on nationals of other Member States who are subject to the provisions of the Treaty except in the cases and circumstances in which such measures may be applied to nationals of the State concerned.

N o t e

Following the judgments in the Van Duyn Case (Case 47/74) and the Bonsignore Case (Case 67/74), the Rutili Case gave the Court of Justice of the European Communities the opportunity of interpreting the scope of Article 48 of the EEC Treaty which secures freedom of movement for workers within the Community, abolishes all discrimination based on nationality between

workers of the Member States whilst placing on that freedom of movement limitations justified on the grounds of public policy, public security or public health.

The Tribunal Administratif, Paris, referred the following questions to the Court of Justice for a preliminary ruling:

- does the expression "subject to limitations justified on grounds of public policy" employed in Article 48 concern only the legislative decisions which each Member State of the EEC has decided to take in order to limit within its territory the freedom of movement and residence for nationals of other Member States or does it also concern individual decisions taken in application of such legislative decisions?

- what is the precise meaning to be attributed to the word "justified"?

The plaintiff in the main action, Mr Rutili, is of Italian nationality, was born in France and has been residing there since birth; he is married to a French woman and was until 1968 holder of a privileged resident's permit. He lived in Audun-le-Tiche in Meurthe-et-Moselle where he worked and carried on trade union activities. In 1968 he was the subject of a deportation order and was then ordered to reside in the department of Puy-de-Dôme. These orders were revoked but Mr Rutili was nevertheless prohibited from residing in the departments of Moselle, Meurthe-et-Moselle, Meuse and Vosges.

In 1970 the Prefect of Police granted him a residence permit of a national of a Member State of the EEC subject to a prohibition on residence in the departments of Lorraine. This led Mr Rutili to appeal to the Tribunal Administratif, Paris, for the annulment of the decision limiting the territorial validity of his residence permit.

In its grounds of judgment, the Court examined the underlying principles and the spirit of the rule of freedom of movement for workers and studied closely on the one hand the restrictions on that principle flowing from the Treaty itself and the implementing regulations issued

thereunder and, on the other, the limitations placed on the powers of Member States with regard to immigration authorities which are, the Court states, the specific manifestation of a more general principle established by the Convention for the Protection of Human Rights and Fundamental Freedoms which provides that infringements of the rights guaranteed by that Convention by virtue of the requirements of public order and public security cannot go beyond what is necessary in order to safeguard these requirements "in a democratic society".

The Court ruled that:

(1) The expression "subject to limitations justified on grounds of public policy" in Article 48 does not only concern the legislative provisions which each Member State has taken in order to limit within its territory the freedom of movement and residence for nationals of other Member States, but also concerns the individual decisions taken in application of such legislative decisions.

(2) The justification for measures intended to safeguard public policy must be examined in the light of all rules of Community law the object of which is, on the one hand, to limit the discretionary power of Member States in that respect and, on the other, to guarantee the defence of the rights of persons subjected to restrictive measures on that account.

Such limits and guarantees are the result in particular of the duty imposed on Member States to base the measures adopted exclusively on the individual behaviour of persons who are the subject thereof, to refrain from all measures in that respect which are used for purposes unconnected with the requirements of public policy or which affect adversely the exercise of trade union rights, to notify immediately any person in respect of whom restrictive measures are adopted of the reasons which underlie the decision taken, except in cases where this would conflict with reasons of State security, and finally, to ensure the effective use of recourse to the courts.

In particular measures restricting the right of residence which are limited to part of the national territory may only be taken by a Member State with regard to nationals of other Member States under the provisions of the Treaty in the cases and circumstances in which such measures may be applied to nationals of the State in question.

* * *

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 October 1975

Galati v Landesversicherungsanstalt Schwaben

Case 33/75

SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY INSURANCE - INSURANCE PERIODS - AGGREGATION - CONVERSION INTO MONTHS - PERIOD ROUNDED UP TO A MONTH IN ACCORDANCE WITH LEGISLATION OF A MEMBER STATE - PERIOD COMPLETED IN ANOTHER MEMBER STATE - IDENTICAL TREATMENT (Council Regulation No. 574/72, Art. 15 (3))

If an insurance period of less than one month completed in the Federal Republic of Germany must, under German legislation, be treated as a whole month, an insurance period completed in accordance with the legislation of another Member State and which, on conversion into months for the purpose of aggregation, produces a decimal fraction, must also be rounded up to the next highest figure in months, in order to ensure that employed workers do not, because of emigration, lose the rights which they have acquired in their country of origin.

N o t e

The plaintiff in the main action, an Italian national residing in Italy, became incapable of work in January 1971. He had completed 27 monthly insurance periods in the Federal Republic of Germany and paid 142 weeks' compulsory contributions in Italy up to January 1971; following this, he paid two weeks' voluntary contributions with the authorization of the Italian Istituto Nazionale della Previdenza Sociale.

He sent to the Landesversicherungsanstalt Schwaben an application for a part pension from the German pensions insurance scheme on account of incapacity for work or alternatively occupational invalidity. The German Landesversicherungsanstalt rejected that application on the ground that the qualifying period of 60 calendar months required by German legislation with regard to such risks had not been completed even if the insurance periods completed in Italy were taken into account.

The question under discussion in this case consists in the conversion of insurance periods expressed in weeks into insurance periods expressed in months. This led the Sozialgericht Augsburg to ask the European Court whether with regard to that conversion, the competent authority is to disregard any decimal fractions in the aggregation of insurance periods or whether those decimal fractions must be treated as a full month or one which has started to run.

The Court of Justice replied by ruling that if an insurance period of less than one month which has been completed in the Federal Republic of Germany must under the German legislation be treated as a whole month, an insurance period completed under the legislation of another Member State which produces decimal fractions after conversion into months for the purposes of aggregation must also be rounded up to the next highest figure in months in order to ensure that employed workers do not, because of emigration, lose the rights which they have acquired in their country of origin.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

30 October 1975

Rey Soda v Cassa Conguaglio Zucchero

Case 23/75

1. EEC - INSTITUTIONS - COMMISSION - IMPLEMENTING POWERS CONFERRED BY THE COUNCIL - WIDE INTERPRETATION (EEC Treaty, Art. 155)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - COMMON PRICES - ALTERATION - DISTURBANCES ON THE MARKET - MEASURES TAKEN BY THE COMMISSION - MANAGEMENT COMMITTEE PROCEDURE - BASIC RULES - EXCLUSIVE POWERS OF THE COMMISSION (Regulation No. 1009/67 of the Council, Art. 37 (2))

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - COMMON PRICES - DISTURBANCES ON THE ITALIAN MARKET - SUGAR STOCKS - HOLDERS - IMPOSITION - BASIC CONDITIONS - OMISSION (Regulation No. 834/74 of the Commission, Art. 6)

4. PRELIMINARY RULINGS - COMMUNITY MEASURES - DECLARATION OF INVALIDITY BY THE COURT - CONSEQUENCES - NATIONAL IMPLEMENTING MEASURE - NATIONAL AUTHORITIES - POWER (EEC Treaty, Art. 177)

1. The powers conferred by the Council on the Commission for the implementation of the rules of the Treaty must be given a wide interpretation as appears from the general context of the Treaty and practical requirements.

When the Council has conferred on the Commission, using the Management Committee procedure, a very wide power of implementation of the agricultural policy, the limits of this power must be judged with regard to the basic general objectives of the organization of the market and less in terms of the literal meaning of the enabling words.

2. Article 37 (2) cannot be interpreted as enabling the Commission to impose upon a Member State the obligation to draw up, under the guise of implementation measures, essential basic rules which would not be subject to any control by the Council. It must determine them itself in a precise manner when it decides, after consultation with the

Management Committee, to require certain holders of sugar of a Member State to pay a tax on their stocks.

3. Article 6 is not valid, for, in not specifying the bases of the calculation of the tax on sugar stocks held and the classes of traders subject thereto, the Commission has omitted basic rules.

4. It is first of all for the national authorities to draw the consequences in their legal system of the declaration of such invalidity made under Article 177 of the EEC Treaty as regards the national measure implementing the Community measure in question.

N o t e

This case raises the problem of the compatibility with Community law of the imposition, by the Cassa Conguaglio Zucchero, of a levy on stocks of sugar held by Italian industrial consumers on transition to the 1974-1975 sugar marketing year. The Cassa Conguaglio Zucchero is an Italian public body the purpose of which is to achieve "equalization of prices" on the Italian sugar market. It was required to impose a charge, expressed in Italian currency, to be levied on all undertakings which, on 1 July 1974, held stocks of white sugar, raw sugar and sugar syrup in quantities of more than 500 kilogrammes. The Cassa Conguaglio was also required to distribute the sums thus raised directly to all Italian producers of sugar beet, as from 31 December 1974.

The undertaking Rey Soda, an association of manufacturers of confectionery and lemonade, and therefore consumers of sugar, considered that the above-mentioned charge was illegal and brought the dispute before the Pretore d'Abbiategrasso.

The Pretore, considering that the issue involved the interpretation of Community law, requested the European Court in Luxembourg to give a preliminary ruling as to whether Article 6 of Regulation (EEC) No. 834/74 on sugar intended for human consumption must be interpreted as meaning that it contains no authority for the Italian State to impose pecuniary charges on consumers of sugar, for the benefit of beet growers. The national court also asks the Court to state whether that provision was

adopted in an illegal manner, inasmuch as a charge of the kind authorized by that provision must be expressly approved by the Council of Ministers.

Regulation No. 834/74 of the Commission must be viewed in the general context; in fact the regulation was adopted pursuant to Regulation No. 1009/67 of the Council, the basic regulation in the sugar sector.

The undertaking Rey Soda, the plaintiff in the main action, maintains that Article 37 (2) of the basic regulation did not empower the Commission to require a Member State to impose a pecuniary charge on sugar stocks and that even if the Commission had been empowered to do so it could not impose such an obligation except for the purposes of compensating a change in the level of Community prices expressed in units of account and not variations in those prices in a national currency following a devaluation of that currency.

The Court of Justice has found that the powers conferred on the Commission pursuant to Article 37 (2) of the basic regulation are to be subject to the Management Committee procedure. This procedure, while it vests in the Commission considerable powers with regard to implementation, nevertheless permits the Council to intervene. But the said Article 37 (2) cannot be interpreted as allowing the Commission to require a Member State to establish, under the appearance of implementing measures, essential substantive rules which would fall outside any control by the Council.

Accordingly, the Commission was required to fix the basis for calculation of the levy and the categories of trader subject thereto, and to submit this decision to the Management Committee for its opinion.

The Court of Justice, having interpreted the regulations in issue as a whole, proceeded to examine Article 6 of the disputed Regulation No. 834/74. That article lays down that "Italy shall take national measures to prevent disturbances on the market resulting from the increase on 1 July 1974 in the price of sugar expressed in Italian lire. These provisions shall consist in particular of a payment to beet growers of the increased value of stocks".

Since the concepts "increased value" and "stock" are not defined, the Court has given them a precise meaning in the light of Community precedents and has reached the conclusion that the Commission, having defined the objective of the measures which the Italian authorities were required to take, should have specified, for each category of trader, and bearing in mind the size of the undertakings, wht was to be understood by "excessive stocking". The use of the concept "increased value" is an innovation in agricultural regulations and precise rules should have been laid down for determining the method of calculation of it.

Furthermore, by omitting to specify the basis for calculation of the levy and by leaving the choice to Italy, the Commission failed to discharge its responsibility to draw up essential substantive rules and to submit them, through the Management Committee procedure, for possible assessment by the Council.

The Court has ruled that Article 6 of Regulation No. 834/74/EEC of the Commission is invalid.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 November 1975

Bagusat KG v Hauptzollamt Berlin-Packhof

Case 37/75

1. COMMON CUSTOMS TARIFF - CLASSIFICATION OF GOODS - SEVERAL TARIFF HEADINGS - CHOICE - DISCRETION OF THE COMMISSION (Regulation (EEC) No. 97/69 of the Council)

2. COMMON CUSTOMS TARIFF - CLASSIFICATION OF GOODS - CHERRIES - PUT UP IN A MIXTURE OF WATER AND ETHYL ALCOHOL - TARIFF SUBHEADING 20.06 B 1 (Regulation (EEC) No. 1709/74 of the Commission)

1. Regulation (EEC) No. 97/69 of the Council has conferred on the Commission, acting in co-operation with the customs experts of the Member States, a wide discretion as to the choice between two or more headings which come into consideration with regard to the classification of specific goods with the sole reservation that the provisions adopted by the Commission do not amend the text of the Tariff.

2. Under Regulation (EEC) No. 1709/74 of the Commission, cherries put up in a mixture of water and ethyl alcohol must be classified under subheading 20.06 B 1 of the Common Customs Tariff.

N o t e

The Bagusat company imports cherries from Yugoslavia for the chocolate industry. To preserve the cherries provisionally during transport they are put up on despatch in a flavoured mixture of water and ethyl alcohol. These so-called "recirculated juices" are drained from the cherries and are used, as far as possible, again and again. The main action is concerned with the question whether the cherries must be classified under tariff heading 08.11 (Fruit provisionally preserved ... but unsuitable in that state for immediate consumption) or under tariff heading 20.06 (Fruit otherwise prepared or preserved, whether or not containing added sugar or spirit).

On 16 January 1973, in a preliminary ruling, the Bundesfinanzhof, Munich, classified the products under tariff heading 08.11. Previously, in a regulation of 1969 (No. 97/69), in order to ensure the uniform application of the nomenclature of the Common Customs Tariff, the Council had set up a Nomenclature Committee composed of representatives of the Member States under the chairmanship of a representative of the Commission.

Pursuant to that regulation of the Council, the Commission drew up Regulation No. 1709/74 on the classification of goods under subheading 20.06-B-I of the Common Customs Tariff, which provides that fruit which has been treated in a way which does not make it unsuitable for immediate consumption may not be classified under heading 08.11.

On the basis of that provision the Berlin customs office classified the cherries imported by Bagusat under tariff subheading 20.06-B-I (which is less favourable, from the point of view of sums to be paid by way of levies, than heading 08.11).

In its direct action challenging this classification, Bagusat claimed that the Berlin customs office should not have been guided by Regulation No. 1709/74 of the Commission, being of the opinion that that regulation was invalid because the Commission had in that case exceeded the limits of its regulatory power.

The Finanzgericht Berlin referred the matter to the European Court for a preliminary ruling on the validity of the Commission regulation and on the interpretation of heading 08.11 and subheading 20.06-B-I of the Common Customs Tariff.

The Court of Justice emphasizes that the Council has vested in the Commission, acting in co-operation with the customs experts of the Member States, considerable discretion as to the choice between two or more possible headings for the classification of specific goods, in particular in a case such as the present, where the Tariff does not list exhaustively the preservative processes covered by heading 08.11, and gives only examples. The Commission, acting in co-operation with the national experts, is empowered to adopt a regulation specifying the types of process coming under that heading.

The Court has ruled that examination of the question referred has not revealed any factors capable of affecting the validity of Regulation (EEC) No. 1709/74 of the Commission and that pursuant to that regulation cherries put up in a mixture of water and ethyl alcohol must be classified under subheading 20.06-B-I of the Common Customs Tariff (Fruit suitable for human consumption).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

13 November 1975

General Motors Continental v Commission

Case 26/75

COMPETITION - DOMINANT POSITION - CONCEPT - EXPLOITATION - ABUSE (EEC Treaty, Art. 86)

When combined with the freedom of the manufacturer or its authorized agent appointed by the public authority to fix the price for its service, the delegation by a Member State to such person in the form of a legal monopoly of the duty governed by public law which consists in carrying out the technical inspection of vehicles before they are used on the public highway, leads to the creation of a dominant position.

The abuse of such a position may be, inter alia, in the imposition of a price which is excessive in relation to the economic value of the service provided, and which has the effect of curbing parallel imports by neutralizing the possibly more favourable price levels applying in other sales areas in the Community or by leading to unfair trading in the sense of Article 86 (2) (a).

N o t e

Vehicles registered in Belgium must satisfy certain technical standards before they may be used on the public highway in that country. Every type of chassis or vehicle manufactured or assembled in Belgium must be the subject of an approval. The manufacturer or, where the latter is established abroad, his sole authorized agent in Belgium is obliged to issue a certificate of conformity in respect of each new vehicle of the same type to show that the vehicle complies with the standard laid down in the approval and thereafter affixes a compulsory typeshield.

Since 15 March 1973 the State testing-stations, which until then had tested used vehicles, have no longer themselves issued the certificate of conformity in respect of vehicles which have been registered abroad for less than 6 months. Since that date, such tests have been performed by the manufacturer's authorized agents in Belgium.

General Motors Continental (G.M.C.), a company incorporated under Belgian law, is the sole authorized agent for Adam Opel AG, private car manufacturers, and for the other manufacturers belonging to the General Motors Group.

Private customers and dealers importing General Motors vehicles into Belgium otherwise than through G.M.C.'s distribution system - parallel imports - must also apply to G.M.C. for certificates of conformity both for new vehicles and, since 15 March 1973, for vehicles registered abroad for less than six months.

Between 15 March and 31 July 1973, in five cases of parallel imports of new Opel vehicles, G.M.C. charged the same rates for the issue of certificates of conformity and typeshields as it had previously charged for inspecting certain American G.M. models. The amount in question was 5,000 Bfrs + 900 Bfrs VAT.

With effect from 1 August 1973 G.M.C. adopted a new scale of charges, fixing those for European cars at 1,250 Bfrs, and refunded to the five purchasers mentioned above the sums overcharged.

The Commission of the European Communities considered that G.M.C., by requiring parallel importers of Opel vehicles to pay an excessive price for technical inspection and the administrative costs of the issue of certificates of conformity and of typeshields, had abused a dominant position within a substantial part of the Common Market within the meaning of Article 86 of the EEC Treaty. On 26 July 1973 it instituted the procedure laid down in Regulation No. 17 of the Council and, on 19 December 1974, adopted a decision imposing on G.M.C. a fine of 100,000 units of account (5 million Bfrs). G.M.C. brought an action against this decision, in consequence of which the Court of Justice has examined the question whether the applicant occupies, in respect of the conformity inspection, a dominant position within the meaning of Article 86 and, if so, whether its behaviour constitutes an abuse of that position.

From the facts alleged the Court has held that the conformity inspection which gave rise to the charges at issue is by its very nature a function governed by public law delegated by the Belgian State, the performance of which is reserved exclusively to the manufactuer or to his sole authorized agent. This legal exclusivity, combined with the fact that the manufacturer or his agent is at liberty to determine the price of his services, amounts to a dominant position within the meaning of Article 86. Abuse of that dominant position might arise in particular from the charging of a price which was excessive in relation to the economic value of the service rendered so that parallel imports would be discouraged.

However, although the possibility of abuse of the dominant position occupied by the applicant in view of all the facts which gave rise to the Commission's decision must be admitted, it cannot be denied that G.M.C. promptly reduced the charge made for the inspection of imported vehicles manufactured in Europe to a level corresponding to the real cost of the operation and refunded the excess to those concerned at a time prior to the Commission's investigations.

The applicant claims further that when it was required by the Belgian State to adopt a new procedure it applied to European vehicles for an initial period a scale of charges which was normally employed for the importation of American vehicles.

In these circumstances the Court of Justice has annulled the Commission's decision.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 November 1975

S.p.A. UNIL It v Amministrazione Finanzaria dello Stato

Case 30/75

AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - IMPORTS - INTRA-COMMUNITY LEVY - CONDITIONS - FULFILMENT - EVIDENCE - CERTIFICATE DD4 - NATIONAL IMPLEMENTING MEASURES - LACK - OTHER MEANS OF PROOF - ACCEPTABILITY (Decision of the Commission of 17 July 1962)

The requirement that the submission of certificate DD4 is alone acceptable as evidence of fulfilment of the conditions which entitle a trader to pay only the intra-Community levy cannot be applied against a trader who satisfies the formal requirements which are still in force in the importing State when the goods cross the frontier.

A Member State which has not adopted substantive measures tc implement the decision introducing the duty to submit certificate DD4 cannot claim that traders have failed to fulfil the duties involved in that decision but must provisionally accept such other means of proof as are appropriate to the fulfilment of the formal requirements in force.

N o t e

Following lengthy proceedings in a dispute between a cheese importing undertaking, UNIL, and the Italian State Finance Administration, the Italian Corte di Cassazione, considering that questions of interpretation of Community law were involved, made a preliminary reference to the European Court on the interpretation of a Commission decision of 17 July 1962 laying down special methods of administrative co-operation for the application of intra-Community levies instituted in the context of the common agricultural policy. That decision introduced a special certificate, DD4, in respect of goods subject to agricultural levies at the time of crossing the frontier; production of this certificate was necessary so that the goods, at the moment of entry into the importing Member State, could be subject to the intra-Community levy system, which is more favourable than that to which products from third countries are subject.

Regulations Nos. 13/64 and 82/64 of the Council on the progressive establishment of a common organization of the market in milk and milk products instituted a dual system of levies, on the one hand on trade with third countries and, on the other hand, on intra-Community trade; the system came into force on 1 November 1964. After that date, the application of the intra-Community agricultural levy system was subject to production of movement certificate DD4.

The plaintiff in the main action, S.p.A. UNIL-It, imported into Italy after 1 November 1964, consignments of cheese from the Federal Republic of Germany and from the Netherlands, despatched during October 1964, which were covered, in part, by certificates DD1 (in the case of direct transport) and, in part, by certificates DD3 (in the case of so-called indirect transport). UNIL-It claims that it was unable to obtain either from the German authorities or from the Netherlands authorities the said certificate DD4. Furthermore, at the time of the imports in question, no internal administrative measure had been adopted in Italy to extend the obligation to submit a DD4 certificate. This had not occurred until the issue of a ministerial circular of 19 November 1964, and it was only by a Decree Law of 23 December 1964 that the dual system of levies on milk products was instituted with effect from 1 November 1964.

Some 18 months after these imports had been effected the Italian authorities claimed from the plaintiff in the main action the levies applicable to trade with third countries, on the ground that the imports had not been accompanied by a certificate DD4.

The Court of Justice has ruled that the Decision of 17 July 1962, in conjunction with Regulations Nos. 13/62 and 82/64 of the Council, gave traders the right to pay only the intra-Community levy upon production, by means of a certificate DD4, of evidence of the fulfilment of the conditions necessary for receiving the benefit of the intra-Community levy, but that a Member State which had not adopted the implementing measures required by that decision was not entitled to invoke against traders a failure to fulfil the obligations contained in that decision and must, as a temporary measure, permit the production of other sufficient evidence of the fulfilment of the said conditions.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

18 November 1975

Société C.A.M. SA. v European Economic Community

Case 100/74

1. PROCEDURE - APPLICATION FOR ANNULMENT - APPLICATION BY NATURAL OR LEGAL PERSONS - DECISION IN THE FORM OF A REGULATION - APPLICANT DIRECTLY CONCERNED - CONCEPT (EEC Treaty, second paragraph of Art. 173)

2. PROCEDURE - APPLICATION FOR ANNULMENT - APPLICATION BY NATURAL OR LEGAL PERSONS - DECISION IN THE FORM OF A REGULATION - APPLICANT INDIVIDUALLY CONCERNED - CONCEPT (EEC Treaty, second paragraph of Art. 173)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - EXPORT REFUND - ADVANCE FIXING - AMOUNT - ADJUSTMENT IN RELATION TO THRESHOLD PRICE IN FORCE AT TIME OF EXPORT - VESTED RIGHTS - INCREASE IN THRESHOLD PRICE DIVORCED FROM THE OBJECTIVE OF ARTICLE 16 OF REGULATION NO. 120/67 - EXCLUSION

1. A measure, by denying to a class of traders the benefit of an increase in the amount of refunds for specific exports which was, on the contrary, granted to those whose applications for advance fixing were made at a later date, directly concerns the said traders.

2. A measure applying to a fixed number of traders identified by reason of the individual course of action which they pursued or are regarded as having pursued during a particular period, even if it is one of a number of provisions having a legislative function, individually concerns the persons to whom it applies in that it effects their legal position because of a factual situation which differentiates them from all other persons and distinguishes them individually just as in the case of the person addressed.

3. Even if the applicant is entitled to rely upon vested rights or a legitimate expectation in the continuation of increases in the amount of the refund laid down by Article 16 of Regulation No. 120/67 as it applied at the time of the request for advance fixing, he cannot take advantage of such a right or such a prospect as regards that part of the refund which corresponds to increases in the threshold price which are entirely divorced from the objective of Article 16, and which were unforeseeable at the time when the amount was fixed in advance.

N o t e

On 4 October 1974 the Commission adopted a regulation laying down that exports of cereals for which the advance-fixing certificate (that is to say, the possibility of opting for the refund applicable on the day of submission of the request for an export licence) was issued prior to 7 October 1974, would not receive the benefit of the exceptional increase in the threshold price because it was reasonable to believe - in view of the validity of the certificates (in the event, until 16 October) - that the exporters in question had already covered themselves by buying before the increase announced by the Council on 2 October 1974. The Council had increased the common prices of numerous agricultural products by 5 % with effect from 7 October 1974 as an exceptional measure and by way of derogation from the principle of the annual fixing of agricultural prices. This exceptional increase in target prices resulted in a corresponding increase in threshold prices, which in turn had a bearing on the amount of the refund.

Between 7 and 17 October C.A.M. exported some 4,000 metric tons of barley and complained that it was refused the increased refund in respect of these amounts. C.A.M. claims that the provision adopted by the Commission from which this refusal results and which is of direct and individual concern to it, should be annulled. Regarding the admissibility of the application the Court of Justice has stated that the measure at issue, a regulation, even if it forms part of a corpus of provisions having a legislative character, is of individual concern to the persons to whom it is directed in that it affects their legal position by reason of

circumstances in which they are differentiated from all other persons and distinguishes them individually just as in the case of the person addressed. The application is therefore admissible. On the substance, the applicant attempts to show that the Commission lacked authority, that it exceeded the limits of the power vested in it by the Council and that the provision at issue infringes acquired rights. All these submissions have been rejected by the European Court, which has dismissed the application as unfounded.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

19 November 1975

Douaneagent der N.V. Nederlandse Spoorwagen v Inspector of Customs and Excise

Case 38/75

1. COMMON CUSTOMS TARIFF - ADDITIONAL NOTE - MANDATORY FORCE

2. COMMON CUSTOMS TARIFF - REPLACEMENT OF NATIONAL CUSTOMS TARIFFS - INTERPRETATION - EXCLUSIVE COMPETENCE OF COMMUNITY AUTHORITIES

3. GATT - COMMITMENTS - MANDATORY FORCE FOR THE COMMUNITY - DETERMINATION BY REFERENCE TO COMMUNITY PROVISIONS

4. COMMON CUSTOMS TARIFF - BRUSSELS CONVENTIONS ON NOMENCLATURE AND SETTING UP OF A CUSTOMS CO-OPERATION COUNCIL - COMMITMENTS - MANDATORY FORCE FOR THE COMMUNITY

5. COMMON CUSTOMS TARIFF - CUSTOMS CO-OPERATION COUNCIL - CLASSIFICATION OPINION - EFFECT - INTERPRETATION

1. An Additional Note to the Common Customs Tariff, decided upon by the Council, becomes part of the heading to which it refers and has the same binding effect both whether it constitutes an authentic interpretation of the heading or supplements it.

2. With effect from 1 July 1968 the Common Customs Tariff replaced the national customs tariffs of the Member States. Subject to review by the courts responsible for applying and interpreting Community law, the Community authorities alone have jurisdiction to interpret and determine the legal effect of the headings which it comprises. Consequently an interpretation placed upon a heading of a national customs tariff, or of one which was common only to some Member States, by the competent authority of a Member State before 1 July 1968 can no longer hold good under the Community legal system, even if the wording of the heading in the CCT has remained the same.

3. Since, so far as fulfilment of the commitments provided for by GATT is concerned, the Community has replaced the Member States, the mandatory effect, in law, of these commitments must be determined by reference to the relevant provisions in the Community legal system and not to those which gave them their previous force under the national legal systems.

4. The Community has replaced the Member States in commitments arising from the Convention of 15 December 1950 on Nomenclature for the Classification of Goods in Customs Tariffs and from the Convention of the same date establishing a Customs Co-operation Council.

5. The classification opinions expressed by the Customs Co-operation Council do not bind the Contracting Parties but they have a bearing on interpretation which is all the more decisive because they emanate from an authority entrusted by the Contracting Parties with ensuring uniformity in the interpretation and application of the nomenclature. When such an interpretation reflects the general practice followed by the Contracting States, it can be set aside only if it appears incompatible with the wording of the heading concerned or goes manifestly beyond the discretion conferred on the Customs Co-operation Council.

N o t e

The Tariefcommissie has referred to the Court of Justice questions on the validity of an Additional Note to Chapter 90 of the Common Customs Tariff (CCT) added by Regulation No. 1/71 of the Council of 17 December 1970.

This note provides that "Apparatus for the automatic reproduction of documents by electrostatic means incorporating an optical system is also classified under subdivision A of heading 90.07 (photographic cameras)". Pursuant to this provision the Netherlands customs administration on 28 April 1971 imposed a duty of 14 % on the importation of a xerographic duplicator from a third country.

The plaintiff in the main action contested the decision of the customs administration, claiming that the product at issue should have been classified under subheading 84.54-B, relating to office machines and subject to a duty of 7.2 % consolidated in the context of the General Agreement on Tariffs and Trade (GATT). This classification prompted three questions, which the Tariefcommissie has referred to the European Court.

Is it permissible for apparatus which appears to come under subheading 85.54-B to be classified under subheading 90.07-A, in a regulation of the Council, by means of an Additional Note to Chapter 90 of the CCT without the text of heading 90.07 being appropriately adapted?

The Court has replied that the Note in question of itself constitutes either an interpretation not requiring an amendment to the wording of the heading in question or, where appropriate, a permissible addition to that wording which, therefore, is appropriately adapted to the new situation.

The second question raises the problem whether, in the light of the prescriptions of the Netherlands constitution, agreements concluded with organizations governed by public international law (in this case, GATT) have binding force after they have come into existence and have been published. Since heading 84.54 and the duty related to it were consolidated during the Kennedy Round, is it lawful to classify the goods under a different tariff heading with a higher duty by means of a regulation of the Council? The Court of Justice has found that the tariff concessions and consolidations effected under the auspices of GATT were, even before 1 July 1968, negotiated by the Community authorities pursuant to Article 111 of the Treaty and therefore apply to the CCT.

The third question asks whether the Additional Note in question conflicts with the obligations flowing from the Convention of 15 December 1950 on the Nomenclature for the Classification of Goods in Customs Tariffs. The European Court has replied that in the same way as for undertakings deriving from GATT, the Community has taken the place of the Member States in respect of obligations resulting from the Convention of 15 December 1950 and, giving judgment on the questions referred, the Court has ruled that examination of the questions referred has not revealed any factors capable of affecting the validity of the Additional Note in question.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

20 November 1975

Camilla Borella v Landesversicherungsanstalt Schwaben, Augsburg

Case 49/75

SOCIAL SECURITY FOR MIGRANT WORKERS - OLD-AGE AND DEATH INSURANCE - INSURANCE PERIOD OF LESS THAN ONE YEAR - BENEFITS - RIGHT ACQUIRED BY VIRTUE OF THE LEGISLATION OF THE MEMBER STATE IN QUESTION - ARTICLE 48 OF REGULATION NO. 1408/71 - INAPPLICABILITY

Article 48 of Regulation No. 1408/71 is not applicable where the right to benefits of a migrant worker or his survivors already arises solely from the provisions of the legislation of the Member State in question.

N o t e

... "If the total length of the insurance periods completed under the legislation of a Member State does not amount to one year, and if under that legislation no right to benefits is acquired by virtue only of those periods the institution of that State shall not be bound to award benefits in respect of such periods" (Article 48 (1) of Regulation No. 1408/71 of the Council). Is this provision to be understood in such a way that the competent institution of a Member State is required to pay benefits to the survivors of an insured person who are resident in another Member State and who possess the nationality of that State, even if the insurance periods completed by the insured person under the legislation of the first-mentioned Member State amount to less than one year, provided that the deceased insured person had acquired a right to benefit arising out of these insurance periods until his death after the coming into force of Regulation No. 1408/71?

The Court has ruled that Article 48 (1) applies only if two conditions are fulfilled, namely "if the total length of the insurance periods ... does not amount to one year", and "if under that legislation no right to benefits is acquired by virtue only of those periods", and that it therefore follows that that article cannot be applied where the right of a migrant worker or of his survivors to benefits is already acquired by virtue of the provisions of the legislation of the relevant Member State alone.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

25 November 1975

Caisse de Pension des Employés Privés v Helga Weber (née Massonet)

Case 50/75

1. SOCIAL SECURITY FOR MIGRANT WORKERS - RIGHTS OF PERSONS CONCERNED - REDUCTIONS - PROHIBITION - LIMITATION CONSTITUTING THE COUNTERBALANCE TO COMMUNITY ADVANTAGES - PERMISSIBILITY (EEC Treaty, Art. 48 and Art. 51)

2. SOCIAL SECURITY FOR MIGRANT WORKERS - MORE THAN ONE LEGISLATIVE SYSTEM - APPLICATION - ARTICLE 12 OF REGULATION NO. 3 - AIM - BENEFITS DUE UNDER ONE LEGISLATIVE SYSTEM - REDUCTION - IMPERMISSIBLE

3. SOCIAL SECURITY FOR MIGRANT WORKERS - OLD-AGE AND DEATH INSURANCE - RIGHT ACQUIRED BY VIRTUE OF INSURANCE PERIODS COMPLETED UNDER THE LEGISLATION OF A SINGLE MEMBER STATE - REDUCTION BY WAY OF AGGREGATION AND APPORTIONMENT - PROHIBITION (Regulation No. 3 of the Council, Art 27 and Art. 28)

4. SOCIAL SECURITY FOR MIGRANT WORKERS - OLD-AGE AND DEATH INSURANCE - INSURANCE PERIODS COMPLETED UNDER THE LEGISLATION OF SEVERAL MEMBER STATES - OVERLAPPING - CONCEPT (Regulation No. 3 of the Council, Art. 27)

1. It follows from the purpose and from the framework of Articles 48 and 51 of the Treaty that limitations can be imposed on workers only as a counterbalance to the advantages which they derive from Community regulations. Article 51 of the EEC Treaty and Regulation No. 3 of the Council of 25 September 1968 concerning social security for migrant workers, especially Articles 12, 27 and 28, must therefore be interpreted as meaning that they do not authorize a national insurance institution to reduce the benefits which are due to a worker or to those entitled under him by virtue of national legislation alone and without recourse to the procedure of aggregation.

2. The purpose of Article 12 of Regulation No. 3 is on the one hand to avoid any plurality or purposeless overlapping of contributions and liabilities which would result from the simultaneous or alternate application of several legislative systems and, moreover, preventing those concerned, in the absence of legislation applying to them, from remaining without protection in the matter of social security. It therefore does not authorize a national insurance organization either expressly or by implication to reduce the benefits which are due to a worker or those entitled under him under national legislation alone.

3. The aggregation and apportionment of insurance periods completed within the meaning of Articles 27 and 28 of Regulation No. 3 do not apply when the legislation of a Member State entitles the person concerned to a benefit.

4. There is no duplication of insurance periods within the meaning of Article 27 of Regulation No. 3 and, similarly, there is no unjustified cumulation of pensions if a special increase provided for by the law of one of the States for the benefit of the survivors of an insured person is awarded or calculated, not in relation to an insurance period, whether actual or fictitious, but for the duration of a certain period which bears no direct relation to the insurance period completed by the deceased.

N o t e

Article 51 of the EEC Treaty and Regulation No. 3 of the Council of 25 September 1958 concerning social security for migrant workers, in particular Articles 12, 27 and 28, must be interpreted as meaning that they do not authorize a national insurance institution to reduce benefits payable to a worker or his successors in title pursuant to national legislation alone without recourse to aggregation. This is the answer given by the Court of Justice of the European Communities to a question referred for a preliminary ruling by the Cour Supérieure de Justice de Luxembourg in the context of a dispute in connexion with a survivor's pension over the calculation of the rights of the widow of a Luxembourg national who, having worked first in Luxembourg and subsequently, up to the time of his death, in the Federal Republic of Germany, completed 67 months of insurance in the first State and 13 in the second.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 November 1975

Robert Gerardus Coenen v Sociaal-Economische Raad, The Hague

Case 39/75

1. SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - CONCEPT (EEC Treaty, Art. 59 (1))

2. SERVICES - FREEDOM TO PROVIDE SERVICES - RESTRICTIONS - ABOLITION - OBLIGATION ON THE PERSON PROVIDING THE SERVICES TO RESIDE IN THE TERRITORY OF A MEMBER STATE - UNACCEPTABLE NATURE - CRITERIA

1. The restriction to be abolished pursuant to Article 59 (1) of the Treaty include all requirements which are imposed on the person providing the service by reason in particular of his nationality or of the fact that he does not habitually reside in the State where the service is provided, which do not apply to persons established within the national territory or which may prevent or otherwise obstruct the activities of the person providing the service.

2. The provisions of the EEC Treaty, in particular Articles 59, 60 and 65, must be interpreted as meaning that national legislation may not, by means of a requirement of residence in the territory, make it impossible for persons residing in another Member State to provide services, when less restrictive measures enable the professional rules to which the provision of the service is subject in that territory to be complied with.

N o t e

Robert Coenen, of Netherlands nationality, having resided in the Netherlands until 9 September 1973 but residing since that date in Belgium, works as an insurance broker, both on his own account and in the name of two insurance companies established in the Netherlands and actually managed by him in his capacity as salaried director.

According to Netherlands law on insurance broking the exercise of this occupation is subject to entry in a register. The law also provides that registration can only be effected where it is shown that the applicnat has a fixed abode in the country.

Having ascertained that Mr Coenen was resident in Belgium, the Sociaal Economische Raad notified the latter that his name would be removed from the register and notified the two insurance companies managed by Mr Coenen that their registration also would have to be cancelled by reason of Mr Coenen's place of residence.

An action was brought against this decision before the College van Beroep voor het Bedrijfsleven, which referred to the Court of Justice the question whether the provisions of the Treaty establishing the European Economic Community, in particular Articles 59 and 60, must be understood as meaning that a requirement such as that contained in the law on insurance broking, according to which a natural person who wishes to act as broker within the meaning of that law must reside in the Netherlands, is not compatible with those provisions. The Court of Justice, interpreting the spirit of the Treaty in the matter of freedom to provide services within the Community, has ruled that the requirement that the provider of a service must be permanently resident within the territory of the State where the service is to be provided may, according to the circumstances, render Article 59 nugatory, since the precise object of that article is to eliminate restrictions on freedom to provide services on the part of persons who do not reside in the State on the territory of which those services are to be provided. In the present case, the additional requirement that the provider of the service be personally resident within the territory of the Netherlands appears to be a restriction on the freedom to provide services which is incompatible with the provisions of the Treaty.

The Court has ruled that the provisions of the EEC Treaty, in particular Articles 50, 60 and 65, must be interpreted as meaning that national legislation cannot, by requiring residence within the territory of that State, render it impossible for persons residing in another Member State to provide services where less restrictive measures (than the requirement of permanent residence) would make it possible to ensure that the rules of conduct to which the provision of such services is subject on that territory were observed.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 November 1975

Groupement des Fabricants de Papiers Peints de Belgique v Commission of the European Communities and Jean-Marie Pex

1. COMPETITION - RESTRICTIVE AGREEMENT - PRICE-LIST - FIXING - PROHIBITION (EEC Treaty, Art. 85 (1))

2. COMPETITION - RESTRICTIVE AGREEMENT - LIMITATION TO THE TERRITORY OF A SINGLE MEMBER STATE - ADVERSE EFFECT ON TRADE BETWEEN MEMBER STATES - CRITERIA (EEC Treaty, Art. 85)

3. MEASURES ADOPTED BY AN INSTITUTION - DECISION IN LINE WITH PREVIOUS DECISIONS - SUMMARY OR EXPLICIT STATEMENT OF REASONS (EEC Treaty, Art. 190)

1. A price-list system arising under an agreement which prohibits the announcement of rebates on the list prices comes within the prohibition in Article 85 (1) of the EEC Treaty.

2. A restrictive agreement the purpose of which is to market products in a single Member State can affect trade between Member States. Since it extends over the whole of the territory of a Member State, it is by its very nature liable to have the effect of reinforcing the compartmentalization of markets at national level, thereby preventing the economic interpenetration which the Treaty is designed to bring about and protects domestic production. In this connexion it is necessary to identify the means available to the parties to a restrictive agreement to ensure that customers remain loyal, the relative importance of the agreement on the market concerned and the economic context in which it exists.

3. Whereas a decision which fits into a well-established line of decisions may be reasoned in a summary manner, for example by a reference to those decisions, if it goes appreciably further than the previous decisions, the Commission must give an account of its reasoning.

N o t e

In 1922 five Belgian companies, producers and importers of wallpaper, came together to found the Groupement des Papiers Peints de Belgique, a de facto association without legal documents of association. The members of the Group co-operate in the drawing up of a retail price-list and undertake to apply the general conditions of sale laid down by the Group. The Group fixes a price-list for the resale of its wallpapers. These prices are at present either imposed resale prices (in the words of the Commission), or target prices with a prohibition on the advertising of reductions. The Group also provides for co-operation bonuses.

In 1962, in pursuance of Regulation No. 17, the Group notified to the Commission the existence of an agreement concerning the manufacture and distribution of wallpapers.

The origin of the Commission's proceedings and of the application to the Court in Luxembourg may be traced to the following circumstance: J. M. Pex, a dealer in paints and distributor of wallpapers, placed several orders with the Brepols company (a member of the Group) for delivery to a large distribution undertaking which pursues a policy of price-cutting and which has publicly advertised reductions on the sale prices fixed by the Group. Accordingly, the Group issued a circular to all its customers emphasizing that the conditions of the agreement involve an automatic obligation on a purchaser for resale to respect equally the general conditions of sale laid down by the Group.

The members of the Group, with the exception of a single company, refused to sell wallpapers to Mr Pex, on the ground that he had infringed their general conditions of sale. This prompted Mr Pex to submit a complaint to the Commission, alleging a collective boycott by the members of the Group on sales of wallpapers. The Commission initiated the procedure laid down in Article 3 of Regulation No. 17, which resulted in the adoption of its decision of 23 July 1971, in which it found that a number of agreements and decisions of the Group were incompatible with Article 85 (1) of the EEC Treaty, rejected a request for exemption, required the members of the Group to terminate immediately the infringements established and imposed fines on the members of the Group for their collective decision to suspend deliveries to Mr Pex.

The Group and its members brought an action before the Court of Justice against this decision, but limited the subject-matter of the application. The applicant companies refrained from contesting the Commission's decision as at the date of its adoption and subsequently, to the extent to which it prohibits agreements imposing a requirement to adhere to imposed prices and to display them and agreements prohibiting the display of lower prices or of reductions in relation to imposed or suggested prices, but the applicants stated that they continued to contest the legality of the decision as regards the past, not in order to request its total annulment, but to affirm that the suspension of deliveries to Mr Pex did not fall within the prohibition of Article 85 (1) (adverse effect on trade between Member States) and that in consequence the Commission's decision inflicting fines for such suspension should be annulled.

Regarding the restrictions on competition within the Common Market, it is not contested that the manipulation of the market by the Group, characterized by its policy of prices and price reductions and providing for sanctions to ensure strict observance of the general conditions of sale, had as its object and effect the restriction of competition in Belgium and therefore within the Common Market.

In respect of the question whether trade between Member States was affected, the applicants maintain, first, that their agreement was not such as to affect that trade. Second, that even on the hypothesis that the agreement might affect trade between Member States, the decision at issue did not state how such trade could be affected.

The Court of Justice recalled that the fact that an agreement on prices of the type at issue is exclusively concerned with the marketing of products within a single Member State does not preclude the possibility that trade between Member States may be affected (cf. Case 8/72 - Cementhandelaren v Commission). Attention should be paid to the resources at the disposal of the participants in an agreement, the relative importance of the latter on the market in question and the economic context in which it is placed. Article 190 of the Treaty obliges the Commission to give reasons for its decisions, stating the elements of fact and the considerations which prompted it to take its decision. On occasions when its decisions no longer fall within an established line of practice but go appreciably beyond its earlier decisions, the Commission must state its reasons with greater precision.

As regards the territorial protection ensured by the agreement and the isolation of the national market referred to in the decision, the latter does not state with sufficient clarity the reasons for which the Commission came to those conclusions. Mere reference to a previous decision is not sufficient. Accordingly, the Court has annulled Article 4 of the Commission's decision inflicting the fines on the applicants.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

26 November 1975

Société des Grands Moulins des Antilles v Commission of the European Communities

Case 99/74

1. ACTION FOR DAMAGES - NATURE - INDEPENDENT FORM OF ACTION (EEC Treaty, Arts. 178 and 215)

2. NON-CONTRACTUAL LIABILITY OF THE COMMUNITY - SCOPE - DEBT OWED BY A MEMBER STATE

3. ACTION FOR DAMAGES - ADMISSIBILITY - INJURY CAUSED BY THE COMMUNITY - ALLEGATION - CONDITION (EEC Treaty, Arts. 178 and 215)

1. The action for damages provided for in Articles 178 and 215 of the Treaty was included as an independent form of action with a particular purpose to fulfil within the system of legal remedies and subject to conditions on its use arising out of its specific aim.

2. A refusal by a Community institution to pay a debt owed by a Member State to an exporter under Community law is not a matter involving the non-contractual liability of the Community.

3. For an action involving non-contractual liability to lie it is necessary that an injury arising from an act or omission of the Community be capable of adversely affecting the applicant be alleged.

N o t e

The applicant company, which is established in Guadeloupe, has claimed that the Commission be ordered to pay it a sum of more than FF 500,000 by way of compensation for damage caused to it by the unlawful implied refusal on the part of the Commission of the European Communities to pay the following sums: (1) the refunds due to it by reason of exports of cereals from the French Overseas Department ... to a third country; (2) the compensatory allowance for stocks in respect of the 1972/73 marketing year.

The French body competent to pay these amounts is the Office National Interprofessionnel des Céréales which, upon receiving the applicant's request, placed the file "under investigation", on the ground that this was a matter of refunds for Overseas Departments. The applicant then applied to the Commission with no greater success and finally brought before the European Court a claim for damages and interest under the second paragraph of Article 215.

The Société des Grands Moulins des Antilles has failed in its action, since the refusal by an institution of the Community to pay a debt which may be due from a Member State pursuant to Community law cannot involve the Community in non-contractual liability. The action in fact is intended to secure the payment by the Community, in place of the competent authority of the State in question, of sums allegedly owed to it by virtue of Community law. There is no doubt that the payment or refusal of payment fall into the category of acts of the national authorities and that it is therefore for the competent national courts to rule as to the legality of those acts, in pursuance of Community law, according to the forms laid down by national law and following recourse, if necessary, to the procedure for obtaining a preliminary ruling.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 December 1975

The Procureur Général at the Cour d'Appel, Lyon v Henri Mommessin, Jean-Claude Chevalier and the Institut National des Appellations d'Origine and Direction Générale des Impôts du Département du Rhône

Case 64/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - WINE - ANALYSIS - METHODS - OBJECT - COMMERCIAL PURPOSES - METHOD OF CONTROL (Regulation No. 1539/71 of the Commission)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - WINE - ANALYSIS - METHOD - NON-EXHAUSTIVE NATURE - COMPETENCE OF MEMBER STATES (Regulation No. 1539/71 of the Commission)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - WINE - IMPORTATION - NATIONAL CONTROL - OVER-ALCOHOLIZATION - PRESUMPTION - METHOD OF ANALYSIS - PERMISSIBILITY - CONDITIONS (Regulations Nos. 816/70 and 817/70 of the Council, Regulation No. 1539/71 of the Commission, EEC Treaty, Art. 30)

1. The methods of analysis laid down by Regulation No. 1539/71 are mandatory not merely when wine has to be analysed for commercial purposes but also whenever the determination of the elements referred to is necessary to establish fraud or adulteration.

2. Regulation No. 1539/71 is not exhaustive but leaves to the Member States the choice of applying other methods of analysis for determining the constituent elements of wine which are not relevant to the application of Regulations Nos. 816/70 and 817/70.

3. A Member State may in the present state of Community law apply as a national measure of control a presumption in law of over-alcoholization which is based on the proportion of alcohol to the dry extract measured by the 100° method, provided that that presumption is capable of being rebutted and that it is applied in such a way as not to place at a disadvantage, in law or in fact, wines from other Member States.

N o t e

After the Cours d'Appel of Bordeaux and Aix en Provence, the Cour d'Appel, Lyon, has referred a question to the Court of Justice on the interpretation of the Community regulations laying down the Community methods of analysis to be applied in respect of wine.

The question has been referred in the context of criminal proceedings instituted against a vine grower and a wine merchant accused of having illegally enriched certain quantities of red wine and having put those quantities on the market under the appellation "Beaujolais Villages". Once again, the problem raised is that of whether the measures for control and analysis employed in France (the 100° method) and the legal presumption of over-alcoholization based on the alcohol/dry extract ratio (cf. Joined Cases 89/74 and 18-19/75 - Vins de Bordeaux - Proceedings No. 15/75) are to be considered as measures of control falling within the sphere of competence of the State or as rules of analysis which may be incompatible with the relevant Community regulations.

The European Court, in confirmation of its earlier case-law, has ruled that the Community regulations are to be interpreted as meaning that a Member State may, in the present state of Community law, employ as a national measure of control a legal presumption of over-alcoholization based on the alcohol/dry extract ratio determined by the 100° method, provided that that presumption is capable of rebuttal and that it is applied in such a way as not to put at a disadvantage, either in law or in fact, wines coming from other countries.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 December 1975

Fernand Plaquevent v (1) Caisse Primaire d'Assurance-Maladie du Havre and (2) Directeur Régional de la Sécurité Sociale de Rouen

Case 57/75

SOCIAL SECURITY FOR MIGRANT WORKERS - INVALIDITY INSURANCE - PERIODS COMPLETED IN SEVERAL MEMBER STATES - AGGREGATION - NECESSARY FOR ENTITLEMENT TO A PENSION IN ONE OF THOSE STATES - BENEFITS - CALCULATION BASED ON AN AVERAGE CONTRIBUTION - PRO RATA CALCULATION - METHOD (Regulation No. 3 of the Council, Art. 28)

Subparagraph (c) of Article 28 (1) does not depart from the rule laid down in the preceding subparagraphs, according to which the corollary of the aggregation of insurance periods and assimilated periods completed under the legislation of each of the Member States in question is a pro rata calculation by each of the relevant institutions of the amounts of the benefits.

Accordingly, in circumstances in which for an insured person who has been successively subject to the legislation of two Member States to acquire a right to an invalidity pension it is necessary to take into account the insurance periods completed in one of these States as such insured person does not fulfil the conditions laid down in the other for entitlement thereto and where, under the legislation of this latter State, the calculation of benefits is based upon an average wage or an average contribution, without regard to the length of the period of employment, the pro rata calculation must be made after aggregation of all the insurance periods, as provided in Article 28 (1) (b) of Regulation No. 3.

N o t e

The French Cour de Cassation referred to the Court of Justice a question concerning the interpretation of Regulation No. 3 on social security for migrant workers.

This question arose in the context of proceedings concerning the calculation by the relevant French institution of the invalidity pension of a French national who had worked first in France, from 1 December 1931 to 30 December 1944, and later in the Federal Republic of Germany, from 1 October 1944 to 12 December 1952.

(The interpretation given by the Court of Justice in answer to the question referred to it is set out in the summary above).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 December 1975

Belgian State v (1) Jean Nicolas Vandertaelen

and (2) Dirk Leopold Maes

Case 53/75

1. COMMON CUSTOMS TARIFF - CLASSIFICATION OF GOODS - DECISIVE CRITERION

2. COMMON CUSTOMS TARIFF - DESCRIPTION OF GOODS - ICE-CREAM - CONCEPT - SUBHEADINGS 18.06 B and 21.07 C - APPLICATION

1. The decisive criterion for the customs classification of goods must generally be looked for in their objective characteristics and properties.

2. For the purposes of the application of subheadings 18 06 B and 21.07 C of the Common Customs Tariff, the concept of "ice-cream" refers to products having as their essential characteristic that they melt at a temperature of approximately 0°C. That concept cannot be applied to products with a fat content exceeding 15 %.

N o t e

For the purpose of applying headings 18.06-B and 21.07-C of the Common Customs Tariff the term "ice-cream" covers those products the essential characteristic of which is a melting point of about 0°. This term cannot apply to products having a fat content exceeding 15 % by weight. In giving this judgment the European Court has taken up the defence of the consumer. The facts which prompted the Court to take an interest in the composition of ice-cream are as follows: a product coming from third countries was imported into Belgium under an import licence issued for ice-cream, which is covered by tariff subheading 18.06-B. On analysis it appeared that this product was composed of 14 % water, 66 % fats and 20 % sucrose. This mixture showed no sign of melting at a temperature of 0°C nor did it melt at 20°C after a period of 24 hours.

The dispute arose from the fact that the Common Customs Tariff does not specify the composition of ice-cream, but information which was very useful to the Court of Justice may be found in a Council regulation indicating a reasonable composition of that product. In order to obtain an ice-cream, the 7 to 9 % milk-fat content of which allows it to melt at 0°, 35 kg of whole milk powder and 20 kg of sugar are necessary.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 December 1975

Union Nationale des Coopératives Agricoles de Céréales and others v Commission and Council

Joined Cases 95-98/74, 15 and 100/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - IMPORT AND EXPORT CERTIFICATES - TRANSFER - RIGHTS OF THE PARTIES - PROTECTION - LOSS - ACTION FOR DAMAGES - ADMISSIBILITY

2. AGRICULTURE - CONJUNCTURAL POLICY - CURRENCY - FLUCTUATIONS IN EXCHANGE RATES - EXPORTS TO THIRD COUNTRIES - COMPENSATORY AMOUNTS - PAYMENT - OBLIGATION - ORIGIN (Regulation No. 974/71 of the Council, Art. 1)

1. Since Community law permits the transfer of import certificates, the parties to whom the transfer is made have acquired rights which deserve protection and may seek compensation for the loss suffered from the implementation of these certificates.

2. Under Article 1 of Regulation No. 974/71 the right to benefit from a compensatory amount or the obligation to pay it can only arise by the export's taking place and only as from the time when it takes place.

N o t e

These disputes arose from the modification of the method of calculating compensatory amounts which was effected between April and June 1973. The applicants concluded contracts for the exportation of cereals to third countries before the modification and executed those contracts afterwards.

The six applications are for an order that the Community should pay various sums in compensation for damage allegedly suffered by the applicants as a result of the application of the new method of calculation of compensatory amounts. The Court has dismissed the applications and ordered the applicants to bear the costs, having refuted their arguments. The applicants claimed that the new method of calculation of compensatory amounts, in that it applied to export undertakings entered into previously, infringed the rights which they allegedly acquired by the grant of export certificates involving advance fixing of the amount of the export refund.

The Court noted that no provision of the regulation at issue confers on exporters a right to the continuance of a specific method of calculation. The applicants further maintained that the application of the new method of calculation abuse their legitimate expectation of the continued use of the former system. The Court recalled in this connexion the objective and development of the system of compensatory amounts. The events of 1971 on the currency markets, marked by the abandonment of the international rules of the margins of fluctuation of exchange rates, led the Council to institute a system permitting the Member States to charge on imports and grant on exports compensatory amounts, both on trade with other Member States and on that with third countries. This system is intended to neutralize the effect of monetary measures on the prices of certain basic agricultural products, for which intervention prices were provided, and thus to avoid deflections of trade. The Court emphasized the temporary nature of the system of compensatory amounts and the duty of the Community institutions to modify the system whenever it appeared necessary to maintain its corrective rôle.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

16 December 1975

The Sugar Cases

Joined Cases 40 to 48/73, 50/73, 54 to 56/73, 111, 113 and 114/73

(*)

On 16 December the Court of Justice of the European Communities delivered its judgment in what are called the "sugar" cases.

By this judgment (the grounds of judgment alone take up about two hundred pages) the Court of Justice annulled part of the Commission's decision and in addition reduced substantially the fines imposed on the sugar companies by the same decision (No. COM(72) 1600 of 2 January 1973).

The Court has thereby annulled:

(1) - subparagraphs 1 and 4 of Article 1 (1) of the decision (findings of various infringements of Article 85 (1) on the Italian and South German markets);

- subparagraph 2 of Article 1 (1) of the decision to the extent to which it finds that Pfeifer & Langen, Suiker Unie and Centrale Suiker Maatschappij have engaged in a concerted practice designed to protect the Netherlands market;

- subparagraph 2 of Article 1 (2) of the decision (infringement by Netherlands producers of Article 86 on the Netherlands market by bringing economic pressure to bear on Netherlands importers);

- subparagraph 3 of Article 1 (2) to the extent to which it finds that Südzucker-Verkaufs-GmbH committed an infringement by preventing its agents from reselling sugar from other sources;

(*) It is not possible to give the summary of these cases.

(2) - Article 2 of the decision - which requires the undertakings to whom the decision was addressed to put an end immediately to the infringements found by the Commission to have been committed - to the extent to which it refers to infringements which have not been upheld in whole or in part by the Court;

(3) - Article 3 of the decision to the extent to which it imposes fines on Emiliana (100,000 u.a.), Volano (100,000 u.a.), S.A.D.A.M. (100,000 u.a.), Süddeutsche Zucker-AG (700,000 u.a.), Cavarzere (200,000 u.a.), Industria degli Zuccheri (300,000 u.a.) and Eridania (1,000,000 u.a.), as no infringement by these applicants has been upheld.

The fines imposed by Article 3 of the decision on the other applicants have been reduced as follows:

Name of company	Fine fixed by the Commission	Fine fixed by the Court
Suiker Unie	800,000 units of account or 2,896,000 florins	200,000 units of account or 724,000 florins
Générale Sucrière	400,000 u.a. or 2,221,676 FFrs.	80,000 u.a. or 444,335.20 FFrs.
Centrale Suiker Maatschappij	600,000 u.a. or 2,172,000 florins	150,000 u.a. or 543,000 florins
Say	500,000 u.a. or 2,777,095 FFrs.	80,000 u.a. or 444,335.20 FFrs.
Béghin	700,000 u.a. or 3,887,933 FFrs.	100,000 u.a. or 555,419 FFrs.
Raffinerie Tirlemontoise	1,500,000 u.a. or 75,000,000 BFrs.	600,000 u.a. or 30,000,000 BFrs.
Sucres et Denrées	1,000,000 u.a. or 5,554,190 FFrs.	100,000 u.a. or 555,419 FFrs.
Südzucker Verkauf-GmbH	200,000 u.a. or 732,000 DM	40,000 u.a. or 146,400 DM
Pfeifer & Langen	800,000 u.a. or 2,928,000 DM	240,000 u.a. or 878,400 DM

The Court of Justice has given, in the case of each of the undertakings concerned, a very detailed statement of the reasons for upholding the complaints against each of them or, on the contrary, for dismissing them in the judgment. In addition it has given an important and detailed explanation of its reasons for reducing the amount of the fines which are based on the special features of the common organization of the market in sugar.

This organization provides that each Member State shall, by a calculation relating to a basic quantity allocated to it, fix for each factory or undertaking producing sugar in its territory a basic quota and a maximum quota. Member States shall impose on manufacturers a production levy on sugar which is outside the basic quota but within the maximum quota. Further the amount of sugar in excess of the maximum quota cannot be sold on the domestic market.

The difference between this organization and the organization of the market in other sectors is therefore evident.

Some of the important findings of the Court are given below

(1) It is beyond doubt that, as the beforementioned system of national quotas stopped production moving gradually to areas particularly suitable for the cultivation of sugar beet and, in addition, prevented any large increase in production, it cut down the amounts which producers can sell in the Common Market.

This restriction, together with the relatively high transport costs, is likely to have a not inconsiderable effect on one of the essential elements of competition, namely the supply, and consequently on the volume and pattern of trade between Member States.

(2) So far more particularly as the legislative background and economic context of the conduct complained of is concerned no decision as to the amount of the fines can be made without taking account of the fact that the sugar market is not organized on the basis of the Community treated as a geographical unit but as a system designed to maintain any partitioning of national markets, in particular by means of national quotas within the limits of which manufacturers producing sugar and at the same time farmers growing beet are in general protected.

The Commission has failed to take sufficient account of the extent to which this system was capable of affecting conditions on the sugar market.

The common organization of the market in sugar, which moreover is tending to emerge from its initial transitional phase and for the reasons which have just been given only left a residual field available for competition, has therefore helped to ensure that sugar producers continue to behave in an uncompetitive manner.

If this situation cannot lead to the conclusion that the practices are capable of making the disadvantages of such a system still worse in the light of the Treaty, it also has the effect that the conduct of the undertakings concerned cannot be evaluated as rigorously as usual.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 January 1976

Balkan-Import Export GmbH v Hauptzollamt Berlin-Packhof

Case 55/75

1. COMPLEX ECONOMIC SITUATION - EVALUATION - ADMINISTRATION - DISCRETION - EXPORT - REVIEW BY THE COURT - EXTENT

2. AGRICULTURE - MONETARY CRISIS - THIRD COUNTRY - TRADE - DISTURBANCES - MANAGEMENT COMMITTEE PROCEDURE - DISCRETION - EXTENT - REVIEW BY THE COURT - LIMITATION (Regulation No. 974/71 of the Council, Art. 6)

3. AGRICULTURE - MONETARY CRISIS - THIRD COUNTRY - TRADE - DISTURBANCES - RISK - EXISTENCE - DECISION OF THE ADMINISTRATION - CRITERIA (Regulation No. 974/71 of the Council, Arts. 1 and 3)

4. EEC - EXTERNAL RELATION - PRINCIPLE OF NON-DISCRIMINATION - ABSENCE

1. Where a complex economic situation is to be evaluated the administration enjoys a wide measure of discretion. In such a case the court is confined to examining whether the exercise of such a discretion contains a manifest error or constitutes a misuse of power or whether the administrative authority in question did not clearly exceed the bounds of its discretion.

2. When deciding whether there is a risk of disturbance within the meaning of Article 6 of Regulation No. 974/71 the Commission and the Management Committee make an evaluation of a complex economic situation and because of this enjoy a wide measure of discretion the exercise of which is subject to review by the Court within limited terms.

3. When deciding whether there is a risk of disturbance, the Commission may make evaluations of a general nature, taking into consideration groups of products coming under the same tariff heading and subject to the same levy rules.

Furthermore, the Commission must have in mind not only the effect of the depreciation or the increase in value of the currency of a Member State on trade between third countries and that State but also the effect of that depreciation or increase in value on trade between the different Member States with regard to the group of products in question.

Finally, it must not take account solely of the actual free-at-frontier price of a particular export but may rely on standard justified factors for assessment.

4. In the Treaty there exists no general principle obliging the Community, in its external relations, to accord to third countries equal treatment in all respects and in any event traders do not have the right to rely on the existence of such a general principle.

N o t e

Regulation No. 974/71 of the Council of 12 May 1971 established a system of monetary compensatory amounts to be applied to trade between the Member States and with third countries.

The compensatory amounts must be limited to the amounts strictly necessary to compensate the incidence of monetary measures on the prices of basic products covered by intervention arrangements and may be applied only in cases where this incidence would lead to difficulties.

In April 1974, on the occasion of the importation into Germany of a consignment of sheep's-milk cheese from Bulgaria, which had been purchased in accordance with a long-term contract dated November 1972, the customs administration of the Federal Republic of Germany claimed from the plaintiff in the main action, the undertaking Balkan, an import undertaking, the payment of a monetary compensatory amount of more than 9,000 DM on the basis of a rate of 63.80 DM per 100 kg.

The Finanzgericht Berlin, before which the main action was brought, has referred the following questions to the Court of Justice:

Was it still compatible with Community law on 25 April 1974 to levy a monetary compensatory charge on imports from third countries of cheese of sheep's milk, especially in view of the exemptions under a Commission regulation of May 1973 for imports of other types of cheese from payment of a monetary compensatory charge? If so, how is the rate of charge of 63.80 DM per 100 kg to be justified, in particular with regard to its calculation?

The Finanzgericht states in the grounds of its judgment that the reasons for its doubts as to the conformity of the charge at issue with the basic regulation of the Council are to be found in the fact that since May 1973 certain Italian and Swiss cheeses have been exempt from payment of the monetary compensatory amount.

The first question is intended to ascertain whether the validity of the provision at issue may be affected by the fact that its field of application covers the relevant product whereas the monetary measures which gave rise to the institution of the system of compensatory amounts - in particular the increase in value of the DM - could, in April 1974, no longer have resulted in imports from Bulgaria of the relevant products being capable of causing disturbances on the German market in agricultural products. The Court has replied that it is clear that the product at issue in this case belongs to the category of products for which the levy or grant of compensatory amounts is compulsorily prescribed by Regulation No. 974/71 of the Council.

As regards possible disturbances of trade in agricultural products, since this is a complex economic situation the Commission and the Management Committee enjoy extensive discretionary powers in this connexion.

The Commission is guilty of no evident error, nor has it obviously exceeded the limits of its discretionary power in considering that imports from third countries of products derived from milk were, in the absence of compensatory amounts, capable of disturbing trade in agricultural products within the Community. As regards the inequality of treatment between Bulgarian and Swiss cheeses (the latter being exempt from payment of the compensatory amounts) mentioned by the national court, it should be noted that examination of the principle of equality of treatment must be conducted not from the point

of view of the existence or absence of competition between Swiss and Bulgarian cheeses, but from that of their comparability with regard to the disturbance which their importation might have on trade in agricultural products.

In this respect the Commission considers that imports of Swiss cheeses, by reason of their high free-at-frontier offer price, represent less danger of disturbance than imports of Bulgarian sheep's-milk cheeses, the free-at-frontier offer price of which was distinctly lower. The Court has ruled that examination of the questions referred to it has not revealed any factors capable of affecting the validity of the compensatory amount in question.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

22 January 1976

Carmine Antonio Russo v A.I.M.A.

Case 60/75

1. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - MEMBER STATES - INTERVENTION - PERMISSIBILITY - CONDITION (EEC Treaty, Art. 40)

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - PRICE - FORMATION - MEMBER STATES - INTERVENTION - PROHIBITION (Regulation No. 120/67 of the Council, Art. 2)

3. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - CEREALS - PRICE - INDIVIDUAL PRODUCER - RIGHT - MEMBER STATES - ILLEGAL INTERVENTION - DAMAGE - COMPENSATION - NATIONAL LAW - APPLICATION (Regulation No. 120 of the Council, Art. 2)

1. Intervention by a Member State on the agricultural market is compatible with the common organization of the market in the sector in question only in so far as it does not jeopardize the objectives or operation of that organization.

2. The action of a Member State in purchasing durum wheat on the world market and subsequently reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the market in cereals.

3. An individual producer of cereals may claim, under Community rules, that he should not be prevented from obtaining a price approximating to the target price and in any event not lower than the intervention price.

If an individual producer has suffered damage as a result of the intervention of the Member State in violation of Community law it will be for the State, as regards the injured party, to take the consequences upon itself in the context of the provisions of national law relating to the liability of the State.

N o t e

As in Case 40/75 (Bertrand v Commission), the Court has been called upon to examine questions concerning the interpretation of the common organization of the market in cereals in relation to anti-inflation measures adopted by the Italian Government.

These questions were referred for a preliminary ruling in connexion with an action to establish non-contractual liability instituted by an Italian producer of durum wheat against the State intervention agency for the agricultural market (A.I.M.A.).

The producer claims to have been injured by activities of the A.I.M.A., which consist in the purchase on the world market of large quantities of durum wheat in order to resell them to Italian manufacturers of pasta products at prices well below the purchase price and even below the intervention prices fixed pursuant to the provisions concerning the common organization of the market in cereals.

Mr Russo, a producer of durum wheat and the plaintiff in the main action, brought an action against A.I.M.A. for damages, claiming that, in January 1975, he was obliged to sell a consignment of durum wheat at a price of 17,000 lire per quintal, whereas pursuant to the system of the common organization of the market he had a legitimate expectation that he would obtain a price of about 18,500 lire per quintal.

The national court has asked in effect whether the action of a Member State in acquiring durum wheat on the world market and reselling it at prices lower than the purchase price, and indeed lower than the intervention price, is compatible with the common organization of the market in cereals.

The Court has replied that in all cases the objectives and operation of the common organization of the markets must be safeguarded, and that one of the principal objectives is to ensure for producers a price which is based upon the target price; it has concluded that the action of a Member State in purchasing durum wheat on the world market and thereafter reselling it on the Community market at a price lower than the target price is incompatible with the common organization of the market in cereals.

The other questions referred by the national court concern the individual position of traders in the event of interference by the State in the machinery of price-formation and the consequences to be drawn in a case in which such intervention has the effect of injuring the rights vested in traders by Community rules.

The Court has ruled that an individual producer may claim, on the basis of Community rules, that he should not be prevented from obtaining a price bordering on the target price and, in any event, from obtaining a price which is not lower than the intervention price. In the event of injury being caused to an individual producer by intervention by the Member State in violation of Community law it is for the State to bear the consequences with respect to the injured party in accordance with the provisions of national law relating to the State's non-contractual liability.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

27 January 1976

I.B.C. Importazione Bestiame Carni s.r.l. v

Commission of the European Communities

Case 46/75

PROCEEDINGS - ACTION - NATIONAL IMPLEMENTING MEASURES - COMMUNITY RULES - PRESUMED ILLEGALITY - INADMISSIBILITY - NATIONAL COURT OR TRIBUNAL - JURISDICTION

When an action is brought against decisions of the national authorities adopted in implementation of Community rules which the applicant regards as unlawful, the question of the legality of such implementing measures adopted in pursuance of Community law is a matter for the competent national courts or tribunals to decide, using the procedures laid down under national law and after application, where appropriate, of Article 177 of the Treaty, in particular on questions concerning the validity of the Community provisions applied.

It is, therefore, impossible to refer the matter to the Court of Justice by the expedient of an action brought under the second paragraph of Article 215 of the EEC Treaty in order to obtain a material revision of such implementing measures.

N o t e

In 1973 the applicant, the I.B.C. undertaking, imported into Italy hindquarters of beef and veal from Yugoslavia and 22 head of live cattle from Hungary. It believed itself to have suffered damage as a result of the application by the Italian customs authorities of a Commission regulation laying down detailed rules for the application of monetary compensatory amounts, certain provisions of which were said to be illegal in that they unduly reduced compensatory amounts on imports.

According to the applicant it was wrongly required to pay various sums by way of equalization between the import charge and the monetary compensatory amounts, and it was in respect of these that it claimed compensation. The Court of Justice has rejected this application as inadmissible on the ground that it is for the national courts to give judgment as to the legality of such implementing measures, pursuant to Community law, using the procedures laid down by national law and following the use, where appropriate, of the procedure for preliminary rulings, in particular as regards the validity of the Community rules which were implemented.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 February 1976

S.A. Fonderies Roubaix Wattrelos v Société Nouvelle des Fonderies A. Roux, Société des Fonderies J.O.T.

Case 63/75

1. COMPETITION - CARTELS - EXCLUSIVE DEALING AGREEMENTS CONCLUDED BETWEEN TWO UNDERTAKINGS FROM ONE MEMBER STATE - INTERFERENCE WITH TRADE BETWEEN MEMBER STATES - PROHIBITION - EXEMPTION BY CATEGORIES - ASSESSMENT - JURISDICTION OF NATIONAL COURT (EEC Treaty, Art. 85 (1) and (3), Regulation No. 67/67 of the Commission, Art. 1)

2. COMPETITION - CARTELS - NOTIFICATION - EXEMPTION UNDER ARTICLE 4 (2) OF REGULATION NO. 17 - EXTENSION - EXCLUSIVE SALES AGREEMENTS - OPERATION WITHIN THE TERRITORY OF A SINGLE MEMBER STATE - GOODS IMPORTED FROM ANOTHER MEMBER STATE

3. COMPETITION - CARTELS - EXCLUSIVE DEALING AGREEMENTS CONCLUDED BETWEEN TWO UNDERTAKINGS FROM THE SAME MEMBER STATE - INTERFERENCE WITH TRADE BETWEEN MEMBER STATES - PROHIBITION - EXEMPTION BY CATEGORIES (Regulation No. 67/67 of the Commission, Art. 1 (2))

1. It is for the national courts before which an action relating to the validity of agreements concluded between two undertakings from one Member State is brought to assess, subject to the possible application of Article 177, whether such agreements may significantly affect trade between Member States and whether they benefit, in spite of the absence of notification, from the exemption relating to categories of agreements provided for in Regulation No. 67/67 of the Commission in pursuance of Article 85 (3).

2. To the extent to which it exempts from notification agreements which do not relate either to imports or to exports, Article 4 (2) (1) of Regulation No. 17 of the Council must be interpreted as extending to agreements granting exclusive sales concessions in relation to the marketing of goods, where the marketing envisaged by the agreement takes place solely within the territory of the Member State to whose law the undertakings are subject, even if the goods in question have at a former stage been imported from another Member State.

3. Article 1 (2) of Regulation No. 67/67 of the Commission is not intended to exclude from the benefit of exemption by categories those agreements which, although concluded between two undertakings from one Member State, may nevertheless by way of exception significantly affect trade between Member States but which, in addition, satisfy all the conditions laid down in Article 1 of Regulation No. 67/67.

N o t e

Should a contract which is concluded between two undertakings from one Member State for the purpose of selling at least expense a product imported from another Member State by one of the parties using the warehouses and distribution network of the other party be considered to "relate to" imports and for this reason be subject to the notification provided for in Article 4 (1) of Regulation No. 17 of the Council implementing the provisions of the Treaty relating to competition?

This is the question referred by the Cour d'Appel, Paris, in the context of a dispute between two French undertakings. The facts are as follows: Fonderies Roubaix are exclusive distributors of Gopag iron castings of German manufacture. In 1964 this concession covered the whole of France. Roubaix, for its part, was to refrain from manufacturing similar products or to work directly or indirectly for a competing undertaking. In October 1964 Roubaix in turn conceded to Fonderies Roux an exclusive sales concession for Gopag products covering 24 départements in Southern France. This agreement specified that the validity of the Roubaix-Roux agreement depended on the existence of the Roubaix-Gopag contract and that, in the same way as Roubaix, Roux undertook not to manufacture similar products or to work for an undertaking in competition with Gopag. The dispute between the two French undertakings arose following the purchase by Roux of Swiss castings in 1972. Roux, in proceedings taken against it by Roubaix, the other party to their contract, pleaded in defence the incompatibility of the Roubaix-Gopag contract with Article 85, and submitted that both that contract and, consequently, the contract linking Roux to Roubaix were null and void.

The problem raised by the national court therefore consists in assessing whether the sub-concession agreement, assuming that it is prohibited under Article 85 (1) and does not benefit from the exemption by category laid down in Regulation No. 67/67 of the Commission should, in order to have benefited pursuant to Article 85 (3) from an individual exemption from that prohibition, have been the subject of a prior notification.

After pointing out the objective of the simplification of administrative procedures, the Court of Justice has ruled that Article 4 (1) of Regulation No. 17, in so far as it exempts from the requirement of notification those agreements which concern neither importation nor exportation, must be interpreted as covering exclusive sales concession agreements where the marketing operation envisaged by the agreement is conducted exclusively within the territory of a single Member State in which the undertakings are based, even if it covers goods which have previously been imported from another Member State. As regards exemption by category, the Community provisions are not intended to exclude from this system agreements which, although concluded between two undertakings in a single Member State, are however, on a quite exceptional basis, capable of affecting trade between Member States but which for the rest fulfil all the conditions required in order to benefit from the exemption from notification. The Court has emphasized in the grounds of its judgment the rôle of the national courts in this context. It is in effect for them, subject to the use where appropriate of the procedure for preliminary rulings, to assess whether agreements are capable of affecting trade between Member States to an appreciable extent and to ascertain whether contracts of the type at issue here should benefit, in spite of the absence of notification, from exemption by category.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

3 February 1976

Pubblico Ministero v Flavia Manghera and others

Case 59/75

QUANTITATIVE RESTRICTIONS - ELIMINATION - NATIONAL MONOPOLIES OF A COMMERCIAL CHARACTER - ADJUSTMENT - TRANSITIONAL PERIOD - EXPIRY - DISCRIMINATION - ABOLITION - SUBJECTIVE RIGHTS - PROTECTION (EEC Treaty, Art. 37)

Article 37 (1) of the EEC Treaty must be interpreted as meaning that as from 31 December 1969 every national monopoly of a commercial character must be adjusted so as to eliminate the exclusive right to import from other Member States.

When the transitional period ended Article 37 (1) was capable of being relied on by nationals of Member States before national courts.

N o t e

The defendant in the main action, the Manghera undertaking, imported directly into Italy, after 1 January 1970, tobacco produced abroad and, at least in part, in the Member States, without passing through the intermediary of the State monopoly and without paying the duties in force on the imports.

Pursuant to the Italian law of 1942 establishing a State monopoly for the production, preparation, importation and sale of tobacco, the parties were prosecuted before the Tribunale di Como.

Having regard to the fact that the offences with which the accused are charged were committed following the expiry of the exclusive rights exercised by the monopoly pursuant to Article 37 of the EEC Treaty, the investigating judge at the Tribunale di Como has requested the Court of Justice in Luxembourg to give a preliminary ruling on the interpretation of Article 37, laying down that Member States shall progressively adjust any State monopolies of a commercial character so as to ensure that when the transitional period has ended no discrimination exists between nationals of Member States.

Following an analysis of the system of the provisions of the Treaty the Court has concluded that the objective pursued is to ensure adherence of the fundamental rule of the free movement of goods within the whole of the Common Market, in particular by the abolition of quantitative restrictions and measures having equivalent effect in trade between Member States.

This aim could not be achieved if, in a Member State where there is a commercial monopoly, free movement of goods from other Member States, similar to those with which the national monopoly is concerned, were not ensured.

A second question from the national court asks whether Article 37 of the EEC Treaty is directly applicable and whether it has created subjective rights in favour of individuals which the national courts must protect.

The Court has ruled that Article 37 (1) of the EEC Treaty must be interpreted as meaning that as from 31 December 1969, the end of the transitional period, all State trade monopolies had to be reorganized in such a way as to eliminate exclusive import rights from other Member States and that since the expiry of the transitional period this provision may be relied upon by nationals of the Member States before the national courts.

A Council resolution of 1970 urging the French and Italian Governments to take all measures necessary to abolish discrimination resulting from State trade monopolies, which abolition should have been effected at the latest by 1 January 1976, in no way affects the scope and direct applicability of the provisions of Article 37 (1).

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 February 1976

Conceria Daniele Bresciani, M. amd P. Bresciani Bros. v

Amministrazione Italiana delle Finanze

Case 87/75

1. CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - MEANING - PUBLIC HEALTH INSPECTION - CHARGE - IMPOSITION - PROHIBITION (EEC Treaty, Arts. 9 and 12)

2. CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - PROHIBITION - DIRECT EFFECT (EEC Treaty, Art. 13 (2))

3. CUSTOMS DUTIES - ASSOCIATED STATES - CHARGES HAVING EQUIVALENT EFFECT - PROHIBITION - SUBJECTIVE RIGHTS - SAFEGUARD

4. ASSOCIATED STATES - MEMBER STATES - OBLIGATIONS - YAOUNDÉ CONVENTION OF 1963 - DURATION

1. Whatever its designation and mode of application, a pecuniary charge which is imposed unilaterally on goods imported from another Member State when they cross a frontier constitutes a charge having an effect equivalent to a customs duty.

Nor, in determining the effects of the duty on the free movement of goods, is it of any importance that a duty is proportionate to the costs of a compulsory public health inspection carried out on entry of the goods, since the activity of the administration of the State intended to maintain a public health inspection system imposed in the general interest cannot be regarded as a service rendered to the importer such as to justify the imposition of a pecuniary charge.

2. The direct effect of Article 13 (2) of the Treaty can only be invoked with effect from 1 January 1970.

3. Article 2 (1) of the Convention signed at Yaoundé on 20 July 1963 confers, with effect from 1 January 1970, on those subject to Community law the right, which the national courts of the Community must protect, not to pay to a Member State a charge having an effect equivalent to customs duties.

4. The obligations imposed upon the Member States by the Yaoundé Convention of 1963 continued to exist without interruption until the entry into force of the Convention signed at Yaoundé on 29 July 1969.

N o t e

Between 1969 and 1970 the tanners Daniele Bresciani imported various consignemmts of raw cattle hides from France and Senegal.

An Italian legislative decree of 27 July 1934 lays down that all animal products imported into Italy must be subjected to a veterinary inspection at the frontier, resulting in the levy of a charge.

The Bresciani undertaking was required to pay a duty for inspection on imports of cattle hides and it instituted proceedings for exemption therefrom before the Tribunale di Genova, claiming that, as regards the imports of hides from France, the levying of the charge was prohibited by Article 13 (2) of the EEC Treaty and that, for the hides imported from Senegal, a State associated with the Community, the charge was prohibited under the Yaoundé Convention. The national court has submitted to the Court of Justice several questions on the interpretation of the concept of "charges having an effect equivalent to customs duties on imports" contained in the EEC Treaty and in the Yaoundé Conventions and has requested the Court to take account of three particular circumstances:

- the fact that the charge is proportional to the quantity of goods and not to their value distinguishes a duty of the type in issue from charges which are prohibited under Article 3 (2) of the Treaty;

- a pecuniary charge of the type in issue is merely payment for a service rendered (examination and analysis, where appropriate of the goods imported);

- although it is levied in different ways and at different times, the duty in question is also paid in respect of national products of the same kind.

The Court of Justice has once more pointed out that the Community is founded upon a customs union based upon the prohibition, as between Member States, of customs duties and of "charges having equivalent effect", as well as on the adoption of a Common Customs Tariff in respect of their relations with third countries. Article 13 (2) of the Treaty requires the Member States progressively to abolish customs duties so as to have eliminated them totally by the end of the transitional period. This obligation is supplemented by that of abolishing charges having equivalent effect in order to ensure that the fundamental principle of the free movement of goods within the Common Market is not evaded by pecuniary charges of any sort imposed by a Member State.

The Court has ruled that a pecuniary charge imposed unilaterally, whatever its designation or in whatever way it is imposed, which falls on goods imported from another Member State when they cross the frontier, constitutes a charge having an effect equivalent to a customs duty.

The Court has stated that it matters little that the customs duty is proportional to the quantity of goods and not to their value, or that the duty in issue represents payment for a veterinary inspection.

The second question raised by the Italian court poses the problem of whether the direct effect of Article 13 (2) of the Treaty became operative on 31 December 1969 (the end of the transitional period) or on 1 July 1968 (the date of elimination of customs duties within the Community pursuant to the Council Decision of 26 July 1966). Since that decision applied only to the measures expressly mentioned therein, the reply must be that the direct effect of Article 13 (2) can be relied upon only as from 1 January 1970.

The third and fourth questions ask whether the concept of a charge having equivalent effect has the same scope in the Yaoundé Conventions of 1963 and 1969 as in Article 13 (2) of the Treaty.

The European Court has analysed the spirit, system and provisions of the Yaoundé Convention, which enables the interests and prosperity of the inhabitants of the Associated African and Malagasy States to be treated with favour. It is clear from the provisions of the Convention that the latter was not concluded in order to ensure equality between the obligations which the Community has assumed in relation to the Associated States but to encourage their development, and this is no obstacle to the recognition by the Community of the direct effect of certain of its provisions.

The Court has ruled that the provision of the Yaoundé Convention concerning customs duties and charges having equivalent effect (Article 2 (1)) has, as from 1 January 1970, created an individual right to withhold payment to a Member State of a charge having an effect equivalent to a customs duty, this being a right which the national courts of the Community must protect.

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COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

5 February 1976

Firma Süddeutsche Zucker-Aktiengesellschaft, Mannheim v Hauptzollamt Mannheim

Case 94/75

1. MEASURES ADOPTED BY THE INSTITUTIONS - METHODS OF INTERPRETATION

2. AGRICULTURE - COMMON ORGANIZATION OF THE MARKETS - SUGAR - QUOTA SYSTEM - CALCULATION WITHIN THE MEANING OF ARTICLE 1 (1) OF REGULATION NO. 142/69 OF THE COMMISSION - CRITERIA

1. Although Article 1 (2) of Regulation No. 142/69 of the Commission does not expressly mention sugar sweepings, both logic and equity lead nevertheless to the conclusion that they must be deducted from the production mentioned in paragraph (1) of the article.

2. Quantities of white sugar produced from sugar sweepings from a previous sugar year are to be excluded when the quantity of sugar referred to in Article 1 (1) of Regulation No. 142/69 of the Commission is being calculated.

   For this purpose sugar sweepings from a previous sugar year are to be expressed as white sugar in proportion to the sucrose content.

N o t e

The Finanzgericht Baden-Württemberg has referred to the Court of Justice questions on the interpretation of a Commission regulation laying down certain detailed rules for the application of the quota system for sugar. Quantities of sugar produced outside the manufacturer's basic quota are subject to a production levy.

The action was brought in the national court by Süddeutsche Zucker-AG, which contested the inclusion of "sugar sweepings" in the calculation of the quantity of sugar subject to the levy. The plaintiff in the main action maintains in effect that sugar sweepings are sugar produced during the preceding marketing year which, following packaging and despatch, is recovered by sweeping in the factory and is refined again to be reintroduced into the marketing cycle.

The Court has ruled that quantities of white sugar produced from sugar sweepings resulting from a previous sugar marketing year do not enter into the calculation of the quantity of sugar referred to in Regulation No. 142/69 of the Commission.

For this purpose sugar sweepings arising from a previous sugar year are to be expressed as white sugar in proportion to the sucrose content.

* * *

N A T I O N A L

C A S E - L A W

COUR DE CASSATION DE FRANCE

(3rd Chambre civile)

- Judgment of 15 December 1975 -

(Agricultural tenancies)

1. European Economic Community: Article 52 of the Treaty of 25 March 1957 establishing the EEC - Freedom of establishment - The right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals by the law of the country where such establishment is effected - Non-discrimination between nationals of the Member States of the EEC.

2. European Economic Community: Article 52 of the EEC Treaty - Direct applicability: as from the end of the transitional period on 1 January 1970, Article 52 of the EEC Treaty is directly applicable to nationals ot the Member States of the European Economic Community and is binding on their courts.

3. European Economic Community: Article 52 of the EEC Treaty - Article 52 of the EEC Treaty is directly applicable and prohibits any restriction on the freedom of establishment of nationals of the Member States of the EEC. Therefore those provisions of French domestic law which required an administrative authorization for persons wishing to operate an agricultural undertaking in France are no longer applicable to them.

* * *

On the grounds summarized above the Cour de Cassation (3rd Chambre civile) overruled and annulled a judgment of the Cour d'appel of Paris of 12 March 1974 and referred the case to the Cour d'appel of Orléans.

The German proprietor of an agricultural holding in France had, on the expiry of the lease, served a notice to quit on the French tenant and declared his intention to assume the management and operation of his holding himself. The French tenant brought the matter before the French courts and his action was successful before the Cour d'appel of Paris.

In support of his appeal on a point of law, the appellant, the German landlord, pleaded two grounds the first of which was formulated as follows:

"Infringement and wrongful application of Articles 845 and 869 of the Code rural, of the Treaty of Rome, of the decrees of 20 January 1954, 10 October 1963 and 28 August 1969, of the order of 28 August 1969 and of the arrêté of 30 March 1955, furthermore infringement of Article 7 of the Law of 20 April 1810 and in conjunction with Article 102 of the Decree of 20 July 1972, lack, inadequacy and irrelevance of the grounds of judgment and contradictions therein, absence of legal foundation, in that the contested judgment annulled a notice to quit served on a farmer to enable the landlord to resume occupation where the landlord was a national of a Member State of the Community, on the grounds that, although the intention of the Council of the EEC was to guarantee complete equality of treatment with nationals to all citizens of the Community, no general measure had been adopted either under domestic law or under Community law to regulate the freedom of establishment of farmers, that a foreigner is therefore subject to the conditions laid down by the farming regulations under Article 809 of the Code rural and to the necessity to obtain a farming permit and that in this case the landlord cannot exercise his right to resume possession of the property without such a permit, when on the one hand the court could not, without contradicting itself, recognize the aim of the European Economic Community was to allow nationals freedom of establishment in the territory of another State, while stating that the landlord's argument, based on the spirit of the Treaty of Rome, is invalid, apply French law for the purpose of interpreting this spirit, and when on the other hand, the order of 28 August 1969, amending Article 869 of the Code rural, treats nationals of the European Economic Community, without any reservation, in the same way as French nationals, so that the former thus receive the benefit of the whole of the farming regulations without having to show that they hold a farming permit from the administration".

(Cass. Civ. III - Hearing in open court on 15 December 1975 - Judgment No. 1329)

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