INFORMATION ON THE COURT OF JUSTICE

OF THE

EUROPEAN COMMUNITIES

No. XIV

Publications Division, Directorate-General of Information, Commission of the European Communities, 200, rue de la Loi, 1040 - Brussels.

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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

For a number of years, this bulletin, appearing as a quarterly periodical, has published information on the activities of the Court of Justice of the European Communities.

However, it is not the only document of information on the Court or on Community law, far from it. Below, the reader will find a complete list of these publications:

I Information on current matters - for general use

1. - Hearings of the Court - calendar of public hearings, drawn up on a weekly basis. It is sometimes necessary subsequently to change dates; also this calendar is only a guide.

It may be ordered from the Registry of the Court. In French. Free of charge.

2. - Proceedings of the Court of Justice of the European Communities - weekly summary of the judicial work of the Court, appearing in the six official languages of the Community.

Free of charge.

To be ordered from the Press and Legal Information Service, mentioning the language desired.

3. - The Judgments, Orders of the Court, Reports for the hearings, Opinions of the Advocates-General, in the form of roneoed documents - are sent to the parties and may be sent, on express request, to other interested persons once they have been delivered or lodged at the public hearing.

Free of charge.

Orders may be placed with the Registry for: Judgments, Orders, Reports for the hearings.

Opinions of the Advocates-General may be ordered from the Press and Legal Information Service.

II Information and technical documentation.

1. - Information on the Court of Justice of the European Communities - quarterly bulletin published by the Publications Division, Directorate-General of Information, Commission of the European Communities, Brussels.

Free of charge.

To be ordered from the Information Offices of the Community, whose addresses appear in this bulletin.

2. - Collection of texts on the organisation, powers and procedure of the Court.

The 1967 edition is completely out of print.

A new edition is being prepared; it will be available around the middle of 1974. The price remains to be determined.

Orders are to be placed, with an indication of the language desired, with the Publications Office of the European Communities or the bookshops whose addresses are set out below.

3. - Legal publications on European integration (bibliography) -

	BF	Dkr.	DM	FF	Lire	Fl	£
1966 reprint	300	-	24	29	3,750	22	-
1967 supplement	150	-	12	15	1,870	11	-
1968 supplement	150	-	12	15	1,870	11	-
1969 supplement	150	-	12	15	1,970	11	-
1970 supplement	150	-	11	17	1,900	11	-

On sale at the addresses given below.

4. - Bibliography of European case law (1965) on judicial decisions relating to the Treaties establishing the European Communities -

	BF	Dkr.	DM	FF	Lire	Fl	£
1965 edition	100	-	8	10	1,250	7.25	-
1967 supplement	100	-	8	10	1,250	7.25	-
1968 supplement	100	-	8	10	1,250	7.25	-
1969 supplement	100	-	8	10	1,250	7.25	-
1970 supplement	100	-	7.50	11.50	1,250	7.25	-

On sale at the addresses given below.

Germany:	Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1
Belgium:	Ets Emile Bruylant, Rue de la Régence 67, 1000 Brussels
Denmark:	Office des publications officielles des Communautés européennes, Case postale 1003, Luxembourg
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Italy:	Casa Editrice Dott. A. Giuffré, Via Statuto 2, I-2012-Milan
Luxembourg:	Office des publications officielles des Communautés européennes, Case postale 1003, Luxembourg
Netherlands:	NV Martinus Nijhoff, Lange Voorhout 9, 's-Gravenhage
United Kingdom:	Office des publications officielles des Communautés européennes, Case postale 1003, Luxembourg
Other countries:	Office des publications officielles des Communautés européennes, Case postale 1003, Luxembourg.

5. - Europäische Rechtsprechung - Index of case law relating to the Treaties establishing the European Communities 1953-1972 (it exists in German and in French, the extracts of national decisions also appear in their original language), Carl Heymann's Verlag, Gereonstrasse 18-32, 5000 Cologne 1, Federal Republic of Germany.

III Official publication.

Of course, the Recueil de la jurisprudence de la Cour remains the only authentic source for citing the case law of the Court of Justice. This Recueil, covering 20 years of case law (1953-1973), is on sale at the same addresses as the publications mentioned under heading II above. As from 1973, the Recueil is also published in English under the heading "Reports of Cases before the Court".

D E C I S I O N S

of the

COURT OF JUSTICE

of the

EUROPEAN COMMUNITIES

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 October 1973

(Balkan-Import-Export)

Case 5/73

1. AGRICULTURE - COMMON AGRICULTURAL POLICY - COUNCIL - POWERS - CONJUNCTURAL INTERVENTION - URGENT MEASURES - ARTICLE 103 OF THE EEC TREATY - APPLICATION - VALIDITY (EEC Treaty, Art. 40, Art. 43, Art. 103)

2. CONJUNCTURAL POLICY - COMMUNITY INSTITUTIONS - POWERS - MEASURES APPROPRIATE TO THE SITUATION - FORM - CHOICE MADE BY THE COUNCIL. (EEC Treaty, Art. 103)

3. EEC - COMMUNITY INSTITUTIONS - Burdens imposed on Community subjects - LIMITATION TO THOSE STRICTLY NECESSARY - DUTY - SCOPE

4. AGRICULTURE - COMMON AGRICULTURAL POLICY - OBJECTIVES - RECONCILIATION - COMMUNITY INSTITUTIONS - DUTY (EEC Treaty, Art. 39).

5. AGRICULTURE - DISCRIMINATION - EEC TREATY, ARTICLES 39 and 40 - SPHERE OF APPLICATION

6. AGRICULTURE - IMPORTS FROM THIRD COUNTRIES - COMPENSATORY AMOUNTS - NATURE - IMPOSITION - AUTHORIZATION WHERE RATES OF EXCHANGE ARE FLUCTUATING - VALIDITY (Regulation No. 974/71 of the Council). (Regulations Nos. 1073/71, 1014/71, 548/72 of the Commission).

1. It appears from Articles 40 and 43(2) of the EEC Treaty that the powers given for implementing the common agricultural policy do not relate merely to structural measures but extend equally to any immediate short-term economic intervention required in this sphere of production and that the Council is empowered to have recourse thereto in

accordance with the decision-making procedures provided for. Article 103, since it refers to the conjunctural policy of Member States which they must regard as a matter of common concern, does not concern those areas already made subject to common rules, as is the organization of the agricultural markets.

However, since the common agricultural policy contains no adequate provision for the case which would enable the necessary measures to be taken in order to deal with a conjunctural crisis, the Council is justified in making interim use of the powers conferred on it by Article 103 of the Treaty.

2. Article 103 does not preclude Community institutions from having powers to introduce, without prejudice to other procedures set out in this Treaty, any conjunctural measures which may appear to be necessary in order to safeguard the objectives of the Treaty. The Council shall in each instance select the form to be taken by the measure which it considers to be the most suitable.

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

4. The Community institutions must harmonise the various objectives of the common agricultural policy which, taken separately, appear to conflict with one another and, where necessary, allow temporary priority to one of them in accordance with the demands of those economic factors or conditions in view of which their decisions are made.

5. Article 40 contemplates only discrimination between producers or between consumers, while the balance to be held between the conflicting interests of these two groups is dealt with in Article 39.

6. Compensatory amounts are Community measures which, while they do involve a partitioning of the market, serve to compensate for variations in fluctuating exchange rates and thus help to preserve the normal flow of trade in products under the exceptional conditions temporarily created by the monetary situation. The authorisation to charge compensatory amounts on agricultural imports from third countries for a time when rates of exchange are fluctuating is valid.

Note

This case concerns the import from Bulgaria into the Federal Republic of 13,590 kg of soft cheese. The importer must pay the German customs a compensatory amount of over 6,000 DM pursuant to a Regulation of the Council of the European Communities which was intended to prevent disturbances in the agricultural market consequent on the temporary widening of the margins of fluctuation of currencies.

The importer sought to have the demand annulled by the German fiscal court on the grounds that the Regulation of the Council was contrary to the Common Market Treaty.

The German Court referred this question to the Court of Justice, which has ruled that it found nothing capable of affecting the validity of the Regulation of the Council.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 October 1973

(Firma Carl Schlüter)

Case 9/73

1. AGRICULTURE - COMMON AGRICULTURAL POLICY - COUNCIL - POWERS - CONJUNCTURAL INTERVENTION - URGENT MEASURES - ARTICLE 103 of the EEC TREATY - APPLICATION - VALIDITY. (EEC Treaty, Art. 40, Art. 43, Art. 103).

2. CONJUNCTURAL POLICY - COMMON INSTITUTIONS - POWERS - MEASURES APPROPRIATE TO THE SITUATION - FORM - CHOICE MADE BY THE COUNCIL. (EEC Treaty, Art. 103)

3. EEC - COMMUNITY INSTITUTIONS - BURDENS IMPOSED ON COMMUNITY SUBJECTS - LIMITATION TO THOSE STRICTLY NECESSARY - DUTY - SCOPE.

4. PRELIMINARY RULINGS - ACTS OF INSTITUTIONS - VALIDITY - ASSESSMENT IN THE LIGHT OF INTERNATIONAL LAW - CRITERIA (EEC Treaty, Art. 177)

5. GENERAL AGREEMENT ON TARIFFS AND TRADE - ARTICLE II - NO PERSONAL RIGHTS OF COMMUNITY SUBJECTS

6. COMMUNITY LAW - DIRECT EFFECT - CRITERIA

7. BALANCE OF PAYMENTS - EXCHANGE RATES - POLICY OF MEMBER STATES - DUTY - NO DIRECT EFFECT (EEC Treaty, Art. 5, Art. 107) (Council Resolution of 22 March 1971)

8. AGRICULTURE - IMPORTS FROM THIRD COUNTRIES - COMPENSATORY AMOUNTS - NATURE - IMPOSITION - AUTHORIZATION WHERE RATES OF EXCHANGE ARE FLUCTUATING - VALIDITY (Regulation No. 974/71 of the Council) (Regulations Nos. 1013/71, 1014/71, 501/72 of the Commission).

1. It appears from Articles 40 and 43(2) of the EEC Treaty that the powers granted for implementing the common agricultural policy do not relate merely to structural measures but extend equally to any immediate short-term economic intervention required in this sphere of production and the Council is empowered to have recourse thereto in accordance with the decision-making procedures provided for. Since it refers to Member States' conjunctural policies which they must regard as a matter of common concern, Article 103 does not concern those areas already made subject to common rules, as is the organization of the agricultural markets.

   However, since the common agricultural policy contains no adequate provision for the case which would enable the necessary measures to be taken in order to deal with a conjunctural crisis, the Council is justified in making interim use of powers conferred on it by Article 103 of the Treaty.

2. Article 103 does not preclude Community institutions from having powers to introduce, without prejudice to other procedures set out in the Treaty, any conjunctural measures which may appear to be necessary in order to safeguard the objectives of the Treaty. The Council shall in each case select the form to be taken by the measure which it considers to be the most suitable.

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

4. The validity of acts of the institutions, within the meaning of Article 177 of the Treaty, cannot be tested against any rule of international law unless that rule is binding on the Community and capable of creating rights of which interested parties may avail themselves in a court of law.

5. Article II of the General Agreement on Tariffs and Trade cannot confer on Community subjects a right to invoke it in a court of law.

6. A Community provision in itself clear and precise and which does not leave any margin of discretion to the authority by whom it is to be applied is directly applicable.

7. Neither Articles 5 and 107 of the Treaty, (so long as the procedures set out in Article 3(g) have not been applied), nor the Resolution adopted by the Council and government representatives of Member States on 22 March 1971 on the establishment by stages of an economic and monetary union can be interpreted as, in themselves, imposing on Member States a prohibition against altering the exchange parity of their currencies otherwise than by establishing a new fixed parity, which might be invoked by interested parties in the national courts.

8. Compensatory amounts are Community measures which, while they constitute a partitioning of the market, serve to compensate for variations in fluctuating exchange rates and thus help to preserve the normal flow of trade in products under the exceptional conditions temporarily created by the monetary situation. Authorization to levy compensatory amounts on agricultural imports from third countries during a period of fluctuation in the exchange rates is valid.

Note

The Court has also given judgments in two cases similar to Judgment 5/73. In these cases however the referring courts further required to know whether the resolution adopted by the representatives of the Member States on 22 March 1971 on the progressive realisation of economic and monetary union did or did not prohibit Member States from fixing the parity of their currencies otherwise than by a decision laying down a fixed

parity. In other words, does the resolution forbid Member States from "floating" their currencies? The Court answered that question in the negative. The resolution does not constitute a prohibition which could be invoked by parties in a national court of law.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 October 1973

(Rewe)

Case 10/73

1. AGRICULTURE - COMMON AGRICULTURAL POLICY - COUNCIL - POWERS - CONJUNCTURAL INTERVENTION - URGENT MEASURES - ARTICLE 103 OF THE EEC TREATY - APPLICATION - VALIDITY. (EEC Treaty, Art. 40, Art. 43, Art. 103).

2. CONJUNCTURAL POLICY - COMMUNITY INSTITUTIONS - POWERS - MEASURES APPROPRIATE TO THE SITUATION - FORM - CHOICE MADE BY THE COUNCIL. (EEC Treaty, Art. 103).

3. BALANCE OF PAYMENTS - RATES OF EXCHANGE - POLICY OF MEMBER STATES - DUTY - NO DIRECT EFFECT. (EEC Treaty, Art. 5, Art. 107) (Resolution of the Council of 22 March 1971).

4. AGRICULTURE - IMPORTS FROM THIRD COUNTRIES - COMPENSATORY AMOUNTS - NATURE - IMPOSITION - AUTHORIZATION WHERE RATES OF EXCHANGE ARE FLUCTUATING - VALIDITY. (Regulation No. 974/71 of the Council) (Regulations Nos. 1073/71, 1014/71, 501/72 of the Commission).

1. It appears from Articles 40 and 43(2) of the EEC Treaty that the powers granted for implementing the common agricultural policy do not relate merely to structural measures but extend equally to any short-term economic intervention required in this sphere of production and the Council is empowered to have recourse thereto in accordance with the decision-making procedures provided for. Since Article 103 refers to the conjunctural policy of Member States which they must regard as a matter of common concern, it does not concern those areas already made subject to common rules, as is the organization of the agricultural markets.

However, since the common agricultural policy contains no adequate provision for the case which would enable the necessary measures to be taken in order to deal with a short-term crisis the Council is

justified in making interim use of the powers conferred on it by Article 103 of the Treaty.

2. Article 103 does not preclude Community institutions from having powers to introduce, without prejudice to other procedures set out in the Treaty any conjunctural measures which may appear to be necessary in order to safeguard the objectives of the Treaty. The Council shall in each instance select the form to be taken by the measure which it considers to be the most suitable.

3. Neither Articles 5 and 107 of the Treaty, (so long as the procedures set out in Article 3(g) have not been applied), nor the Resolution adopted by the Council and government representatives of Member States on 22 March 1971 on the establishment by stages of an economic and monetary union, can be interpreted as, in themselves, imposing on Member States a prohibition against altering the exchange parity of their currencies otherwise than by establishing a new fixed parity, which might be invoked by interested parties in the national courts.

4. Compensatory amounts are Community measures which, while they do constitute a partitioning of the market serve to compensate for variations in floating exchange rates and thus help to preserve the normal flow of trade in products under the exceptional conditions temporarily created by the monetary situation. Authorization to levy compensatory amounts on agricultural imports from third countries during a period of fluctuation in the exchange rates is valid.

See the Note following Judgment 9/73.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

9 October 1973

(Claus W. Muras)

Case 12/73

1. COMMUNITY LAW - INTERPRETATION - THIRD COUNTRIES - LAWS OR CUSTOMS - REFERENCE - INADMISSIBILITY.

2. AGRICULTURE - COMMON ORGANIZATION OF MARKETS - PRODUCTS SUBJECT TO A SINGLE PRICE SYSTEM - EXPORT REFUNDS - GRANT - CONDITION - REQUIREMENTS AS TO QUALITY - CRITERIA FOR ASSESSMENT. (Regulation No. 1041, Art. 6)

3. COMMON CUSTOMS TARIFF - DESCRIPTION OF GOODS - INTERPRETATION - ABSENCE OF COMMUNITY PROVISIONS - AUTHORITY OF EXPLANATORY NOTES TO THE BRUSSELS NOMENCLATURE.

4. COMMON CUSTOMS TARIFF - DESCRIPTION OF GOODS - SAUSAGES AND THE LIKE - TARIFF SUB-HEADINGS 16.01-B-1-(a) and 16.01-B-1-(c) - MEANING.

1. In the absence of any express reference to the laws or customs of a third country a Community provision must be interpreted in relation and in the context of its own sources.

2. A product which cannot be marketed within the Community on normal terms and under the description given in the claim for the grant of a refund would not fulfil the requirements as to quality set out in Article 6 of Regulation No. 1041.

The fact that the amount of the refund exceeds the price in fact paid by the exporter on the home market for the export of products is an indication that doubts should be cast on the quality of the product.

The question whether products for which an export refund is claimed meet the requirements as to quality laid down by Article 6 of Regulation No. 1031/67 must be assessed on the basis of criteria in force within the Community.

3. In the absence of Community provisions the Explanatory Notes to the Brussels Convention on nomenclature for the classification of goods in customs tariffs are authoritative as a valid means of interpreting common headings.

4. The classification of a product under sub-heading 16.01-B-1-(a) presupposes that its ingredients had been subjected to a drawing process and that moreover they are composed of meat, not merely of offal. Sub-heading 16.01-B-1-(c) is a residual heading under which should be classified all sausages and the like and other similar products composed of meat, offal or blood, within the meaning of the above-mentioned Explanatory Notes, which cannot be included under the other headings.

Note

What must a sausage contain?

Recipes vary on this point. The European Economic Community, though innocent of any wish to encroach on the territory of the disciples of Vatel, has one all its own. In fact its rules for the common organization of markets in the pigmeat sector, which provide for a compensatory payment to be made on exports of pork sausage to third countries - a payment which is designed to compensate for the difference between the price ruling on the world market, usually lower, and the higher Community price - require that, for there to be sausage, the product which it is intended shall benefit from the compensatory payment be in free circulation within the Community, that it be of sound and fair marketable quality and that it be intended and fit for human consumption.

A German exporter invoked these rules in order to claim a compensatory payment of 195,762.42 DM from the Community for the export to Yugoslavia of 108,756.9 kg of sausages and the like.

An expert's opinion taken at the request of the German customs authorities indicated that this was in fact "a product manufactured from fat and the lowest grade of meat offal. The merchandise cannot be described as sausage because a necessary ingredient, namely meat, is absent. In the home customs territory this product would be treated as a flagrant misrepresentation under Article 4(2) of the Food Law. Moreover, this merchandise, on account of its distinctive odour and taste, ought to be the subject of a complaint as being rotten and unfit for consumption".

Thereupon the German customs authorities claimed repayment of the refund granted. The exporter filed an objection to the decision seeking repayment and, upon rejection of this objection brought an action for annulment before the Hamburg Finanzgericht.

This Court requested the Court of Justice of the European Communities to give a preliminary ruling on the interpretation of the content and scope of the Community rules on this subject.

The Court has just ruled that for the purposes of granting a compensatory payment, the products which are to benefit from an export refund must be judged on the basis of criteria in force within the Community. Thus, a product which could not be put on the market within the Community cannot for this reason benefit from compensatory payments on export. Sausage, within the meaning of the nomenclature of the Common Customs Tariff, must be made of meat-based components, not merely offal. Moreover, these components must have been dried in some way.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 October 1973

(Firm of F.lli VARIOLA S.p.A., Trieste)

Case 34/73

1. CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - MEANING - SAME MEANING IN THE TREATY AND IN THE AGRICULTURAL REGULATIONS. (EEC Treaty, Art. 9).

2. CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - MEANING - UNLOADING CHARGE - INADMISSIBILITY. (EEC Treaty, Art. 9, 13(2)).

3. ACTS OF AN INSTITUTION - REGULATION - DIRECT APPLICABILITY - MEANING (EEC Treaty, Art. 189).

4. ACTS OF AN INSTITUTION - REGULATION - REPEAL - PRIVATE RIGHTS - VALIDITY (EEC Treaty, Art. 189).

5. COMMUNITY LEGAL ORDER - PRIMACY OVER NATIONAL LAW - COMMUNITY RULES - ENTRY INTO FORCE - DATE - ALTERATION BY MEMBER STATES - INADMISSIBILITY.

1. The concept of "charge having equivalent effect" under the agricultural regulations must be taken to have the same meaning as in Article 9 et seq. of the Treaty.

2. The prohibition of all customs duties and charges having equivalent effect covers any charge levied at the time or by reason of importation and which, specifically affecting the imported product and not the home-produced product, has the same restrictive effect on free movement of goods as a customs duty.

   Accordingly, a charge imposed exclusively on imported goods because they have been unlaoded in home ports constitutes a "charge having equivalent effect" and is prohibited.

3. Owing to its very nature and its place in the system of sources of Community law, a Regulation has immediate effect and, consequently,

operates to confer rights on private parties which the national courts have a duty to protect.

The direct application of a Regulation means that its entry into force and its application in favour of or against those subject to it are independent of any measure of reception into national law.

A legislative provision of national law reproducing the content of a directly applicable rule of Community law can in no way affect direct applicability, or the Court's jurisdiction under the Treaty.

4. In the absence of a valid provision to the contrary, repeal of a Regulation does not mean abolition of the private rights it created.

5. A legislative provision of internal law cannot be set up against the direct application, in the legal order of Member States, of Regulations of the Community and other provisions of Community law without compromising the essential character of Community rules and the fundamental principle that the Community legal system is supreme.

This is particularly true as regards the date from which the Community rule becomes operative and creates rights in favour of private parties.

The freedom of Member States, without express authority, to vary the date on which a Community rule comes into force is excluded by reason of the need to ensure uniform and simultaneous application of Community law throughout the Community.

Note

Disembarkation tax?

Having imported cereals from the Argentine and Canada, a Trieste undertaking was required by the Italian Customs authorities at Trieste to pay several taxes called "administrative duty", "statistical duty" and "disembarkation

duty" (Tassa di sbarco).

Being of the opinion that these taxes have equivalent effect to customs duties, as prohibited by the Common Market Treaty and by the Regulations on the common organization of markets in the cereals sector, the importer requested the Trieste Court to order the Customs authorities to return the amounts paid.

The Trieste court put several questions to the Court of Justice of the Communities on the interpretation of Community Regulations, but required precise answers only with respect to disembarkation duty. In fact the Court has already had to give its opinion on the nature of the so-called statistical duty (Case 24/68: Commission v. Italian Republic 1 July 1969) and on the administrative duty (Case 8/70: Commission v. Italian Republic 18 November 1970).

The Court of Justice ruled that the disembarkation duty constitutes a charge having equivalent effect to customs duty and as such is prohibited by the Common Market Treaty and by certain Community Regulations. The Court emphasized in this case that these provisions - being directly applicable - create individual, subjective rights which the national court must safeguard. Moreover, no national legislation, even if adopted after the Community rule, can amend the latter, still less annul it.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 October 1973

Ludwig KUNZ, Amsterdam, Netherlands

Case 35/73

SOCIAL SECURITY - MIGRANT WORKERS - SICKNESS INSURANCE - PENSIONERS ENTITLED TO DRAW PENSIONS UNDER THE LEGISLATION OF SEVERAL MEMBER STATES - RESIDENCE IN THE TERRITORY OF ONE OF THESE STATES - BENEFITS IN KIND PROVIDED BY THE LEGISLATION OF A STATE OTHER THAN THAT OF RESIDENCE - NON-ENTITLEMENT.

Article 22 of Regulation No. 3 of the Council concerning social security for migrant workers is to be interpreted as meaning that the state where he is resident does not have to issue benefits in kind to a pensioner who is entitled to draw pensions under the legislation of several Member States and who is resident in one of them, where this is not provided for by the law of that state.

Note

A Dutch worker living in Amsterdam was paid a retirement pension by the German Federal Assurance Office in Berlin. In the Netherlands he made voluntary contributions to a mutual sickness insurance organization which provided benefits in kind, such as free medical or dental services. Dutch legislation does not provide for such benefits.

Therefore, armed with the Community rules on Social Security for migrant workers, he applied to the German Assurance Office for payment of a proportion of his voluntary contributions to the Dutch organization. The German office refused on the grounds that - in its view - Community Regulations provide that the sickness insurance of perons in receipt of

retirement pensions must be undertaken by the Social Security institution of the State in which the insured is permanently resident.

This refusal led to proceedings in the German Courts - first instance, appeal, "revision" by the Landessozialgericht - which led in turn to a reference to the European Court for a preliminary ruling on a question on the interpretation of the Community Regulation.

The Court held that the Regulation in question should be interpreted as meaning that the person entitled to a pension under the legislation of several Member States and who is resident within one of those states has no right to benefit in kind from the state within which he is resident when the legislation of that state does not provide for such benefits.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

11 October 1973

(REWE-Zentralfinanz GmbH)

Case 39/73

CUSTOMS DUTIES - CHARGES HAVING AN EFFECT EQUIVALENT TO - MEANING - PHYTO-SANITARY EXAMINATION - CHARGES - IMPOSITION - PROHIBITION (EEC Treaty, Art. 13(2)).

Pecuniary charges, whatever their amount, imposed for reasons of phyto-sanitary examination of products when they cross the frontier, which are determined according to criteria of their own, which criteria are not comparable with those for determining the pecuniary charges attaching to similar domestic charges, are deemed charges having an effect equivalent to customs duties.

The activity of the administration of the state intended to maintain a phyto-sanitary 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.

Note

Is the hygiene control tax imposed by the Chamber of Agriculture of a Member State on the import of plants, fruit or vegetables from another Member State valid under the terms of the Common Market Treaty?

The answer, given by the Court of Justice in a preliminary ruling on a question put to it by the Oberverwaltungsgericht of North Rhine-Westphalia, is no.

The Chamber of Agriculture of Westphalia-Lippe charged the importer of 19,195 kg of apples from Italy the sum of 29.10 DM for a hygiene control examination. In the importer's opinion this tax constituted a charge having equivalent effect to a customs duty as prohibited by the Treaty.

The European Court supported this view. It stated that pecuniary charges, for whatever amount, imposed for the hygiene control examination of products crossing a frontier, which are fixed in accordance with independent criteria, not corresponding to those used to fix pecuniary charges which might be made upon similar national products, are to be considered as charges having equivalent effect to customs duties.

Moreover the Court stated that the work of a national administration aimed at maintaining a system of plant hygiene control in the public interest cannot be considered to be a service performed for the importer such as would justify the imposition of a pecuniary charge.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

24 October 1973

(Merkur)

Case 43/72

1. PROCEDURE - ACTION FOR DAMAGES - AUTONOMOUS NATURE - DIFFERENCE BETWEEN SUCH ACTION AND AN APPLICATION FOR ANNULMENT (EEC Treaty, Art. 178, Art. 215).

2. EEC - NON-CONTRACTUAL LIABILITY - LEGISLATIVE ACTION INVOLVING SELECTION OF POLICY - DAMAGE SUFFERED - VIOLATION OF A SUPERIOR RULE OF LAW (EEC Treaty, Art. 215)

3. AGRICULTURE - IMPORTS - EXPORTS - COMPENSATORY AMOUNTS - AUTHORISATION - EXCLUSIVE RIGHT OF MEMBER STATES (Regulation No. 974/71 of the Council, Art. 7)

4. AGRICULTURE - EXPORTS - COMPENSATORY AMOUNTS - GRANT - AUTHORISATION - DISCRETIONARY POWERS OF THE COMMISSION (Regulation No. 974/71 of the Council, Art. 1)

5. EEC - CONJUNCTURAL POLICY - COMMUNITY INSTITUTIONS - POWERS - SCOPE (EEC Treaty, Art. 103)

1. The action for damages provided for by Articles 178 and 215 of the Treaty was introduced as an autonomous form of action, with a particular purpose to fulfil within the system of actions and subject to conditions on its use dictated by its specific nature. It differs from an application for annulment in that its end is not the cancellation of a particular measure, but compensation for damage caused by an institution in the performance of its duties.

2. Where legislative action involving measures of economic policy is concerned, the Community does not incur non-contractual liability

for damage suffered by individuals as a consequence of that action, by virtue of the provisions contained in Article 215, second paragraph of the Treaty unless a sufficiently flagrant violation of a superior rule of law for the protection of the individual has occurred.

3. Article 7 of Council Regulation No. 974/71, which states that "partial ... use may not be made of the authorization provided for in this Regulation", is addressed solely to Member States.

4. By virtue of the last sentence in Article 1(2) of Regulation No. 974/71 of the Council, compensatory amounts cannot be granted for exports, under this provision of any specific product unless without them trade in that product would be subject to disturbances. The Commission - by whom any such decision is to be made and which has wide discretionary powers for that purpose - is therefore under no duty to fix compensatory amounts for every product listed in Regulation No. 974/71.

5. While the powers conferred on Community institutions by the Treaty, and by Article 103(2) in particular, include the option of mitigating, as a matter of common concern, some of the effects of the widening by a Member State of the margins of fluctuation for the exchange rates of its currency in relation to its official parity, it does not follow that the Council is bound to compensate for all such effects insofar as these are disadvantageous to importers and exporters in the Member State concerned.

   In fact, by enabling the Council, without obliging it, to "adopt ... measures appropriate to the situation", Article 103 conferred on that body wide powers of appraisal, to be exercised as a matter of "common concern", and not in the private interests of a particular group of participants in the market.

Note

The Court gave judgment in another case brought against the Commission by a German importer who, also, considered himself adversely affected by Community provisions on monetary matters.

By means of a Regulation, the Council gave the Commission the task of determining the compensatory amounts for the export of agricultural products. This was done in order to avoid disturbances in the agricultural market following the temporary widening of the margins of fluctuation of currencies.

A German company complained that barley and secondary products from barley were not the subject of any compensatory amount. It claimed, before the Court, damages of 50,000 DM from the Community. The Court dismissed this claim. From the moment that the Council had expressly given the Commission a mandate to determine the compensatory amounts for agricultural products, the Commission was empowered, if it so desired, not to provide compensatory amounts for certain products if it was of the opinion that trading in these products was unlikely to cause a disturbance in agricultural markets.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 November 1973

(Fleischer)

Case 49/73

COMMON CUSTOMS TARIFF - DESCRIPTION OF GOODS - SUGAR CONFECTIONERY - CLASSIFICATION OF PRODUCTS UNDER SUBHEADING 17.04-D-II - CRITERIA

The milkfat content of goods covered by subheading 17.04-D-II of the Common Customs Tariff must not be such as to affect the character of those products as sugar confectionery.

Products in bulk form intended for use in the making of sugar confectionery, even if their sugar content must be increased during processing into the finished product, are covered by subheading 17.04-D-II, provided that their composition specifically and definitely designates them for use in the making of a certain category of sugar confectionery.

Note

Bulk caramel is used in the manufacture of confectionery. It falls under one of the headings in the Common Customs Tariff of the European Economic Community.

A quantity of it was imported into the Common Market by a German importer in February 1970 and here the merchandise coming from Denmark - at the time a third country, non-Member of the Common Market was subjected to an import levy fixed by reference to the heading under which it is classified in the Common Customs Tariff.

This was the cause of a dispute between the importer and the German Customs authorities. How much milk, butter, milkfat, sugar, sucrose, can be

contained in bulk caramel before it ceases to be classified as such? and what would be its tariff heading?

After a sample analysis, the German Customs authorities reversed their original decision, reclassified the caramel, and claimed a supplementary levy of 78,452.99 DM., on the ground that the milkfat content of the caramel concerned was too high, and the sugar too low.

It was therefore no longer caramel, but a sweet fat food preparation; and products classified as such attracted a higher levy.

An administrative objection was made, followed by an appeal to the Hamburg Fiscal Court; the latter asked the Court of Justice of the Communities for an interpretation of the heading 17.04-D-II.

The Court held that, if a product was to be classified under the tariff heading for bulk caramel, its milkfat content must not be of such a level as to alter the character of the product.

On the other hand, even if the bulk primary material to be used in manufacturing sugar confectionery has too low a sugar content in its initial state - even if its sugar content has therefore yet to be increased in the processing of the end-product - it may still fall under the heading 17.04-D-II insofar as its composition shows that it is specifically and definitely intended to be used in the manufacture of a particular category of sugar confectionery.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

7 November 1973

(Bestuur der Sociale Verzekeringsbank v. B. Smieja)

Case 51/73

1. SOCIAL SECURITY FOR MIGRANT WORKERS - PARTICULAR SCHEMES UNDER NATIONAL LAW WITHIN THE MEANING OF ARTICLES 10(1) OF REGULATIONS NOS. 3 AND 1408/71 OF THE COUNCIL - MEANING

2. SOCIAL SECURITY FOR MIGRANT WORKERS - PARTICULAR SCHEMES UNDER NATIONAL LAW - BENEFITS THEREUNDER - GRANT - CONDITIONS - TERRITORIAL CLAUSE - CANNOT BE APPLIED (Regulations No. 3 and No. 1408/71 of the Council, Art. 10(1))

1. The phrase "by virtue of the legislation of one or more Member States" in Article 10(1) of Regulation No. 1408/71 refer to national laws after the effects of Community law, and particularly the principle of non-discrimination between nationals of Member States have been taken into account.

2. The protection afforded by Article 10(1) of Regulations Nos. 3 and 1408/71 extends to benefits arising from particular schemes under national law which are given effect by increasing the value of the payment to be made to the beneficiary.

Note

On 1 January 1957, the Netherlands replaced its sickness and old-age pension scheme for employed persons by a General Old-Age Assurance applicable to all residents. Since that law ("A.O.W.") extends the old-age pension benefits to persons other than employed persons and the pension rates granted

previously to employed persons only were fairly low, the A.O.W. contained some transitional provisions. According to these, anyone who had attained the age of 15 years but not 65 years when the new scheme entered into force (1.1.1957) is deemed to have been insured for the period from the date he completed his 15th year to 1 January 1957, provided that he was resident in the Netherlands for the six years following completion of his 59th year. Furthermore, the law adds that no one may benefit from the provisions unless he is of Dutch nationality and habitually resident in the Netherlands. These two last requirements can be waived, however, by a public administrative order, subject to conditions to be laid down by it.

Miss B.S., a German national, resident in the Federal Republic of Germany when she attained the age of 65 years and still resident there, was granted, by a decision of the social insurance bank of Amsterdam ("the Bank"), an old-age pension attributable to the contribution periods she had completed in the Netherlands. This pension, paid under the terms of a German-Dutch convention concluded with reference to Community social security provisions for migrant workers, was considerably lower than that to which she would have been entitled under the Dutch AOW.

But could Miss B. S., invoke this law? She thought yes; the Bank, at least in the first instance, thought no.

But - curiously enough - the Bank itself altered its view of the law during the course of the proceedings before a Dutch administrative court of first instance, telling the court that, when Community law was taken into account it considered that it had been mistaken in its assessment of the pension, and requested the Court to annul its (the Bank's!) decision.

Nonetheless, the Court rejected the argument, holding that the Bank's first decision was correct.

Considering that a problem of interpretation of Community law was involved, however, the Bank appealed against the first judgment.

The Court of appeal then referred the case to the Community Court for an interpretation of the Community law relating to social security for migrant workers.

Giving judgment, the Court in Luxembourg held that the Community Regulations refer to national legislation as it is after the effects of Community law, especially the principle of non-discrimination between nationals of Member States, have been taken into account. More particularly the protection afforded by the Community Regulation in question does cover benefits conferred by national legislation under particular schemes.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

10 October 1973

(FIEGE)

Case 110/73

1. SOCIAL SECURITY - MIGRANT WORKERS - INVALIDITY PENSION - TRANSFER - REGULATION No. 4, Art. 30 - INAPPLICABILITY.

2. SOCIAL SECURITY - MIGRANT WORKERS - ALGERIA - RIGHT ACQUIRED BEFORE 19 JANUARY 1965 - OBLIGATION OF FRENCH INSTITUTIONS TO HONOUR SUCH RIGHT - RECIPIENT - RESIDENT WITHIN A MEMBER STATE OTHER THAN FRANCE - CLAIM - (Regulation No. 3, Annex A, former version). (Regulation No. 3, Art. 10).

1. The provisions of Article 30 of Regulation No. 4 do not apply to transfers of invalidity pensions.

2. Annex A to Regulation No. 3, in its former wording, requires French institutions to honour rights acquired in Algeria before 19 January 1965 by a migrant worker. This obligation persists even if the worker takes up residence within another Member State, and even if the claim for transfer was not referred to those institutions until after the coming into force of Regulation No. 109/65.

   A migrant worker resident, before 19 January 1965, within French territory within the meaning of Annex A to Regulation No. 3 is entitled to submit his claim to the last French institution to which he had formerly been affiliated.

Note

From 1936 to 1947 a German national worked in Germany, where for the whole period he was affiliated to German Social Security institutions. From 1947 to 1949 he worked in France, and from 1951, in Algeria, where he contracted poliomyelitis in November 1951.

He first received sickness insurance benefits from the Oran Social Security Fund, which institution then granted him an invalidity pension in December 1962. Algeria, meanwhile had gained its independence (in July 1962), and the insured was informed that, in the absence of any reciprocal agreement, the Algerian Fund would cease payment of his invalidity pension if he left Algeria.

Since he wished to return to Germany he decided to invoke a Community Regulation under which migrant workers can claim the transfer of their right to a pension from the social institution of the Member State to which they were last affiliated. In this case the Caisse régionale d'Assurance Maladie de Strasbourg.

This institution rejected the claim. The Paris Cour d'Appel upheld the rejection on the grounds that the transfer of a right to a pension from an Algerian institution was not possible since Community Regulations have no force in Algeria.

Upon appeal by the insured the Paris Cour de Cassation (Chambre Sociale) referred several questions to the Court of Justice of the European Communities concerning Community Regulations on the subject of social security for migrant workers.

The European Court has just ruled that, according to Community Regulations a migrant worker can request the transfer of his right to a pension from the French Sickness Insurance Fund to which he was last affiliated, even if his claim was not referred until after the date Community Regulations ceased to have any force in Algerian territory.

N A T I O N A L D E C I S I O N S

COUR D'APPEL OF PARIS (16th Chamber)

20 December 1971

(Societe Stricker-Boats, Nederland,
v. Societe les Entreprises Garoche)

President: M. GUTHMANN

EUROPEAN COMMUNITIES - (1) INSTITUTIONS OF THE COMMUNITY - COURT OF JUSTICE - INTERPRETATION AND APPLICATION OF COMMUNITY LAW - JURISDICTION OF THE COURT OF JUSTICE AND OF NATIONAL COURTS - PRELIMINARY RULING - STAY OF PROCEEDINGS OF THE NATIONAL COURT - INTERPRETATION OF COMMUNITY LAW - REFERENCE TO THE COURT OF JUSTICE NOT OBLIGATORY - INTERVENTION AND JURISDICTION OF THE COURT OF JUSTICE - APPLICATION BY THE NATIONAL COURT OF THE RULE DETERMINED BY THE COMMUNITY COURT - UNNECESSARY REFERENCE - (2) POLICY OF THE COMMUNITY - RULES OF COMPETITION - WHETHER AGREEMENT IS PROHIBITED - AGREEMENT FALLING UNDER ARTICLES 85 AND 86 - EXCLUSIVE AGREEMENT - BENEFIT OF THE EXEMPTIONS PRESCRIBED BY ARTICLE 85(3) - EXCLUSIVE AGREEMENT RESULTING IN SALES AT PRICES CONSIDERABLY HIGHER THAN THOSE IMPOSED BY THE PRODUCER - NULLITY OF SUCH AN AGREEMENT.

(1) The common market set up by the Treaty establishing a European Economic Community has as its task, according to Article 2 of this Treaty, to promote throughout the Community a harmonious development of economic activities; for this purpose, according to Article 3(f) of the Treaty, the activities of the Community shall include the institution of a system ensuring that competition in the common market is not distorted.

In pursuance of the principle so formulated, Article 85(1) prohibits as incompatible with the Common Market all agreements between undertakings which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market; by Article 85(2),

the agreements or decisions prohibited by Article 85(1) shall be automatically void.

However, by Article 85(3), the provisions of paragraph 1 may be declared inapplicable to certain agreements or categories of agreements between undertakings when such agreements contribute to improving the production or distribution of goods or to promoting technical or economic progress.

Various Regulations were subsequently enacted, both by the Council and by the Commission, with the aim of specifying the extent and details of application of the above-mentioned rules.

If the provisions are clear and raise no difficulties as to interpretation there is no need for a Court of Appeal, against whose decisions there is a judicial remedy under national law, to use the power offered to it by Article 177 of the Treaty and ask the Court of Justice to decide on this interpretation.

(2) The exclusive agreement within the area it covers is contrary to the principles laid down in Article 85(1) as, far from that agreement allowing the customer of the product bearing that particular trade mark a "fair share" of the benefit resulting for the concessionaire, the latter sells the goods at prices appreciably higher than those imposed by the manufacturer and without the additional cost being justified by greater services of commercial expenses. Nor is the concessionaire able to allege the benefit of the exemptions prescribed by Article 85(3) since the conditions required by that paragraph have not been fulfilled.

Such an exclusive agreement, which is prohibited by Article 85(1) of the Treaty, is automatically void and the nullity of this clause creating exclusive rights entails that of the entire agreement, which

could have no effect between the parties.

Note

This was a case concerning contracts creating exclusive rights made in France between a French company and a Dutch company.

The Cour d'Appel rightly held that a court of appeal against whose decisions there is a judicial remedy under national law, is not obliged to use the method offered it by Article 177 of the EEC Treaty and to ask the Court of Justice to give a ruling on interpretation.

More controversial is the question when a provision is clear and raises no difficulty of interpretation. Especially when one is faced with a treaty drawn up in six different languages, each version being authentic, a single interpretation seems to be a definite advantage.

Often moreover, national courts make use of an interpretation already given by the Community court on a certain point of law and apply this interpretation to a case before them.

In those cases one could assert that there no longer exists any difficulty of interpretation (since the point at issue has already been decided by the Court). Also, according to the case law of the Court itself, a reference in such a case is no longer necessary.

In the present case, the judgment of the Cour d'Appel of Paris of 20 December 1971 was the subject of an appeal to the French Cour de Cassation (see below).

COUR DE CASSATION (Ch. commerciale)

8 May 1973

(Société les Entreprises Garoche
v. Société Stricker-Boats)

President: M. MONGUILAN

Appeal to the Cour de Cassation against a judgment of the Cour d'Appel of Paris of 20 December 1971 (Gaz. du Pal. 1972.2.702). -

EUROPEAN COMMUNITIES (236) - UNDERTAKINGS - EXCLUSIVE AGREEMENT - ART. 85(1) OF THE TREATY OF ROME - NULLITY - CONDITIONS - JUDGES OF THE SUBSTANCE OF THE CASE - ADEQUATE FINDINGS.

In accordance with Article 85(1) of the Treaty of Rome, a court of appeal was right in declaring void the agreement for an exclusive sale concession granted by a Dutch boat manufacturer to a French company after having found that the agreement in dispute, which prevented users, in the area to which the agreement applied, from obtaining the relevant products from other dealers, had the effect of isolating the French market and allowed the concessionaire to impose prices free from any effective competition since, far from granting its customers a fair share of the profit resulting from its exclusive concession, it sold at prices substantially higher than those of the manufacturer, without this additional cost being justified by services or heavier marketing costs.

Dismissal of the appeal

Note

The Cour de cassaion, although a final appeal court "against whose decisions there is no judicial remedy under national law" within the meaning of Article 177 of the EEC Treaty, did not refer this case to Luxembourg.

The reason - which is not explained in the summary - is that "by its judgment of 25 November 1971 (Case 22/71 Béguelin Import Co. v. S.A.G.L.

Import-Export) the Court of Justice of the European Communities defined the meaning and scope of the Community provisions on this matter; (...) the national courts are bound by this interpretation and (...) there is consequently no reason for the Cour de cassation, before giving its decision, to ask this high Court for a new interpretation". (3rd ground adduced in the judgment).

COUR D'APPEL OF PARIS (1st Ch.)

7 July 1973

Directeur général des douanes
v. Société des cafés Jacques Vabre
et S.A.R.L. J. Weigel & Cie.

President: M. ANDRIEUX

EUROPEAN COMMUNITIES - INSTITUTIONS OF THE COMMUNITY - COURT OF JUSTICE - PRELIMINARY RULINGS - RESPECTIVE JURISDICTIONS OF NATIONAL COURTS AND OF THE COMMUNITY COURT - INCOMPATIBILITY OF A LEGISLATIVE PROVISION WITH ARTICLE 95 OF THE TREATY OF ROME - JURISDICTION OF THE TRIBUNAL D'INSTANCE TO DETERMINE THIS MATTER - APPLICATION IN THE FIELD OF CUSTOMS.

Although the Law of 14 December 1966 gave legislative effect to the whole of Article 265 of the Code des douanes, the Tribunal d'instance nevertheless had jurisdiction to determine, not whether this Law is or nor constitutional, a question which it was not asked and which it did not decide, but whether it ceased to have effect insofar as it was incompatible with Article 95 of the Treaty of Rome. According to Article 55 of the Constitution of 4 October 1958, treaties duly ratified have an authority superior to that of laws; it therefore follows that the provisions of the Treaty of Rome have precedence over legislative provisions, even those subsequent to that Treaty, including the Law of 14 December 1966. It remains to be examined whether, in the circumstances, a company could take advantage of Article 95 of the said Treaty; the Director-General of Customs acknowledges in his pleadings that it constitutes a "rule which is immediately and directly applicable in the domestic legal order of every Member State".

Mr. Advocate-General Cabannes delivered the following opinion:

Mr. President,
Gentlemen,

The First Chamber has before it the appeal brought by the "directeur-général des douanes et des droits indirects" (Director-General of customs and indirect taxation) against a judgment of the Tribunal d'instance of the first arondissement of Paris of 8 January 1971. That court has declared that "because it is discriminatory, protectionist and contrary to the first and second paragraphs of Article 95 of the Treaty of the European Economic Community", the "taxe intérieure de consommation" (excise tax) prescribed by Article 265, Table A, Code des douanes, could "neither be applied nor collected" "on imports of coffee extract (pure or mixed) from Holland, a Member State of the said Community. Such imports were carried out by the Société Jean Weigel & Cie", S.A.R.L., the approved customs agent, who had performed the clearance proceedings for the goods on behalf of the Société des cafés Jacques Vabre.

As from 5 January 1967 the Weigel company was thus allowed to claim back, taking account of the limitation period, all the excise tax imposed by the customs authorities "in wrongful application of an illegal regulation" concerning imports effected after that date.

As for the Société des cafés Jacques Vabre, the action which it had brought for compensation of the damage suffered was recognised to be well-founded.

Furthermore, an expert's report was ordered so as to determine the sums recoverable as well as the amount of the damage.

The proceedings, which before the first court were complicated in the extreme, have now, despite the persistence of the parties, been relatively simplified as numerous submissions or objections have been abandoned or settled definitively.

The sums in dispute are very substantial, close to 20 million francs and, with regard to the principles involved, the importance of the case has not diminished.

In their submissions the defendant companies today describe the case in the following manner:

A product, coffee "which was processed to the stage of consumability in another State, a Member of the EEC, was discriminated against as compared with the product processed in France, by the expedient of the discriminatory application of an excise tax".

Mme. de Sévigné, whose taste for coffee has been revealed to us by literary tradition, would perhaps have used a different form of words to describe the subject: but in spite of a certain neologism the dispute is really defined sufficiently in those terms!

The customs authorities, for their part, summarizing very recently their previous pleadings, continue to contest the merits of the claims put forward by the two companies.

For various reasons, which it is now for me to examine, the customs authorities even go as far as to deny the jurisdiction of this court.

To begin with, I must discuss the merits of the objections raised concerning the admissibility of each of the actions.

If necessary I shall then move on to the substance of the dispute.

x x
x

I - As to jurisdiction:

A) The problem of the admissibility of the action brought by the Weigel company: The appellant maintains that this action is inadmissible, for in his opinion it raises the problem of the constitutionality of laws, which no French court or other body, apart from the conseil constitutionnel, within the strict limits laid down for reference to it, has the power to determine.

The facts, which I will examine later in more detail, are as follows:

When, in recent years, the Société des cafés Jacques Vabre bought substantial quantities of soluble coffee or a soluble mixture of coffee and chicory in the Netherlands, Wiegel and Co., the agents, paid the

paid the duty, or more exactly the excise tax, whose tariffs, laid down in Table A of Article 256 of the Code des douanes, had been fixed, then modified and reduced at various times, and in particular by the Decree of 8 July 1963 and the Ministerial Orders of 7 February and 27 December 1967.

The plaintiff companies, considering that the goods thus imported were in direct competition with goods of the same type produced in the national territory from unroasted coffee, went on to make a comparison of the respective amounts of tax paid and concluded from it that soluble coffee from the Netherlands was more heavily taxed than French products of the same kind.

The plaintiff considered this discrimination contrary to Article 95 of the Treaty of Rome, whose provisions, by virtue of Article 55 of the Constitution, have an authority superior to that of our laws.

The defendant administration, without contesting the supremacy of international law and while even recognizing that when projected on to the level of French law it is directly applicable, nevertheless protests that this solution could not be accepted if it meant infringing the terms of a subsequent national law.

Anxious to make my contribution to the study of the question, I must, in these circumstances, endeavour to discover the principles which govern the matter and apply them to this case.

1) <u>What, then, is the scope of the principle of the superiority of a rule of international treaty law</u>?

(a) There is no difficulty in effectively ensuring respect for this precedence where the international law conflicts with provisions of an administrative nature under national law.

On this point the customs authorities themselves refer to a long-standing case law according to which the "tax judge" has the power, by virtue of legislation and traditional principles, to determine the legality of such administrative provisions (1).

That is what the tribunal des conflits held in a decision of 26 May 1954 (2), mentioned in the disputed judgment from which I, in turn, quote the following grounds:

" ... Article 356 of the Decree of 8 December 1948 amending the Code des douanes gives the ordinary courts of law the power to deal with contraventions relating to customs duties and generally all other matters relating to customs ...; when confronted with a claim for reimbursement of customs duties based on an alleged illegal application of tariffs it is for those courts to check the legality of the administrative provisions whereby the customs authorities have claimed to be authorised to levy the said duty and now claim to be justified in refusing reimbursement."

(b) When, on the other hand, the provisions of the Treaty conflict with provisions of legislation, two hypotheses must be borne in mind.

(A) The problem is still easy to resolve where the national law is prior to the Treaty: in the case of inconsistent provisions the law is considered abrogated.

That was the position under the authority of the Constitutional Laws of 1875, even though, when the Head of State acted under his own powers, the Parliament was under no obligation to pronounce on the matter (3).

As the Constitution of 1958 (Art. 53), following that of 1946 (Art. 27), today requires the ratification or approval by a law of any treaty modifying provisions of a statutory nature, no objection based on legal theory can consequently be raised successfully against this case law dating back more than a century, which for some people remains based on the tranditional "monist" principle of settlement of conflicts stemming from the succession of laws in time - lex posterior priori derogat - and which for others derives its force from the intrinsic value of the treaty whose provisions prevail over provisions of law, thus obliging the court, where those provisions conflict, to make a choice based on order of precedence.

This observation may later on be of interest, but at this stage of my

explanations it suffices to note, disregarding the reasoning, that the solution is in any case clear.

The administration does not dispute this in its written observations.

(B) The question becomes more debatable (as long as one continues to rely on the maxim lex posterior) in the case of a national law coming into effect after the entry into force of the Treaty.

Most certainly, Article 55 of our Constitution governs the conflict in the abstract when it provides: "Treaties or agreements duly ratified or approved have, from the time of their publication, an authority superior to that of laws, provided, in the case of each agreement or treaty, that it is applied by the other party" (4).

But as the customs authorities consider that in positive law there are no sanctions to back up these assertions, they consequently ask the court to declare that it has no jurisdiction to give judgment in an action for reimbursement based on the alleged illegality of a piece of legislation.

Presented in this manner, there appears to be no flaw in the argument of the customs authorities.

In a famous note appended to a judgment of the Cour de cassation of Rumania of 16 March 1912 (D.P.2.201) the doyen Berthelemy, regretting the solutions adopted by positive law in this country, was already writing: "in France one scarcely disputes the lack of jurisdiction of courts of all ranks to decide on the plea of unconstitutionality. This rule is based on Articles 10 and 11 of Section 2 of the Law of 16-24 August 1790, reproduced in the Constitution of 3 September 1791..."

But does that amount to saying that the particular obligations arising out of an international convention cannot have priority over the effects of a subsequent national law of general application?

In fact, according to the provisions of the above-mentioned Article 55 there is no need to decide on a problem of constitutionality but to determine which of two rules must be applied to a given dispute.

For its part, the Conseil d'Etat appears to favour strict adherence to a rigorous monist theory.

Did it not in particular on 1 March 1968 deliver a judgment, to which the appellant refers in support, by which it refuses to "set aside the application of a statutory provision when it is alleged to be contrary to a prior regulation of the European Economic Community" (D. 1968. 285, note M.L.)?

The classicism of this solution has not been free from criticism. It has been observed that "several judgments of Cours d'appel" had "been to the contrary"; but above all it has been asserted that the interpretation chosen in that case deprived Article 55 of all meaning and disregarded the specific nature of the Treaty of Rome (5).

These criticisms were not without value, and the tribunal d'instance, with good reason, points out that in a decision which it itself considers of prime importance the Chambre criminelle of the Cour de cassation recently took up a divergent position, expressly accepting the precedence of Community law and recognizing from its conclusions drawn from this analysis that the provisions of Article 55 are of value as a rule of positive law: Cass. crim. 22 October 1970, reported by Jean Mazard, note by Joël Rideau (D. 1971.221 and seq.)

The first court adds that whilst it is true, "as the defendant argues, that the principle stated was principally applied to a legislative provision in force before the Treaty, that judgment however refers expressly to Article 2 of Decree 1001 of 4 October 1963, in other words a subsequent provision, and thus gave a decision on the non-applicability of national law without mentioning the conditions of the latter's antecedence.

If in addition one was tempted, which would merely mean distorting an observation of the judge-rapporteur (D. 71, above-mentioned, especially 222, 2nd column), to minimise the scope of that decision in respect of the facts of this case by remarking that it decided a question of "regulation of economic affairs" and not of the "revenue system", any such objection would not stand up to examination.

It has admittedly been accepted as a fact that the "revenue legislation" of any state cannot be "accepted" into the "international legal system" but this is in no respect the aim of the present dispute.

Finally, I must not leave aside the very remarkable judgment delivered on 27 May 1971 by the Cour de cassation of Belgium (Rev. trim. dr.europ. 1971.494 et seq.) - after all the parties use it, either in praise or in criticism. This was a case very similar to the present one and to which Mr. Touffait, the procureur général, called the attention of lawyers visiting the Court of Justice of the European Communities in Luxembourg on 14 and 15 March 1972 (Rev.intern.dr.comp.1972, n.3, p. 695).

Having heard the masterly opinion of Mr. Procurator-General Ganshof Van der Meersch (Rev.trim.dr.europ. 1971.423) the First Chamber of the supreme Belgian Court, dismissing the appeal brought against a judgment of the Court of Brussels of 4 March 1970 (Rev.trim.dr. europ. 1970.369), clearly affirms the precedence of international treaty law over domestic law even though subsequent.

The judgment also points out that "the conflict which exists between a rule of law established by an international treaty and a rule established by a subsequent law is not a conflict between two laws".

Pacta sunt servanda: the rule Lex posterior ..., previously invoked, has no application here (6).

Without there being any need to take a stand in this matter on the differences between the procedure of ratification of Belgian law and that concerning the approval or ratification of treaties in French law, one must agree with the Court "that, a fortiori, that is the position when the dispute exists, as in this case, between a rule of national law and a rule of Community law."

Mr. Ganshof Van der Meersch points out moreover that the question was resolved in the same manner as early as 14 July 1954 "in a judgment of final appeal which has become famous" (Chambre des métiers c. Pagani, Pas. lux., XV, 263). This judgment was delivered by the Cour supreme of the Grand Duchy of Luxembourg "whose constitution, like that of Belgium, is silent on the question of the relationship between treaties and national law".

Whilst our constitution, in contrast, for example, with that of the Kingdom of the Netherlands, has not been revised to accord with Community law, Article 55 exists and it is for us to apply it: positive law supports international comity.

Should I not add, although in this case this decision does not bind you, that in the judgment "Giudice conciliatore of Milan, Costa v. E.N.E.L." of 15 July 1964, Case 6/64 (Rec. 1964, in particular 1158 et seq., Gaz.Pal. 11 September 1964, 191) which crowned a case law which is today well established, the Court of Justice of the European Communities, having heard the report of Mr. Robert Lecourt, the present President, and having heard the opinion of Mr. Maurice Lagrange, did not fail, by reason of its very nature, to emphasise the very special supremacy of the "legal order" established by the Treaty of Rome (7)?

This case law must be approved as, by virtue of the Treaty itself, the power of the national legislature only exists in practice within the limits permitted by Community law.

The concept derived therefrom, that of "direct applicability", which emerges from the above-mentioned judgments, will moreover be invaluable in enabling you to come to a considered opinion on the matter.

This concept has the particular advantage of promoting, throughout all Member States, a uniform interpretation of the provisions of the Treaty of Rome since it has the merit of respecting both the letter and the spirit of that Treaty (8).

It also gives another dimension to Article 55 itself, in particular as regards the reservation concerning reciprocity which, consequently, cannot be invoked to any useful effect by the appellant.

This being the case, you will not risk the reproach of venturing upon an appraisal of the constitutionality of a piece of legislation; by an authoritative selection you have merely to settle a conflict and determine the cessation of the effects of a rule of minor value, and of no application in this case.

Finally, we must bear in mind that the solution advocated, in the light of another old adage lex posterior generalis non derogat priori speciali, is very much in keeping with the fundamental principles of our law, as the Treaty of the European Economic Community, in the nature of the case, only binds a limited number of countries.

(2) In the case brought before this Court, as even in the appellant's

opinion Article 95 is in this way directly applicable, it follows that the Weigel Company is justified in taking advantage of it, insofar as its provisions take the place of those of national law inconsistent with it.

This finding renders superfluous the arguments useful in an examination of the assertion that the rates of the tax in dispute are in fact fixed by administrative regulations.

To deal formally with this point in the pleadings, I would however point out that even if it is correct, as the appellant insists, that among the laws subsequent to the Treaty, that of 14 December 1966 can be considered as having ratified Table A annexed to Article 265 of the Code des douanes, it must be recognized, in accordance with Article 266, that in the absence of any special legal ratification the tariffs of excise taxes under the said Article 265 may, except in the case of petroleum products, be modified by a simple decree of the Minister of Finance and Economics:

The Minister has not failed to make use of his power to issue decrees. In particular, I would cite the Decrees of 7 February and 27 December 1967 modifying tariffs, as well as the Decree of 24 June 1971 "temporarily " suspending, from 5 July of the same year - and thus after the judgment - the tax itself!

For further points, I would merely urge you to refer to the excellent and detailed analysis appearing in the judgment delivered.

In any case, it follows from the preceding observations that the action of the Weigel undertakings can, and must, be accepted whether the matter is legislative or administrative.

The objection must be dismissed.

(B) As to the application for the payment of damages brought by the Jacques Vabre Company.

With regard to this matter the administration argues that the action should be declared inadmissible as it has been brought before a court which lacks jurisdiction.

In the opinion of the administration the application is a matter solely

for the appraisal of the administrative tribunals, for it has as its basis the very existence of the law setting up the disputed tax.

The appellant alleges with regard to this matter that it is not denied that its servants "have instituted, determined and collected" this tax "in conformity with the law which the administration had the task of applying".

In respect of this submission the tribunal d'instance replied that the error invoked related in this instance to "the operations of assessment and collection of the tax on account of failure to apply the legislation actually in force", since the administration had improperly collected sums calculated in accordance with an excise tax ex hypothesi: contrary to Article 95 of the Treaty of Rome.

Article 267 of the Code des douanes provides that actions concerned with excise taxes are to be examined and judged as customs matters.

It thus refers to the general law on this subject, as set out in Article 357 A granting jurisdiction to the tribunaux d'instance.

Now it appears from an established line of case law (9) that this jurisdiction extends to the injurious consequences arising from an error in the application of tariffs.

Furthermore it is normal and consistent with the principles of law that the same court should give judgment both on the subordinate and on the principal parts of the dispute (10).

The fact that the judicial officer of the Treasury is kept out of these kinds of actions changes nothing.

x x
x

II - Submissions as to the substance of the case

(A) The action brought by the Weigel Company:

The judgment of the Cour d'Appel declared the excise tax set out in Table A of Article 265 "inapplicable and non-collectible by reason of its discriminatory and protectionist character and because of its inconsistency with the first and second paragraphs of Article 95 of the EEC Treaty", and it authorized the recovery of all the sums improperly collected.

1. - As to the discriminatory nature of the tax

The appellant administration submits that the action should be dismissed as it considers that it has not been established that the tax imposed on soluble coffee extracts imported from Holland is any greater than that imposed on products at the same stage of processing within the national territory. Alternatively, the administration demands an expert report on the technical (description of products) and accounting (study of taxation) aspects of this matter.

The principal submission rests primarily on the dispute of principle concerning the comparison which Article 95 of the Treaty of Rome necessitates between the taxation of goods imported under the Community system and that of similar national products.

The terms of Article 95 are as follows:

1st paragraph:

"No State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products."

2nd paragraph:

"Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products."

Under the 3rd paragraph:

"Member States shall, not later than at the beginning of the second stage, repeal or amend any provisions existing when this Treaty enters into force which conflict with the preceding rules."

This action is taking place a long time after that date (1 January 1962), and in respect of the two preceding paragraphs, the administration alleges that they too have no application to the dispute.

With regard to the first of these paragraphs, the administration firstly rejects the notion of similarity of products, and has recourse to the authority of the Court of Justice of the European Communities which considers that this relationship can apply only "when the products in question" fall under the same "fiscal, customs or statistical" classification (settled case law: cf. especially the opinion of

Av.-Gen. Joseph Gand, in Case 27/67 of 4 April 1968 (Rec. 1968, page 329 and seq., especially p. 342) (11). But unroasted coffee and extracts appear under different heads in Table A of Article 265.

In answer to that argument the first court, following the submissions of the plaintiff companies, rightly stated that the Decree of 3 September 1965 had on the one hand accepted this relation of similarity "in the proportion of 3 kg of unroasted coffee for 1 kg of soluble coffee" and that on the other hand the basis of assessment of the excise tax itself despite the development of techniques of processing, had been fixed for extracts "by reference to a proportion of 3.600 kg of unroasted coffee".

The conclusion is clear: there is great "material and fiscal" similarity between the goods.

Moreover it is in fact from unroasted coffee that coffee extracts are taken.

The Court of Justice in Case 77/69 of 5 May 1970 (Rec. 1970, p. 237) and seq. (Gaz.Pal. 28 August 1970)) moreover held that "in applying a tax of the same rate ... on the one hand to native timber sold either standing or felled and on the other hand to imported timber calculated in accordance with its value at the time of declaration for consumption", a State (the Kingdom of Belgium) had failed to fulfil its obligations.

In the same way it is necessary to take into consideration only the national taxes of the country of destination when making such a comparison.

In these circumstances the first court judiciously makes the point "that a single flat-rate tax whose rate of imposition is the same for national products and imported products, but whose effect, by reason of the difference in the basis of assessment of such tax, is to hit imported products, when processed, more heavily than national products at a similar stage of transformation, has a discriminatory character and is contrary to the first paragraph of Article 95 of the EEC Treaty. This is the case here.

Does not this analysis make irrelevant the discussion of the appellant's assertions concerning the application of the second paragraph of the

same article?

On this matter the legal thinking of the Court of Justice (Case 27/67 cited above) shows that since the provisions of this second paragraph constitute the necessary complement of the prohibition set out above, the protection to which they refer would without doubt "be afforded if an internal tax imposed on an imported product were greater than that imposed on a national product with which the imported product, in one or more of its uses, competes without fulfilling the condition of similarity within the meaning of the first paragraph".

That also is the case here, as the principle of the discriminatory nature of the tax can necessarily be inferred from the administrative decisions No. 670 and 1289 of 13 May and 25 October 1965, copies of which have been added to the file by the customs authorities.

In fact it appears from the very detailed report set out in the judgment under the heading "comparison of rates of duty at the same stage" (p. 12) that the fiscal charges imposed "effectively and specifically" on the untreated national product on its entry into the customs territory were "lower, and by far" than the duty borne by the finished product, this discrimination being "to the disadvantage of the importer, he having to pay an amount equal to around three times as much" at the beginning of the period in question, and reduced as from 1 January 1968 to a lower rate in the region of 81 F per quintal. The excise tax on soluble coffees had itself been reduced on 16 February 1967, whereas imports of unroasted coffees had no longer been subject to it since 18 February 1964. Moreover on 5 July 1971 the tax on extracts was also suspended!

Finally the judgment did not fail to remark on the differences, slight but real, affecting mixtures of soluble coffee and chicory, nor did it fail to point out the negligible fiscal effect of the process of incorporation of raw materials other than unroasted coffee at the stage of retail consumption on the national market, the cost of which, moreover, had not even been calculated by the customs.

2. - On the recovery of all the sums collected by virtue of the tax in question:

The appellant also criticizes the tribunal for having declared that the Weigel Company "has the right to recover all the tax".

In reality, in conformity with the case law of the Court of Justice which does not forbid the national court from deciding, if necessary, "the level below which the tax in question would cease to have the effect of protection as condemned by the Treaty, and drawing any consequence therefrom", (Case 27/67 mentioned above), the plaintiff companies had, at the beginning of the proceedings, intended to limit their claim to reimbursement of only a part of the money paid.

As the administration alleged the inadmissibility in French positive law (Article 369) of any action for "partial relief from tax", an application was then made for recovery of all the sums.

The tribunal rightly granted it on the principle that the inapplicability of a tax affects the imposition of such tax in its entirety and it is not the task of this court to moderate that principle.

As regards the imported quantities themselves, since the customs documents are conclusive there must simply be an accurate breakdown of the figures.

An expert opinion which was specifically ordered by the judgment of 8 January 1961 is needed for this.

(B) The action for damages:

Having declared the action for damages brought by the Jacques Vabre Company admissible, the first court, with good reason, concentrated on the "many claims and steps" made by this company against the administration so that, recognising its errors in the assessment and collection of the tax arising from failure to apply the Community law actually in force, the administration should finally assume the consequences of such error.

However, at the present stage, you have not sufficient means by which to assess the damage caused by this failure.

An expert opinion, on this matter as well, on the conditions laid down in the judgment, would enable you to clear up the matter.

x x
x

As far as the respondents are concerned, they, having brought a cross-appeal, desire that the restitution should apply not only to sums paid up to 5 July 1971, the date of entry into force of the Decree temporarily suspending the collection of the tax, but also to any which might be paid after that date in the case of a possible re-introduction of the tax in dispute.

In my opinion only the first part of the claim can be accepted.

It is, with the exception of this sole additional plea, based on reasons occurring after the judgment was given, and if you accept my opinion, Mr. President, Gentlemen, you will affirm the excellent judgment referred, which, according to the hallowed expression, has succeeded so well in determining "priorities between rules of law".

It would be appropriate if, having analysed the provisions at issue and regarding them as strictly administrative, you would subsequently declare them inapplicable.

I nevertheless hope that you will not hesitate to emphasize, as did the first court, and thus determinedly commit yourselves to this new approach whose outlines the Chambre criminelle clearly did not fail to elucidate, that in any case, in conformity with Article 55 of the Constitution and taking account of the particular imperatives of the legal order established by the Treaty of Rome, that order must prevail! In his prophetic comment of 1912, Henry Berthelemy appealed to the "common law of civilised States" which he contrasted with the "extraordinary law accepted in France (and) in Belgium ..."

To a large extent he has been heard in Belgium.

With the aid of your judgment, I hope, it will be the same in France.

(1) Cf.: Cass. civ. 4 July 1827 (Bull. no. 64); Trib. confl. 24 October 1942 (Lebon, 316, Doctr. contr. douaniers, no. 706).

(2) Hauts fourneaux de la Chiers (Lebon 706, Doctr. contr. no. 1095); Adde: 24 June, same company, similar decision.

(3) H. Battifol (Dr. intern. pr. 4th ed., 1967, no. 39, the note (67) and the decisions cited).

(4) Article 26 of the constitution of 27 October 1946: "Diplomatic treaties duly ratified and published have the force of law even where they are inconsistent with domestic French laws without there being any need, to ensure their application, of legislative provisions other than those which were necessary to ensure their ratification".

(5) Cf. M.L., note cited above.

(6) Comp. J. L. Costa, "Le rôle du juge en presence des problèmes économiques", association Henri Capitant, days from 3 to 6 June 1970, rapport national francais en droit penal, p. 25.

(7) Cf. also Pierre Pescatore, Judge of the C.J.E.C., President of Chamber, "L'application directe des traités européens par les juridictions nationales: la jurisprudence nationale" (Rev. trim. dr.europ. 1969.697).

(8) See Cass. crim. 7 January 1972 (D. 497, and the very interesting note by M. Joël Rideau).

(9) Cf. Trib. confl. 27 June 1966 (Lebon 1093).

(10) Cas.civ. 25 February 1942 (D.A. 117); Cons. d'Etat 9 December 1949 (Lebon 547); 11 March 1960 (Lebon 190).

(11) See also C.J.E.C., Case 28/69 of 15 April 1970. Commission v. Italy (Rec. 1970, p. 187, especially 194 and 197, opinion Joseph Gand).

INFORMATION IN BRIEF

Composition of the Court of Justice of the European Communities for the judicial year 1973-1974

President	LECOURT (Robert)
Presidents of Chambers	DONNER (André) - 1st Chamber SØRENSEN (Max) - 2nd Chamber
Judges	MONACO (Riccardo) MERTENS DE WILMARS (Josse) PESCATORE (Pierre) KUTSCHER (Hans) Ó DÁLAIGH (Ceabhall) MACKENZIE STUART (Alexander John)
Advocates-General	TRABUCCHI (Alberto) MAYRAS (Henri) WARNER (Jean-Pierre) REISCHL (Gerhard)
Registrar	VAN HOUTTE (Albert)

SPECIAL!

Association of the "Betriebsberater" with the "Gazette du Palais".

In May 1972 the "Aussenwirtschaftsdienst" (foreign trade edition) of the "Betriebsberater" (German Federal Republic) and the "Gazette du Palais" (Paris) announced to their subscribers and readers that an association had henceforth been established between these two legal journals. This news is very important. In fact this is the first case of "cooperation" between two legal publications in the Common Market.

The first initiatives in this direction were taken on the occasion of the first meeting of the directors of legal reviews and law reports organised by the Court of Justice and the Legal Service of the Commission in Luxembourg on 25 October 1969.

One cannot over-encourage this cooperation which is all for the benefit of those subject to European and Community law.

TO BE PUBLISHED SHORTLY

The Librairie générale de Droit et de Jurisprudence, 20, Rue Soufflot, Paris 5, announces the publication around March 1974 of "Droit institutionnel des Communautés européennes" by Professors R. M. Chevallier and J. Rideau. It is a complete collection of all the legislation - from the Treaty to internal administrative regulations - concerning the organization, powers and working of all the institutions and organs of the Communities.

C O M M U N I T Y L E G I S L A T I O N

CONVENTION ON JURISDICTION AND THE ENFORCEMENT OF CIVIL AND COMMERCIAL JUDGMENTS

The following Articles were omitted from the text of the Convention published in the previous Bulletin:

SOLE JURISIDICTION

Article 16

Only the following shall be competent, regardless of domicile:

(1) In matters involving rights in rem in real property or concerning the leasing of real property, the courts of the Contracting State in which the real property is situated;

(2) In matters of validity, nullity or winding up of companies or other bodies corporate having their registered office in a Contracting State, or of decisions by their organs, the courts of that State;

(3) In matters of validity of entries in public registers, the courts of the Contracting State on the territory of which the registers are kept;

(4) In matters of registration or validity of patents, trade marks, designs and models, and other similar rights requiring filing or registration, the courts of the Contracting State in which filing or registration has been applied for, has been carried out or is assumed to have been carried out under the terms of an international convention;

(5) In matters of enforcement of judgments, the courts of the Contracting State in the place of enforcement.

Section 6

AGREEMENTS ON JURISDICTION

Article 17

If, by an agreement in writing or verbal agreement confirmed in writing, when at least one of the parties is domiciled on the territory of a Contracting State, the parties have designated a court or the courts of a Contracting State as competent to settle disputes which have arisen or may arise in a specific legal relationship, only the designated court or the courts of that State shall have jurisdiction.

Agreements assigning jurisdiction are null and void if they contravene the provisions of Articles 12 and 15 or if the courts whose jurisdiction they seek to exclude have sole jurisdiction by virtue of Article 16.

If the agreement assigning jurisdiction has been entered into in favour of only one of the parties, that party shall retain the right of appeal to any other court having jurisdiction by virtue of this Convention.

Article 18

Apart from cases where his competence derives from other provisions of this Convention, the judge of a Contracting State before whom the defendant enters an appearance shall be competent, save where the appearance is for the purpose of challenging the competence of the court or if another court has sole jurisdiction by virtue of Article 16.

Section 7

EXAMINATION OF COMPETENCE AND ADMISSIBILITY

Article 19

Any judge of a Contracting State applied to on the main issue of a suit which another Contracting State has sole competence to deal with under Article 16, shall declare ex officio that he lacks competence.

Article 20

When the defendant domiciled on the territory of a Contracting State is sued before a court of another Contracting State and fails to enter an appearance, the judge shall declare ex officio that he lacks competence unless he is competent under this Convention.

The judge must stay judgment until it is established that the said defendant has been able to receive the initial summons in time to defend himself, or that every effort has been made to this end.

The provisions of the foregoing paragraph shall be replaced by those of Article 15 of the Hague Convention of 15 November 1965 concerning the serving in a foreign country of judicial or non-judicial documents in civil or commercial matters if the summons has had to be served pursuant to the above-mentioned Convention.