New rights for the citizens of Europe

European File

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11/87
June-July 1987

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322 million Europeans have a new citizenship: one that in no way supplants their national citizenship, but supplements it. Just as they elect representatives to their national parliaments, they have a common Parliament, which is elected by direct universal suffrage and is charged particularly with watching over the Commission and the Council of Ministers of the European Community. European citizenship also brings with it a whole range of rights that are guaranteed by the Community. Everyone can take advantage of these by appealing to their national courts; uniformity of interpretation is maintained by the European Court of Justice.[1]

These rights include equal pay for men and women; the right to work in the country of one's choice and to receive equal pay with workers native to that country; the right to buy and sell without being hindered by frontiers and with the guarantees that Community legislation offers to consumers; the right to benefit from fair prices based on free competition and not on dominant market positions or monopolies; finally, the right to legal redress across Community borders, in disputes concerning the environment or any other issue.

Equal pay for men and women

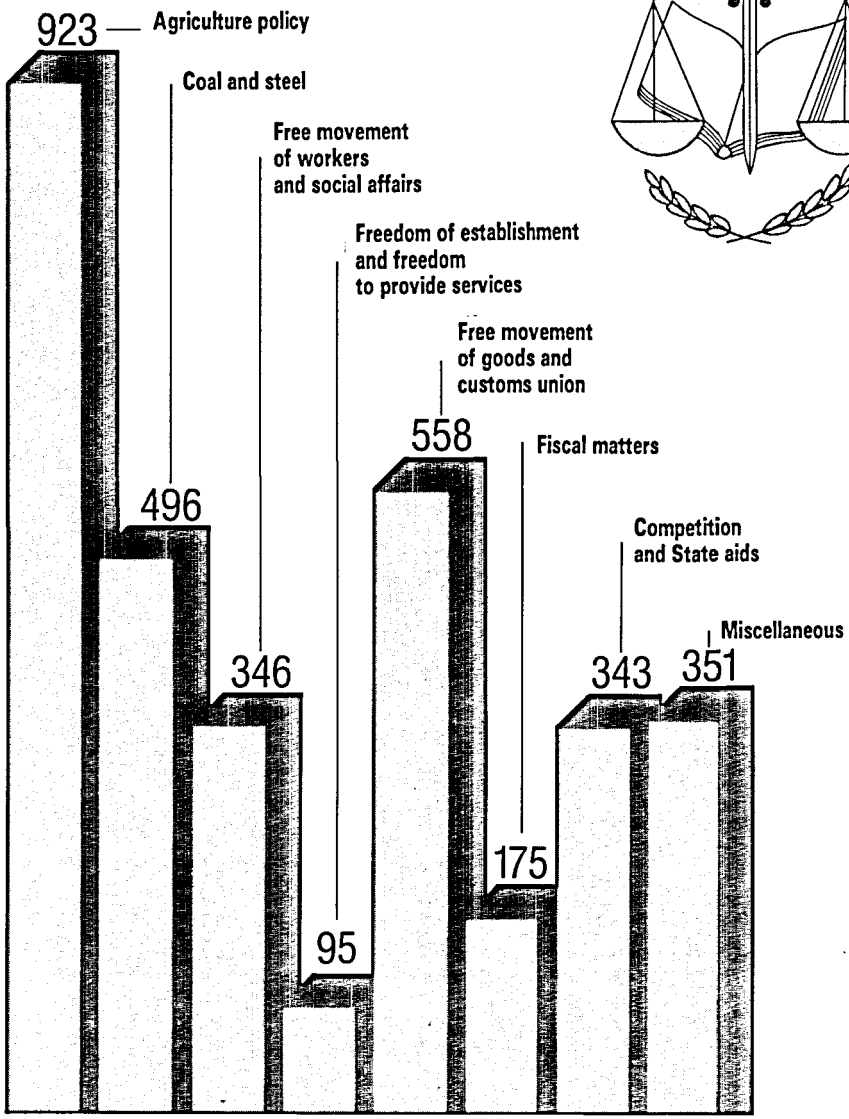
- ☐ Mrs Worringham and Mrs Humphreys discovered that their employer, Lloyds Bank Ltd, refused to give female employees under 25 the same pension rights as other workers. Their case was referred by the Appeal Court in London to the European Court, which found in their favour in 1981. The verdict was that an employer's pension contributions counted as part of a worker's remuneration. The European Treaties forbid any form of discrimination in this area. The judgment apparently affects about 85 000 British firms, employing more than 11 million people.

- ☐ In another British case, Mrs Jenkins, working part-time for Kingsgate Ltd of Harlow, a company producing women's clothes, was earning 10% less per hour than full-time employees. Nominally there was no discrimination on grounds of sex but most of the part-time workers in the Harlow company were women. In 1981 the Court of Justice ruled that this could constitute sexual discrimination. It was left to the national courts to apply the ruling in the light of the particular circumstances of the case and the record and motives of the employer. The Court took a similar line in 1986, after Mrs Weber had challenged the refusal of the Bilka shops in Frankfurt to provide a supplementary pension for their part-time workers, most of whom were women.

Equal pay for equal work – or for work of equal value, as the Court insisted in 1985, when a Danish law, unsatisfactory in this respect, was referred to it. Wage discrimination is thus forbidden, whether it be direct or indirect, based on national

[1] This file replaces our No 1/84.

Number of cases brought before the Court of Justice of the European Communities, 1953-86 [1]



[1] Not including administrative cases brought by Community civil servants.

Source: Commission of the European Communities, 20th General Report.

law, collective agreements or individual contracts. In certain cases compensation can be backdated. This principle was established in 1976 in the *Defrenne* case, involving a Belgian air hostess whose pay was lower than that of the male stewards.

Community directives have put the principle of non-discrimination into concrete form and extended its scope. They cover job descriptions, access to employment, training, promotion, working conditions, social security, the right of legal redress and the protection of plaintiffs against retaliatory dismissal.[1] The penalities provided for in the national laws that apply these directives must not be merely symbolic; as the European Court made clear in 1984, when Mrs Harz, von Colson and Kamann challenged certain provisions of German law, the penalties must have real dissuasive force.

Outside the area of women's rights, there are other European directives that apply to all Community workers and give a right of legal redress. The areas covered include the right to be informed and consulted before large-scale redundancies, the protection of existing rights and information and consultation when a firm or one of its establishments is merged or sold, and the right to pay and social security when an employer goes bankrupt.[2]

Other rules protect citizens of the Community working or seeking work in a Member State other than their country of origin.

Working in the country of one's choice

Looking through the small ads, a Community official noticed that Belgian local authorities and State companies reserved a number of jobs for their own nationals. These included assistant gardeners, nurses and engine drivers. Behind it all was a provision of the Belgian constitution. The European Commission took Belgium to the European Court. In 1980 the Court recalled that the European Treaties outlawed all discrimination between Community citizens in employment, pay and working conditions. Exceptions are allowed for government employees, but within strict limits: they apply only to jobs directly or indirectly involved in the exercise of official authority or protection of the interests of the State or of public bodies. In 1986 the Court had occasion to bring this principle to the attention of France, which was trying to reserve hospital nursing jobs for French nationals, and of the German *Land* of Baden-Württemberg, which had refused a British citizen living in Freiburg, Mrs Lawrie-Blum, a preparatory position for the teaching profession.

The principle of free movement of workers is directly applicable to most salaried jobs and to all professions that need no formal training. The European Court of Justice has upheld this principle on numerous occasions, in cases involving, among others, entertainers, footballers and cyclists. That the party involved may have slender means

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[1] See *European File* No 10/87: 'Equal opportunities for women'.
[2] See *European File* No 9/84: 'Workers'rights in industry'.

is not a valid objection, even if it means that he or she may become dependent on the State: that much was underlined by the Court in 1986, in a case brought by a German music-teacher working in the Netherlands.

Professions that require a certificate, diploma or other form of professional qualification pose particular problems. Consider two cases:

- ☐ The first, comparatively easy to solve but relatively uncommon, involved Mr Reyners, a Dutchman who had studied law in Belgium and wished to practise in that country after he received his qualifications. In 1974 the Court decided that nothing should prevent his doing so, as all discrimination based on nationality is forbidden. In a similar case in 1984, the Court enabled a German lawyer, Mr Klopp, to become a member of the Paris Bar: he was being prevented from doing so by French law requiring a single professional domicile, as he already had an office in Düsseldorf.

- ☐ But what happens when someone who qualifies in one Community country wants to practice in another? Dr Broekmeulen, who had acquired his qualifications in Belgium, wanted to set up as a general practitioner in the Netherlands. In 1981 the Court pointed out that the medical profession, like many others, was subject to Community directives on the mutual recognition of diplomas and professional qualifications. These directives either stipulate study requirements where some harmonization of courses has been achieved – as is the case for medicine – or set a minimum period of professional experience. The conclusion therefore was that if Dr Broekmeulen satisfied those conditions, he could not be required to undergo any further training. Previously, in 1979, the Court had enabled a Dutch heating engineer, Mr Knoors, to work in his own country after acquiring the required experience in Belgium.

  Pending the adoption of a proposal submitted by the European Commission in 1985, for a general system of recognition of diplomas, the existence of a Community directive is not an absolute precondition for freedom of movement. In 1977 a Belgian doctor of law, Mr Thieffry, won the right to practise in France. The University of Paris recognized his diploma and he was able to prove a sound knowledge of French law.

Nationality or country of residence can no longer be used to prevent a person or company from offering services, temporarily or regularly, in a Member State other than their own. That principle was established in 1974. In 1982 the Court went a step further and ruled that, where appropriate, national rules governing such activities should be relaxed to avoid discrimination. Thus two French contracting firms, Seco and Desquenne & Giral, who had taken on workers temporarily in Luxembourg, were exempted from paying social security contributions in that country as similar payments were already being made in France. Otherwise there would have been double payments and an unfair increase in labour costs.

The right of abode and right to work thus accorded to workers from Community countries are also available to members of their families, even those who come from non-Community countries. The Court ruled accordingly in 1985 in the case of Mrs Diatta, the Senegalese wife, albeit separated, of a Frenchman living in Berlin.

Rights regardless of nationality

- ☐ At Christmas 1966, Mr Ugliola was not paid the traditional bonus by the Stuttgart dairy for which he had worked since 1961. The reason given was that he had broken his employment to undertake his military service in Italy. In West Germany, however, temporary military service is included in the calculation of one's length of service with an employer. In 1969 the European Court ruled in Mr Ugliola's favour: a citizen of a Community country has a right to all the social benefits guaranteed by the labour law of the country where he is employed, no matter the flag under which his military service is done.

- ☐ Another Italian, employed in the region of Lyons in France, had a grown-up son, Bernardo, who was seriously handicapped, had never worked, and lived with his parents. French law restricted welfare payments for handicapped adults to French nationals. The European Court ruled in 1976 that the fact of Bernardo's being a foreigner and never having worked in France was irrelevant; he was a dependant of a worker from another Community country who was entitled to all the welfare payments available to French workers.

- ☐ Mr and Mrs Reina, Italian workers living in Stuttgart, were refused the interest-free loans granted to new parents by the local Landeskredietbank. This was a public institution, implementing benefits for newborn children decided by the Baden-Württemberg regional government. In 1982 the Court decided it was wrong; equality of treatment should extend to all social benefits, whether or not they were included in an employment contract and even if they were granted on a discretionary basis.

In 1984 these precedents enabled the dependent mother of an immigrant Italian worker in Belgium to obtain the income guaranteed to the elderly in that country. In 1985 a Dutch woman and a British couple were able to avail themselves of another Belgian law, that guaranteed minimum support to persons with no resources.

The application of the principle of equal treatment, enshrined in the European Treaties, has been systematized by a series of Community regulations. These have abolished the need for a work permit and guaranteed most trade-union rights, the right to education and job training, to study grants and social-security payments, etc.

It is not just migrant workers who benefit. Community citizens who travel abroad occasionally, for holidays or whatever, are also protected by European law. In 1984 the European Court of Justice ruled, in two cases involving Italian citizens, Mrs Luisi and Mr Carbone, that while a Member State may certainly maintain checks on transfers of money to another member country, it may not hinder or limit transfers

intended to pay for tourism, studies or health care. In 1985 Miss Gravier, a French girl enrolled in the Academy of Fine Arts in Liège, Belgium, succeeded in getting declared illegal a Belgian regulation that demanded higher enrolment fees from students coming from other Community countries.

Buying and selling across frontiers

A very international story: Mr Van Zanten wished to take home to the Netherlands a secondhand motor-boat which he had bought in France from a Swede who lived in Monaco. The Dutch customs demanded 18% VAT. He protested. The case was brought to the European Court which ruled in 1982 that the abolition of customs duties between Community countries did not imply the abolition of internal taxes such as VAT. Until VAT rates are brought closely enough into line with each other, it is logical that some tax should have to be paid at Community borders. Double taxation is, however, forbidden. The European Treaties effectively lay down that taxes on imported products must not be higher than those on goods produced internally. The Dutch customs were therefore wrong to charge that proportion of the VAT that represented the tax already paid by Mr Van Zanten in France and which was included in the value of the boat when he was importing it.

The European Commission has persuaded the Council of Ministers to grant certain exemptions for imported goods from VAT and other national taxes. These include limited tax-free allowances for people crossing borders, an allowance for the temporary importation of cars or for the permanent importation of personal possessions when moving home. Border bureaucracy is also being simplified, for private individuals as well as for transport firms and traders. The ultimate objective is clear: to abolish all levying of taxes at borders between Member States, to put an end to border inspections and to create, by 1992, an area truly without frontiers, a great European internal market where the growth of trade would bring about growth in industry and services and, ultimately, in employment. To achieve that aim many legal measures will have to be adopted by the Council of Ministers of the Community. The European Court also has a major contribution to make by clamping down on a whole range of protectionist measures.

- ☐ In 1983 the Court, following a complaint from the Commission, condemned the Italian practice of charging different rates of tax on spirits according to their country of origin. The United Kingdom was similarly condemned for charging higher taxes on table wines (largely imported) than on beer (mainly produced domestically): the products were different but, in the Court's opinion, they answered the same need.

- ☐ Protectionism does not operate through taxation alone. In 1979 the Court of Justice condemned a German trading regulation that set a minimum alcohol content for spirits destined for human consumption and prevented the important of 'cassis de Dijon'. The Court viewed this regulation as equivalent to a quantitative restriction on trade, formally prohibited by the European Treaties except where necessary to protect consumers, public health or fair trade. This was

a crucial judgment. It established clearly that national regulations that apply differently to nationally-made and imported products can constitute obstacles to trade as forbidden by the Treaties. Holding its course, the Court ruled against France in 1980 for restricting advertising of categories of alcoholic drinks in which imported products predominated. It condemned France again in 1985 for granting special postal and fiscal terms to publications posted or printed inside the country. Any measure that interfered in any way with equality of sales opportunity had to be strictly justified.

☐ The interests of consumers must be properly considered in the great European internal market that is being created – a market in which concern for the consumer can no longer be a pretext for protectionism, restricting choice and increasing prices. The Community has adopted a series of directives concerned with the safety, health and economic rights of consumers.[1] National legislation has had to take account of a number of principles defined at Community level, on such matters as display of the composition and price of foodstuffs and protection against misleading advertising. A kind of European consumers' code is gradually being put together in this way; for instance, by 1988 the Member States should fully conform to new common rules on damage caused by defective products and on door-to-door sales.

Competitive prices and no monopolies

Distillers Company Ltd, one of the largest Scotch whisky firms, operated a pricing system differentiated according to the destination of its products: one price for British retailers operating only in the United Kingdom; another price, roughly double, for British traders exporting to another Community country. Complaints from other companies and an investigation by the Commission services resulted in a decision by the Commission to prohibit such a system. The case was referred to the European Court, which confirmed the Commission decision in 1980. The Court gave a similar ruling in 1985, following a refusal by the Ford car company to supply its German dealers with right-hand-drive vehicles, which could be diverted to the United Kingdom where cars are more expensive.

☐ The European Treaties outlaw agreements or concerted practices between companies of all nationalities – even those from outside the Community – that threaten free trade between Member States or restrict or distort competition in the Community. Over more than 20 years, numerous agreements have been condemned and heavy fines often imposed. These cases have usually been brought to light through an investigation of the European Commission, acting on its own initiative or following a complaint by a company or an individual. Interested parties can appeal against Commission decisions to the European Court of

[1] See *European File* No 12/87: 'The European Community and consumers'.

Justice. It is not, however, always necessary to wait for the Commission to act: Community competition law is directly applicable in Member States and individuals can appeal to the national Courts to ensure it is respected.

Among the outlawed agreements have been those that created protected markets, usually in one Member State, as happened among quinine and sugar producers. Others involved price-fixing agreements, like the one between dye manufacturers to raise prices simultaneously. Also declared illegal have been certain agreements that created a mutual obligation for the parties to buy and sell exclusively from each other, as well as exclusive or selective distribution systems that have carved up the European market. The Commission does allow selective distribution agreements based on the qualifications of the retailer, but the *AEG-Telefunken* case (1982) demonstrated that any discriminatory use of such agreements – such as a refusal to supply a dealer who cut his prices – was an offence for which heavy penalties could be imposed.

☐ Abuse of a dominant trading position is also forbidden. Hoffmann-La Roche of Basle dominated the world market in bulk vitamins, with sales of over 80% in some areas. The company had concluded loyalty agreements, guaranteeing it exclusive or preferential dealings with its customers, who were thus discouraged from obtaining supplies from other producers. The firm was penalized by the Commission and appealed to the Court, which in 1979 upheld the Commission's decision for the most part. The Court ruled on that occasion that a dominant company cannot behave so as to restrict a customer's choice of sources of supply; nor may it close the market to other producers who could bring down prices.

Discrimination between trading partners, restrictions on production or outlets and unfair prices, are also punishable offences. In 1974 the Court upheld a ruling against the Commercial Solvents Corporation and its Italian subsidiary, L'Istituto Chemioterapico Italiano. The group had a world monopoly on the manufacture of chemicals needed to make a medicine for tuberculosis. It ceased deliveries to one of the few European producers of the medicine, the Giorgio Zoja Laboratory. The effect was that this small company faced having to halt production and leave the field clear for the Italian subsidiary of the American group, which had just started manufacturing the finished product. Intervention by the European institutions rescued Zoja: the group was ordered to resume deliveries. Four years later in 1978, the European Court upheld a ruling against the food giant, the United Brands Company, which had protected its market by forbidding its distributors to sell bananas while still green and had placed on its blacklist a customer who took part in an advertising campaign for a rival brand. In the *Continental Can* case (1971-73), the Court ruled that certain mergers could, of themselves, csonstitute an abuse of a dominant market position.

Removing obstacles to justice in environmental and other fields

☐ The troubles of the Rhine are not a new affair. In the 1970s the Dutch nursery, Bier, was forced to spend large sums of money on reducing the salt content of the

Rhine water it used, which had been polluted by the dumping of chloride from the potassium mines of Alsace. How was Bier to obtain justice? The Community countries are signatories to the Brussels Convention on Legal Competence and the Implementation of Legal Decisions in Civil and Commercial Matters. As a general rule, the Convention allows any citizen of a signatory country to take legal proceedings against someone else in the country where his adversary is domiciled (using his own lawyer if he wishes). The European Court ruled, however, that, in the case of damage or partial damage outside a formal contract, legal proceedings can be launched before the courts of the country where the damage occurs. In this instance it was a matter of dispute whether the damage took place at the point of dumping of the chloride or at the place where the salt content of the water was found to be too high. The Convention is not specific in this regard. The Court decided therefore that the plaintiff should have a choice, thus allowing the victim of cross-frontier pollution to protect his interests more readily. If necessary, he could avail of one of the many Community directives that lay down environmental standards.[1]

- ☐ In 1980 the Commission obtained a ruling against Italy in the Court of Justice, for failing to adapt its national legislation within the agreed time to two Community directives, on detergents and on the sulphur content of combustible liquids. Other Member States have, of course, had judgments brought against them at the Commission's initiative, over similar matters.

As it has responsibility for implementing the European Treaties, the European Commission can take infringement proceedings on its own authority or when it is alerted by citizens who believe European law has been broken.

Access to the European Court of Justice is not, however, reserved to European institutions and Member States. Many of the Court's judgments in the areas covered by this file resulted from individuals' invoking, in the national courts, various provisions of the Treaties and the Community law that flows from them. Private plaintiffs can even refer directly to the terms of a Community directive that supports their case, if a Member State has failed fully to adapt its legislation to that directive. Whenever necessary, the national judge may consult the European Court of Justice, which will give a 'preliminary ruling'. (In cases where a decision cannot be appealed to a higher national court, consultation of the European Court is obligatory.)

The internal rules of the European Parliament allow citizens, either individually or in groups, to make representations to the President of the Parliament, for examination by its Committee on Petitions; this committee may act as a mediator and, if necessary, make approaches to Member States or to the European Commission.

By means of procedures such as these, the new rights of the Community citizen can be protected in all member countries ■

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[1] See *European File* No 5/87: 'The Community and environmental protection'.

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Office for Official Publications
of the European Communities
L - 2985 Luxembourg

ISSN 0379-3133

Catalogue number: CC-AD-87-011-EN-C