

**61978J0148**

**Judgment of the Court of 5 April 1979. - Criminal proceedings against Tullio Ratti. - Reference for a preliminary ruling: Pretura di Milano - Italy. - Dangerous preparations. - Case 148/78.**

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## Summary

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## Keywords

*1 . ACTS OF THE INSTITUTIONS - DIRECTIVES - DIRECT EFFECT - EXPIRATION OF THE PERIOD FOR IMPLEMENTATION - NECESSARY CONDITION*

*( EEC TREATY , ART . 189 , THIRD PARA . )*

*2 . HARMONIZATION OF LAWS - CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS - OBLIGATIONS OF THE MEMBER STATES - SCOPE*

*( COUNCIL DIRECTIVE NO 73/173 , ARTS . 3 AND 8 )*

*3 . HARMONIZATION OF LAWS - CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS - OBLIGATIONS OF THE MEMBER STATES - SCOPE*

*( COUNCIL DIRECTIVE NO 73/173 )*

*4 . HARMONIZATION OF LAWS - MEASURES FOR THE PROTECTION OF THE HEALTH OF PERSONS AND ANIMALS - COMMUNITY CONTROL PROCEDURES - UNILATERAL DEROGATIONS UNDER ARTICLE 36 - INADMISSIBILITY*

*( EEC TREATY , ARTS . 36 AND 100 )*

*5 . HARMONIZATION OF LAWS - CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS - NATIONAL PROVISIONS MORE RESTRICTIVE THAN COMMUNITY STANDARDS - ADMISSIBILITY - CONDITIONS - ADOPTION PROCEDURE IN ACCORDANCE WITH COMMUNITY PROVISIONS*

*( COUNCIL DIRECTIVE NO 73/173 , ART . 9 )*

*6 . ACTS OF THE INSTITUTIONS - DIRECTIVES - IMPLEMENTATION BEFORE THE EXPIRATION OF THE PERIOD SPECIFIED - INEFFECTIVENESS WITH REGARD TO OTHER MEMBER STATES*

*( EEC TREATY , ART . 189 , THIRD PARA . )*

*7 . ACTS OF THE INSTITUTIONS - DIRECTIVES - DIRECT EFFECT - EXPIRATION OF THE PERIOD FOR IMPLEMENTATION - NECESSARY CONDITION - CONSEQUENCE - POSSIBILITY FOR AN INDIVIDUAL TO PLEAD THE PRINCIPLE OF ' ' LEGITIMATE EXPECTATION ' '*

*( EEC TREATY , ART . 189 , THIRD PARA . )*

*8 . ACTS OF THE INSTITUTIONS - DIRECTIVES - DIRECT EFFECT - EXPIRATION OF THE PERIOD FOR IMPLEMENTATION - NECESSARY CONDITION*

( EEC TREATY , ART . 189 , THIRD PARA . ; COUNCIL DIRECTIVE NO 77/728 , ART . 9 )

## Summary

1 . IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT WHICH ARTICLE 189 ASCRIBES TO DIRECTIVES TO EXCLUDE ON PRINCIPLE THE POSSIBILITY OF THE OBLIGATIONS IMPOSED BY THEM BEING RELIED ON BY PERSONS CONCERNED . PARTICULARLY IN CASES IN WHICH THE COMMUNITY AUTHORITIES HAVE , BY MEANS OF DIRECTIVE , PLACED MEMBER STATES UNDER A DUTY TO ADOPT A CERTAIN COURSE OF ACTION , THE EFFECTIVENESS OF SUCH AN ACT WOULD BE WEAKENED IF PERSONS WERE PREVENTED FROM RELYING ON IT IN LEGAL PROCEEDINGS AND NATIONAL COURTS PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW . CONSEQUENTLY A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE IN THE PRESCRIBED PERIODS MAY NOT RELY , AS AGAINST INDIVIDUALS , ON ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS . IT FOLLOWS THAT A NATIONAL COURT REQUESTED BY A PERSON WHO HAS COMPLIED WITH THE PROVISIONS OF A DIRECTIVE NOT TO APPLY A NATIONAL PROVISION INCOMPATIBLE WITH THE DIRECTIVE NOT INCORPORATED INTO THE INTERNAL LEGAL ORDER OF A DEFAULTING MEMBER STATE , MUST UPHOLD THAT REQUEST IF THE OBLIGATION IN QUESTION IS UNCONDITIONAL AND SUFFICIENTLY PRECISE . SUBJECT TO THESE RESERVATIONS A MEMBER STATE MAY NOT APPLY ITS INTERNAL LAW - EVEN IF IT IS PROVIDED WITH PENAL SANCTIONS - WHICH HAS NOT YET BEEN ADAPTED IN COMPLIANCE WITH THE DIRECTIVE , TO SUCH A PERSON AFTER THE EXPIRATION OF THE PERIOD FIXED FOR ITS IMPLEMENTATION .

ON THE OTHER HAND , SO LONG AS THE PERIOD PRESCRIBED FOR THE MEMBER STATES TO INCORPORATE THE PROVISIONS OF A DIRECTIVE INTO THEIR INTERNAL LEGAL ORDERS HAS NOT YET EXPIRED , THE DIRECTIVE CANNOT HAVE DIRECT EFFECT ; SUCH EFFECT ONLY ARISES AT THE END OF THE PERIOD PRESCRIBED AND IN THE EVENT OF DEFAULT BY THE MEMBER STATE CONCERNED .

2 . THE COMBINED EFFECT OF ARTICLES 3 TO 8 OF DIRECTIVE NO 73/173 IS THAT ONLY SOLVENTS WHICH ' ' COMPLY WITH THE PROVISIONS OF THIS DIRECTIVE AND THE ANNEX THERETO ' ' MAY BE PLACED ON THE MARKET AND THAT MEMBER STATES ARE NOT ENTITLED TO MAINTAIN , PARALLEL WITH THE RULES LAID DOWN BY THE SAID DIRECTIVE FOR IMPORTS , DIFFERENT RULES FOR THE DOMESTIC MARKET . THUS IT IS A CONSEQUENCE OF THE SYSTEM INTRODUCED BY DIRECTIVE NO 73/173 THAT A MEMBER STATE MAY NOT INTRODUCE INTO ITS NATIONAL LEGISLATION CONDITIONS WHICH ARE MORE RESTRICTIVE THAN THOSE LAID DOWN IN THE DIRECTIVE IN QUESTION , OR WHICH ARE EVEN MORE DETAILED OR IN ANY EVENT DIFFERENT , AS REGARDS THE CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS AND THAT THIS PROHIBITION ON THE IMPOSITION OF RESTRICTIONS NOT PROVIDED FOR APPLIES BOTH TO THE DIRECT MARKETING OF THE PRODUCTS ON THE HOME MARKET AND TO IMPORTED PRODUCTS .

3 . DIRECTIVE NO 73/173 MUST BE INTERPRETED AS MEANING THAT IT IS NOT PERMISSIBLE FOR NATIONAL PROVISIONS TO PRESCRIBE THAT CONTAINERS SHALL BEAR A STATEMENT OF THE PRESENCE OF INGREDIENTS OF THE PRODUCTS IN QUESTION IN TERMS GOING BEYOND THOSE LAID DOWN BY THE SAID DIRECTIVE .

4 . WHEN , PURSUANT TO ARTICLE 100 OF THE TREATY , COMMUNITY DIRECTIVES PROVIDE FOR THE HARMONIZATION OF MEASURES NECESSARY TO ENSURE THE PROTECTION OF THE HEALTH OF PERSONS AND ANIMALS AND ESTABLISH COMMUNITY PROCEDURES TO SUPERVISE COMPLIANCE THEREWITH , RECOURSE TO ARTICLE 36 CEASES TO BE JUSTIFIED AND THE APPROPRIATE CONTROLS MUST HENCEFORTH BE CARRIED OUT AND THE PROTECTIVE MEASURES TAKEN IN ACCORDANCE WITH THE SCHEME LAID DOWN BY THE HARMONIZING DIRECTIVE .

5 . NATIONAL PROVISIONS GOING BEYOND THOSE LAID DOWN IN DIRECTIVE NO 73/173 ARE COMPATIBLE WITH COMMUNITY LAW ONLY IF THEY HAVE BEEN ADOPTED IN ACCORDANCE

*WITH THE PROCEDURE AND FORMALITIES PRESCRIBED IN ARTICLE 9 OF THE SAID DIRECTIVE .*

*6 . IF ONE MEMBER STATE HAS INCORPORATED THE PROVISIONS OF A DIRECTIVE INTO ITS INTERNAL LEGAL ORDER BEFORE THE END OF THE PERIOD PRESCRIBED THEREIN , THAT FACT CANNOT PRODUCE ANY EFFECT WITH REGARD TO OTHER MEMBER STATES .*

*7 . SINCE A DIRECTIVE BY ITS NATURE IMPOSES OBLIGATIONS ONLY ON MEMBER STATES , IT IS NOT POSSIBLE FOR AN INDIVIDUAL TO PLEAD THE PRINCIPLE OF ' ' LEGITIMATE EXPECTATION ' ' BEFORE THE EXPIRY OF THE PERIOD PRESCRIBED FOR ITS IMPLEMENTATION*

*8 . DIRECTIVE NO 77/728 OF THE COUNCIL OF THE EUROPEAN COMMUNITIES OF 7 NOVEMBER 1977 , IN PARTICULAR ARTICLE 9 THEREOF , CANNOT BRING ABOUT WITH RESPECT TO ANY INDIVIDUAL WHO HAS COMPLIED WITH THE PROVISIONS OF THE SAID DIRECTIVE BEFORE THE EXPIRATION OF THE ADAPTATION PERIOD PRESCRIBED FOR THE MEMBER STATE ANY EFFECT CAPABLE OF BEING TAKEN INTO CONSIDERATION BY NATIONAL COURTS .*

## **Parties**

*IN CASE 148/78*

*REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE PRETURA PENALE , MILAN , FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN*

*PUBBLICO MINISTERO ( PUBLIC PROSECUTOR )*

*AND*

*TULLIO RATTI , RESIDING IN MILAN*

## **Subject of the case**

*ON THE INTERPRETATION OF TWO COUNCIL DIRECTIVES ON THE APPROXIMATION OF THE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES , THE FIRST NO 73/173/EEC OF 4 JUNE 1973 , RELATING TO THE CLASSIFICATION , PACKAGING AND LABELLING OF DANGEROUS PREPARATIONS ( SOLVENTS ) ( OFFICIAL JOURNAL NO L 189 , P . 7 ) AND THE SECOND , NO 77/728/EEC OF 7 NOVEMBER 1977 , RELATING TO THE CLASSIFICATION , PACKAGING AND LABELLING OF PAINTS , VARNISHES , PRINTING-INKS , ADHESIVES AND SIMILAR PRODUCTS ( OFFICIAL JOURNAL NO L 303 , P . 23 ) ,*

## **Grounds**

*1BY AN ORDER OF 8 MAY 1978 , RECEIVED AT THE COURT ON 21 JUNE 1978 , THE PRETURA PENALE , MILAN , REFERRED SEVERAL QUESTIONS TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY ON THE INTERPRETATION OF TWO COUNCIL DIRECTIVES ON THE APPROXIMATION OF THE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES , THE FIRST , NO 73/173/EEC OF 4 JUNE 1973 ON THE CLASSIFICATION , PACKAGING AND LABELLING OF DANGEROUS PREPARATIONS ( SOLVENTS ) ( OFFICIAL JOURNAL NO L 189 , P . 7 ) AND THE SECOND , NO 77/728/EEC OF 7 NOVEMBER 1977 ON THE CLASSIFICATION , PACKAGING AND LABELLING OF PAINTS , VARNISHES , PRINTING INKS , ADHESIVES AND SIMILAR PRODUCTS ( OFFICIAL JOURNAL NO L 303 , P . 23 ) .*

2THOSE QUESTIONS ARE RAISED IN THE CONTEXT OF CRIMINAL PROCEEDINGS AGAINST THE HEAD OF AN UNDERTAKING WHICH PRODUCES SOLVENTS AND VARNISHES , ON A CHARGE OF HAVING INFRINGED CERTAIN PROVISIONS OF THE ITALIAN LAW NO 245 OF 5 MARCH 1963 ( GAZZETTA UFFICIALE OF 21 MARCH 1963 , P . 1451 ) WHICH REQUIRE MANUFACTURERS OF PRODUCTS CONTAINING BENZENE , TOLUENE AND XYLENE TO AFFIX TO THE CONTAINERS OF THOSE PRODUCTS LABELS INDICATING , NOT ONLY THE FACT THAT THOSE SUBSTANCES ARE PRESENT , BUT ALSO THEIR TOTAL PERCENTAGE AND , SEPARATELY , THE PERCENTAGE OF BENZENE .

3AS FAR AS SOLVENTS ARE CONCERNED , THAT LEGISLATION OUGHT , AT THE MATERIAL TIME , TO HAVE BEEN AMENDED IN ORDER TO COMPLY WITH DIRECTIVE NO 73/173 OF 4 JUNE 1973 , THE PROVISIONS OF WHICH MEMBER STATES WERE SUPPOSED TO INCORPORATE INTO THEIR INTERNAL LEGAL ORDERS BY 8 DECEMBER 1974 AT THE LATEST , AN OBLIGATION WHICH THE ITALIAN GOVERNMENT HAS NOT FULFILLED .

4THAT AMENDMENT WOULD HAVE RESULTED IN THE REPEAL OF THE PROVISION OF THE ITALIAN LAW WHICH THE ACCUSED IS CHARGED WITH CONTRAVENING AND WOULD CONSEQUENTLY HAVE ALTERED THE CONDITIONS FOR APPLYING THE CRIMINAL SANCTIONS CONTAINED IN THE LAW IN QUESTION .

5AS REGARDS THE PACKAGING AND LABELLING OF VARNISHES , DIRECTIVE NO 77/728 OF 7 NOVEMBER 1977 HAD , AT THE MATERIAL TIME , BEEN ADOPTED BY THE COUNCIL , BUT BY VIRTUE OF ARTICLE 12 THEREOF MEMBER STATES HAVE UNTIL 9 NOVEMBER 1979 TO BRING INTO FORCE THE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS NECESSARY TO COMPLY THEREWITH .

6THE INCORPORATION OF THE PROVISIONS OF THAT DIRECTIVE INTO THE INTERNAL ITALIAN LEGAL ORDER MUST LIKEWISE RESULT IN THE REPEAL OF THE PROVISIONS OF THE ITALIAN LAW WHICH THE ACCUSED IS CHARGED WITH CONTRAVENING .

7AS REGARDS THE PACKAGING AND LABELLING OF BOTH THE SOLVENTS AND THE VARNISHES PRODUCED BY HIS UNDERTAKING , THE ACCUSED COMPLIED , IN THE ONE CASE , WITH THE PROVISIONS OF DIRECTIVE NO 73/173 ( SOLVENTS ) , WHICH THE ITALIAN GOVERNMENT HAD FAILED TO INCORPORATE INTO ITS INTERNAL LEGAL ORDER , AND , IN THE OTHER CASE , WITH THE PROVISIONS OF DIRECTIVE NO 77/728 ( VARNISHES ) , WHICH MEMBER STATES MUST IMPLEMENT BY 9 NOVEMBER 1979 .

8THE REPLIES TO THE QUESTIONS SUBMITTED , THE FIRST FOUR OF WHICH CONCERN DIRECTIVE NO 73/173 , WHILE THE FIFTH CONCERNS DIRECTIVE NO 77/728 , MUST ENABLE THE NATIONAL COURT TO DECIDE WHETHER THE PENALTIES PRESCRIBED BY ITALIAN LAW NO 245 FOR AN INFRINGEMENT OF ITS PROVISIONS MAY BE APPLIED IN THE CASE IN QUESTION .

#### A - THE INTERPRETATION OF DIRECTIVE NO 73/173

9THIS DIRECTIVE WAS ADOPTED PURSUANT TO ARTICLE 100 OF THE TREATY AND COUNCIL DIRECTIVE NO 67/548/EEC OF 27 JUNE 1967 ( OFFICIAL JOURNAL , ENGLISH SPECIAL EDITION 1967 , P . 234 ) , AMENDED ON 21 MAY 1973 ( OFFICIAL JOURNAL OF 25 JUNE 1973 NO L 167 , P . 1 ) , ON DANGEROUS SUBSTANCES , IN ORDER TO ENSURE THE APPROXIMATION OF THE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES ON THE CLASSIFICATION , PACKAGING AND LABELLING OF DANGEROUS PREPARATIONS ( SOLVENTS ) .

10THAT DIRECTIVE PROVED NECESSARY BECAUSE DANGEROUS SUBSTANCES AND PREPARATIONS WERE SUBJECT TO RULES IN THE MEMBER STATES WHICH DISPLAYED CONSIDERABLE DIFFERENCES , PARTICULARLY AS REGARDS LABELLING , PACKAGING AND CLASSIFICATION ACCORDING TO THE DEGREE OF RISK PRESENTED BY THE SAID PRODUCTS .

11THOSE DIFFERENCES CONSTITUTED A BARRIER TO TRADE AND TO THE FREE MOVEMENT OF GOODS AND DIRECTLY AFFECTED THE ESTABLISHMENT AND FUNCTIONING OF THE MARKET IN DANGEROUS PREPARATIONS SUCH AS SOLVENTS USED REGULARLY IN INDUSTRIAL , FARMING AND CRAFT ACTIVITIES , AS WELL AS FOR DOMESTIC PURPOSES .

12 IN ORDER TO ELIMINATE THOSE DIFFERENCES THE DIRECTIVE MADE A NUMBER OF EXPRESS PROVISIONS CONCERNING THE CLASSIFICATION , PACKAGING AND LABELLING OF THE PRODUCTS IN QUESTION ( ARTICLE 2 ( 1 ) , ( 2 ) AND ( 3 ) AND ARTICLES 4 , 5 AND 6 ) .

13 AS REGARDS ARTICLE 8 , TO WHICH THE NATIONAL COURT REFERRED IN PARTICULAR , AND WHICH PROVIDES THAT MEMBER STATES MAY NOT PROHIBIT , RESTRICT OR IMPEDE ON THE GROUNDS OF CLASSIFICATION , PACKAGING OR LABELLING THE PLACING ON THE MARKET OF DANGEROUS PREPARATIONS WHICH SATISFY THE REQUIREMENTS OF THE DIRECTIVE , ALTHOUGH IT LAYS DOWN A GENERAL DUTY , IT HAS NO INDEPENDENT VALUE , BEING NO MORE THAN THE NECESSARY COMPLEMENT OF THE SUBSTANTIVE PROVISIONS CONTAINED IN THE AFORESAID ARTICLES AND DESIGNED TO ENSURE THE FREE MOVEMENT OF THE PRODUCTS IN QUESTION .

14 THE MEMBER STATES WERE UNDER A DUTY TO IMPLEMENT DIRECTIVE NO 73/173 , IN ACCORDANCE WITH ARTICLE 11 THEREOF , WITHIN 18 MONTHS OF ITS NOTIFICATION .

15 ALL THE MEMBER STATES WERE SO NOTIFIED ON 8 JUNE 1973 .

16 THE PERIOD OF 18 MONTHS EXPIRED ON 8 DECEMBER 1974 AND UP TO THE TIME WHEN THE EVENTS MATERIAL IN THE CASE OCCURRED THE PROVISIONS OF THE DIRECTIVE HAD NOT BEEN IMPLEMENTED WITHIN THE ITALIAN INTERNAL LEGAL ORDER .

17 IN THOSE CIRCUMSTANCES THE NATIONAL COURT , FINDING THAT ' ' THERE WAS A MANIFEST CONTRADICTION BETWEEN THE COMMUNITY RULES AND INTERNAL ITALIAN LAW ' ' , WONDERED ' ' WHICH OF THE TWO SETS OF RULES SHOULD TAKE PRECEDENCE IN THE CASE BEFORE THE COURT ' ' AND REFERRED TO THE COURT THE FIRST QUESTION , ASKING AS FOLLOWS :

' ' DOES COUNCIL DIRECTIVE 73/173/EEC OF 4 JUNE 1973 , IN PARTICULAR ARTICLE 8 THEREOF , CONSTITUTE DIRECTLY APPLICABLE LEGISLATION CONFERRING UPON INDIVIDUALS PERSONAL RIGHTS WHICH THE NATIONAL COURTS MUST PROTECT? ' ' .

18 THIS QUESTION RAISES THE GENERAL PROBLEM OF THE LEGAL NATURE OF THE PROVISIONS OF A DIRECTIVE ADOPTED UNDER ARTICLE 189 OF THE TREATY .

19 IN THIS REGARD THE SETTLED CASE-LAW OF THE COURT , LAST REAFFIRMED BY THE JUDGMENT OF 1 FEBRUARY 1977 IN CASE 51/76 NEDERLANDSE ONDERNEMINGEN ( 1977 ) 1 ECR 126 , LAYS DOWN THAT , WHILST UNDER ARTICLE 189 REGULATIONS ARE DIRECTLY APPLICABLE AND , CONSEQUENTLY , BY THEIR NATURE CAPABLE OF PRODUCING DIRECT EFFECTS , THAT DOES NOT MEAN THAT OTHER CATEGORIES OF ACTS COVERED BY THAT ARTICLE CAN NEVER PRODUCE SIMILAR EFFECTS .

20 IT WOULD BE INCOMPATIBLE WITH THE BINDING EFFECT WHICH ARTICLE 189 ASCRIBES TO DIRECTIVES TO EXCLUDE ON PRINCIPLE THE POSSIBILITY OF THE OBLIGATIONS IMPOSED BY THEM BEING RELIED ON BY PERSONS CONCERNED .

21 PARTICULARLY IN CASES IN WHICH THE COMMUNITY AUTHORITIES HAVE , BY MEANS OF DIRECTIVE , PLACED MEMBER STATES UNDER A DUTY TO ADOPT A CERTAIN COURSE OF ACTION , THE EFFECTIVENESS OF SUCH AN ACT WOULD BE WEAKENED IF PERSONS WERE PREVENTED FROM RELYING ON IT IN LEGAL PROCEEDINGS AND NATIONAL COURTS PREVENTED FROM TAKING IT INTO CONSIDERATION AS AN ELEMENT OF COMMUNITY LAW .

22 CONSEQUENTLY A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE IN THE PRESCRIBED PERIODS MAY NOT RELY , AS AGAINST INDIVIDUALS , ON ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS .

23 IT FOLLOWS THAT A NATIONAL COURT REQUESTED BY A PERSON WHO HAS COMPLIED WITH THE PROVISIONS OF A DIRECTIVE NOT TO APPLY A NATIONAL PROVISION INCOMPATIBLE WITH THE DIRECTIVE NOT INCORPORATED INTO THE INTERNAL LEGAL ORDER OF A DEFAULTING MEMBER STATE , MUST UPHOLD THAT REQUEST IF THE OBLIGATION IN QUESTION IS UNCONDITIONAL AND SUFFICIENTLY PRECISE .

24 THEREFORE THE ANSWER TO THE FIRST QUESTION MUST BE THAT AFTER THE EXPIRATION OF THE PERIOD FIXED FOR THE IMPLEMENTATION OF A DIRECTIVE A MEMBER STATE MAY

*NOT APPLY ITS INTERNAL LAW - EVEN IF IT IS PROVIDED WITH PENAL SANCTIONS - WHICH HAS NOT YET BEEN ADAPTED IN COMPLIANCE WITH THE DIRECTIVE , TO A PERSON WHO HAS COMPLIED WITH THE REQUIREMENTS OF THE DIRECTIVE .*

*25 IN THE SECOND QUESTION THE NATIONAL COURT ASKS , ESSENTIALLY , WHETHER , IN INCORPORATING THE PROVISIONS OF THE DIRECTIVE ON SOLVENTS INTO ITS INTERNAL LEGAL ORDER , THE STATE TO WHICH IT IS ADDRESSED MAY PRESCRIBE ' ' OBLIGATIONS AND LIMITATIONS WHICH ARE MORE PRECISE AND DETAILED THAN , OR AT ALL EVENTS DIFFERENT FROM , THOSE SET OUT IN THE DIRECTIVE ' ' , REQUIRING IN PARTICULAR INFORMATION NOT REQUIRED BY THE DIRECTIVE TO BE AFFIXED TO THE CONTAINERS .*

*26 THE COMBINED EFFECT OF ARTICLES 3 TO 8 OF DIRECTIVE NO 73/173 IS THAT ONLY SOLVENTS WHICH ' ' COMPLY WITH THE PROVISIONS OF THIS DIRECTIVE AND THE ANNEX THERETO ' ' MAY BE PLACED ON THE MARKET AND THAT MEMBER STATES ARE NOT ENTITLED TO MAINTAIN , PARALLEL WITH THE RULES LAID DOWN BY THE SAID DIRECTIVE FOR IMPORTS , DIFFERENT RULES FOR THE DOMESTIC MARKET .*

*27 THUS IT IS A CONSEQUENCE OF THE SYSTEM INTRODUCED BY DIRECTIVE NO 73/173 THAT A MEMBER STATE MAY NOT INTRODUCE INTO ITS NATIONAL LEGISLATION CONDITIONS WHICH ARE MORE RESTRICTIVE THAN THOSE LAID DOWN IN THE DIRECTIVE IN QUESTION , OR WHICH ARE EVEN MORE DETAILED OR IN ANY EVENT DIFFERENT , AS REGARDS THE CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS AND THAT THIS PROHIBITION ON THE IMPOSITION OF RESTRICTIONS NOT PROVIDED FOR APPLIES BOTH TO THE DIRECT MARKETING OF THE PRODUCTS ON THE HOME MARKET AND TO IMPORTED PRODUCTS .*

*28 THE SECOND QUESTION SUBMITTED BY THE NATIONAL COURT MUST BE ANSWERED IN THAT WAY .*

*29 IN THE THIRD QUESTION THE NATIONAL COURT ASKS WHETHER THE DUTY TO INDICATE ON THE CONTAINER OF THE SOLVENT OFFERED FOR SALE THAT IT CONTAINS BENZENE , TOLUENE AND XYLENE , SPECIFYING THE TOTAL PERCENTAGE OF THOSE SUBSTANCES AND , SEPARATELY THAT OF BENZENE , PURSUANT TO ARTICLE 8 OF LAW NO 245 OF 5 MARCH 1963 , MAY BE CONSIDERED INCOMPATIBLE WITH THE SAID DIRECTIVE .*

*30 ARTICLE 8 OF ITALIAN LAW NO 245 OF 5 MARCH 1963 LAYS DOWN A DUTY , ' ' WHERE SOLVENTS CONTAIN BENZENE , TOLUENE OR XYLENE , TO AFFIX TO THE CONTAINERS OFFERED FOR SALE A LABEL MENTIONING THE PRESENCE OF THOSE SUBSTANCES IN THE SOLVENTS , THE TOTAL PERCENTAGE OF THOSE SUBSTANCES AND , SEPARATELY , THE PERCENTAGE OF BENZENE . . . ' ' .*

*31 HOWEVER , ARTICLE 5 OF DIRECTIVE NO 73/173 REQUIRES IN ALL CASES THAT PACKAGES INDICATE CLEARLY AND INDELIBLY THE PRESENCE OF SUBSTANCES CLASSIFIED AS TOXIC UNDER ARTICLE 2 , SUCH AS BENZENE , AND ALSO THAT THEY SHOW , BUT ONLY IN CERTAIN CASES , THE PRESENCE OF SUBSTANCES CLASSIFIED AS HARMFUL , SUCH AS TOLUENE AND XYLENE IN A CONCENTRATION HIGHER THAN 5% .*

*32 ON THE OTHER HAND NO INDICATION OF THE PERCENTAGE , SEPARATE OR IN THE AGGREGATE , OF THOSE SUBSTANCES IS REQUIRED .*

*33 THUS THE ANSWER TO THE NATIONAL COURT MUST BE THAT DIRECTIVE NO 73/173 MUST BE INTERPRETED AS MEANING THAT IT IS NOT PERMISSIBLE FOR NATIONAL PROVISIONS TO PRESCRIBE THAT CONTAINERS SHALL BEAR A STATEMENT OF THE PRESENCE OF INGREDIENTS OF THE PRODUCTS IN QUESTION IN TERMS GOING BEYOND THOSE LAID DOWN BY THE SAID DIRECTIVE .*

*34 THE FOURTH QUESTION IS DRAFTED AS FOLLOWS :*

*' ' DO THE SAID NATIONAL PROVISIONS , WHICH ARE APPLICABLE WITHOUT DISTINCTION TO ALL GOODS PLACED ON THE DOMESTIC MARKET , NEVERTHELESS CONSTITUTE AN OBSTACLE , A PROHIBITION OR A RESTRICTION ON TRADE IN AND THE FREE MOVEMENT OF SUCH GOODS , EVEN IF SUCH PROVISIONS WERE ENACTED FOR THE PURPOSE OF ENSURING GREATER PROTECTION FOR THE PHYSICAL SAFETY OF USERS OF THE PRODUCTS IN QUESTION?*

*' '*

35 THIS QUESTION IS AN ALLUSION TO ARTICLE 36 OF THE TREATY WHICH PERMITS EXCEPTIONS TO THE FREE MOVEMENTS OF GOODS TO THE EXTENT TO WHICH THEY ARE JUSTIFIED ON GROUNDS OF PUBLIC SECURITY OR THE PROTECTION OF HEALTH AND LIFE OF HUMANS AND ANIMALS .

36 WHEN , PURSUANT TO ARTICLE 100 OF THE TREATY , COMMUNITY DIRECTIVES PROVIDE FOR THE HARMONIZATION OF MEASURES NECESSARY TO ENSURE THE PROTECTION OF THE HEALTH OF HUMANS AND ANIMALS AND ESTABLISH COMMUNITY PROCEDURES TO SUPERVISE COMPLIANCE THEREWITH , RECOURSE TO ARTICLE 36 CEASES TO BE JUSTIFIED AND THE APPROPRIATE CONTROLS MUST HENCEFORTH BE CARRIED OUT AND THE PROTECTIVE MEASURES TAKEN IN ACCORDANCE WITH THE SCHEME LAID DOWN BY THE HARMONIZING DIRECTIVE .

37 DIRECTIVE NO 73/173 PROVIDES THAT WHERE A MEMBER STATE ESTABLISHED THAT A DANGEROUS PREPARATION , ALTHOUGH SATISFYING THE REQUIREMENTS OF THAT DIRECTIVE , PRESENTS A HEALTH OR SAFETY RISK , IT MAY HAVE RECOURSE , TEMPORARILY AND SUBJECT TO THE SUPERVISION OF THE COMMISSION , TO A PROTECTIVE MEASURE PROVIDED FOR IN ARTICLE 9 OF THE DIRECTIVE IN ACCORDANCE WITH THE PROCEDURE LAID DOWN IN THAT ARTICLE .

38 IT FOLLOWS THAT NATIONAL PROVISIONS GOING BEYOND THOSE LAID DOWN IN DIRECTIVE NO 73/173 ARE COMPATIBLE WITH COMMUNITY LAW ONLY IF THEY HAVE BEEN ADOPTED IN ACCORDANCE WITH THE PROCEDURES AND FORMALITIES PRESCRIBED IN ARTICLE 9 OF THE SAID DIRECTIVE .

B - THE INTERPRETATION OF COUNCIL DIRECTIVE NO 77/728/EEC OF 7 NOVEMBER 1977

39 IN A FIFTH QUESTION THE NATIONAL COURT ASKS WHETHER COUNCIL DIRECTIVE NO 77/728 OF 7 NOVEMBER 1977 , IN PARTICULAR ARTICLE 9 THEREOF , IS IMMEDIATELY AND DIRECTLY APPLICABLE WITH REGARD TO THE OBLIGATIONS IMPOSED ON MEMBER STATES TO REFRAIN FROM ACTION AS FROM THE DATE OF NOTIFICATION OF THAT DIRECTIVE IN A CASE WHERE A PERSON , ACTING UPON A LEGITIMATE EXPECTATION , HAS COMPLIED WITH THE PROVISIONS OF THAT DIRECTIVE BEFORE THE EXPIRY OF THE PERIOD WITHIN WHICH THE MEMBER STATE MUST COMPLY WITH THE SAID DIRECTIVE .

40 THE OBJECTIVE OF THAT DIRECTIVE IS ANALOGOUS TO THAT OF DIRECTIVE NO 73/173 IN THAT IT LAYS DOWN SIMILAR RULES FOR PREPARATIONS INTENDED TO BE USED AS PAINTS , VARNISHES , PRINTING INKS , ADHESIVES AND SIMILAR PRODUCTS , AND CONTAINING DANGEROUS SUBSTANCES .

41 ARTICLE 12 OF THAT DIRECTIVE PROVIDES THAT MEMBER STATES MUST IMPLEMENT IT WITHIN 24 MONTHS OF ITS NOTIFICATION , WHICH TOOK PLACE ON 9 NOVEMBER 1977 .

42 THAT PERIOD HAS NOT YET EXPIRED AND THE STATES TO WHICH THE DIRECTIVE WAS ADDRESSED HAVE UNTIL 9 NOVEMBER 1979 TO INCORPORATE THE PROVISIONS OF DIRECTIVE NO 77/728 INTO THEIR INTERNAL LEGAL ORDERS .

43 IT FOLLOWS THAT , FOR THE REASONS EXPOUNDED IN THE GROUNDS OF THE ANSWER TO THE NATIONAL COURT ' S FIRST QUESTION , IT IS ONLY AT THE END OF THE PRESCRIBED PERIOD AND IN THE EVENT OF THE MEMBER STATE ' S DEFAULT THAT THE DIRECTIVE - AND IN PARTICULAR ARTICLE 9 THEREOF - WILL BE ABLE TO HAVE THE EFFECTS DESCRIBED IN THE ANSWER TO THE FIRST QUESTION .

44 UNTIL THAT DATE IS REACHED THE MEMBER STATES REMAIN FREE IN THAT FIELD .

45 IF ONE MEMBER STATE HAS INCORPORATED THE PROVISIONS OF A DIRECTIVE INTO ITS INTERNAL LEGAL ORDER BEFORE THE END OF THE PERIOD PRESCRIBED THEREIN , THAT FACT CANNOT PRODUCE ANY EFFECT WITH REGARD TO OTHER MEMBER STATES .

46 IN CONCLUSION , SINCE A DIRECTIVE BY ITS NATURE IMPOSES OBLIGATIONS ONLY ON MEMBER STATES , IT IS NOT POSSIBLE FOR AN INDIVIDUAL TO PLEAD THE PRINCIPLE OF ' ' LEGITIMATE EXPECTATION ' ' BEFORE THE EXPIRY OF THE PERIOD PRESCRIBED FOR ITS IMPLEMENTATION .

47 THEREFORE THE ANSWER TO THE FIFTH QUESTION MUST BE THAT DIRECTIVE NO 77/728 OF THE COUNCIL OF THE EUROPEAN COMMUNITIES OF 7 NOVEMBER 1977 , IN PARTICULAR

*ARTICLE 9 THEREOF , CANNOT BRING ABOUT WITH RESPECT TO ANY INDIVIDUAL WHO HAS COMPLIED WITH THE PROVISIONS OF THE SAID DIRECTIVE BEFORE THE EXPIRATION OF THE ADAPTATION PERIOD PRESCRIBED FOR THE MEMBER STATE ANY EFFECT CAPABLE OF BEING TAKEN INTO CONSIDERATION BY NATIONAL COURTS .*

### **Decision on costs**

#### *COSTS*

*48 THE COSTS INCURRED BY THE COUNCIL AND BY THE COMMISSION , WHICH HAVE SUBMITTED WRITTEN OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE .*

*49 AS THE PROCEEDINGS ARE , SO FAR AS THE ACCUSED IN THE MAIN ACTION IS CONCERNED , IN THE NATURE OF A STEP IN THE ACTION PENDING BEFORE THE NATIONAL COURT , THE DECISION ON COSTS IS A MATTER FOR THAT COURT .*

### **Operative part**

*ON THOSE GROUNDS ,  
THE COURT*

*IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE PRETURA PENALE , MILAN , BY AN ORDER OF 8 MAY 1978 HEREBY RULES :*

- 1 . AFTER THE EXPIRATION OF THE PERIOD FIXED FOR THE IMPLEMENTATION OF A DIRECTIVE A MEMBER STATE MAY NOT APPLY ITS INTERNAL LAW - EVEN IF IT IS PROVIDED WITH PENAL SANCTIONS - WHICH HAS NOT YET BEEN ADAPTED IN COMPLIANCE WITH THE DIRECTIVE , TO A PERSON WHO HAS COMPLIED WITH THE REQUIREMENTS OF THE DIRECTIVE .*
- 2 . IT IS A CONSEQUENCE OF THE SYSTEM INTRODUCED BY DIRECTIVE NO 73/173 THAT A MEMBER STATE MAY NOT INTRODUCE INTO ITS NATIONAL LEGISLATION CONDITIONS WHICH ARE MORE RESTRICTIVE THAN THOSE LAID DOWN IN THE DIRECTIVE IN QUESTION , OR WHICH ARE EVEN MORE DETAILED OR IN ANY EVENT DIFFERENT , AS REGARDS THE CLASSIFICATION , PACKAGING AND LABELLING OF SOLVENTS AND THAT THIS PROHIBITION ON THE IMPOSITION OF RESTRICTIONS NOT PROVIDED FOR APPLIES BOTH TO THE DIRECT MARKETING OF THE PRODUCTS ON THE HOME MARKET AND TO IMPORTED PRODUCTS .*
- 3 . DIRECTIVE NO 73/173 MUST BE INTERPRETED AS MEANING THAT IT IS NOT PERMISSIBLE FOR NATIONAL PROVISIONS TO PRESCRIBE THAT CONTAINERS SHALL BEAR A STATEMENT OF THE PRESENCE OF INGREDIENTS OF THE PRODUCTS IN QUESTION IN TERMS GOING BEYOND THOSE LAID DOWN BY THE SAID DIRECTIVE .*
- 4 . NATIONAL PROVISIONS GOING BEYOND THOSE LAID DOWN IN DIRECTIVE NO 73/173 ARE COMPATIBLE WITH COMMUNITY LAW ONLY IF THEY HAVE BEEN ADOPTED IN ACCORDANCE WITH THE PROCEDURES AND FORMALITIES PRESCRIBED IN ARTICLE 9 OF THE SAID DIRECTIVE .*
- 5 . DIRECTIVE NO 77/728 OF THE COUNCIL OF THE EUROPEAN COMMUNITIES OF 7 NOVEMBER 1977 , IN PARTICULAR ARTICLE 9 THEREOF , CANNOT BRING ABOUT WITH RESPECT TO ANY INDIVIDUAL WHO HAS COMPLIED WITH THE PROVISIONS OF THE SAID DIRECTIVE BEFORE THE EXPIRATION OF THE ADAPTATION PERIOD PRESCRIBED FOR THE MEMBER STATE ANY EFFECT CAPABLE OF BEING TAKEN INTO CONSIDERATION BY NATIONAL COURTS .*



61986J0080

**Judgment of the Court (Sixth Chamber) of 8 October 1987. - Criminal proceedings against Kolpinghuis Nijmegen BV. - Reference for a preliminary ruling: Arrondissementsrechtbank Arnhem - Netherlands. - The possibility for a directive which has not yet been implemented to be relied upon against an individual. - Case 80/86.**

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### Summary

### Parties

### Grounds

### Decision on costs

### Operative part

### Keywords

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1 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - DIRECT EFFECT - CONDITIONS - LIMITS - POSSIBILITY OF RELYING UPON A DIRECTIVE AGAINST AN INDIVIDUAL - NONE

( EEC TREATY, ART . 189\*(3 )\*)

2 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - IMPLEMENTATION BY THE MEMBER STATES - NEED TO ENSURE THAT DIRECTIVES ARE EFFECTIVE - OBLIGATIONS OF THE NATIONAL COURTS - LIMITS - PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY

( EEC TREATY, ART . 189\*(3 )\*)

### Summary

1 . WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR, AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED, TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE, THOSE PROVISIONS MAY BE RELIED UPON BY AN INDIVIDUAL AGAINST THE STATE WHERE THAT STATE FAILS TO IMPLEMENT THE DIRECTIVE IN NATIONAL LAW BY THE END OF THE PERIOD PRESCRIBED OR WHERE IT FAILS TO IMPLEMENT THE DIRECTIVE CORRECTLY .

HOWEVER, ACCORDING TO ARTICLE 189 OF THE EEC TREATY THE BINDING NATURE OF A DIRECTIVE, WHICH CONSTITUTES THE BASIS FOR THE POSSIBILITY OF RELYING ON THE DIRECTIVE BEFORE A NATIONAL COURT, EXISTS ONLY IN RELATION TO "EACH MEMBER STATE TO WHICH IT IS ADDRESSED " . IT FOLLOWS THAT A DIRECTIVE MAY NOT OF ITSELF IMPOSE OBLIGATIONS ON AN INDIVIDUAL AND THAT A PROVISION OF A DIRECTIVE MAY NOT BE RELIED UPON AS SUCH AGAINST SUCH A PERSON BEFORE A NATIONAL COURT .

2 . IN APPLYING NATIONAL LAW AND IN PARTICULAR THE PROVISIONS OF A NATIONAL LAW SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT THE DIRECTIVE, NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSES OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY .

*HOWEVER, THAT OBLIGATION IS LIMITED BY THE GENERAL PRINCIPLES OF LAW WHICH FORM PART OF COMMUNITY LAW AND IN PARTICULAR THE PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY . THEREFORE A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A NATIONAL LAW ADOPTED BY A MEMBER STATE FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .*

## **Parties**

*IN CASE 80/86*

*REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE ARRONDISSEMENTSRECHTBANK ( DISTRICT COURT ), ARNHEM, FOR A PRELIMINARY RULING IN THE CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT AGAINST*

*KOLPINGHUIS NIJMEGEN BV, NIJMEGEN,*

*ON THE INTERPRETATION OF COUNCIL DIRECTIVE 80/777/EEC OF 15 JULY 1980 ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE EXPLOITATION AND MARKETING OF NATURAL MINERAL WATERS ( OFFICIAL JOURNAL 1980, L\*229, P.\*1 ), IN PARTICULAR AS REGARDS THE EFFECTS OF THAT DIRECTIVE BEFORE IT HAS BEEN IMPLEMENTED IN NATIONAL LAW,*

*THE COURT ( SIXTH CHAMBER )*

*COMPOSED OF : O . DUE, PRESIDENT OF CHAMBER, G . C . RODRIGUEZ IGLESIAS, T . KOOPMANS, K . BAHLMANN AND C . KAKOURIS, JUDGES,*

*ADVOCATE GENERAL : J . MISCHO*

*REGISTRAR : D . LOUTERMAN, ADMINISTRATOR*

*AFTER CONSIDERING THE OBSERVATIONS SUBMITTED ON BEHALF OF*

*THE NETHERLANDS GOVERNMENT, IN THE WRITTEN PROCEDURE BY I . VERKADE, SECRETARY-GENERAL, AND AT THE HEARING BY ITS AGENT, G . M . BORCHARDT,*

*THE UNITED KINGDOM, IN THE WRITTEN PROCEDURE BY ITS AGENT, S . J . HAY, AND AT THE HEARING BY H . L . PURSE, ASSISTANT SOLICITOR,*

*THE ITALIAN GOVERNMENT, BY LUIGI FERRARI BRAVO, HEAD OF THE DEPARTMENT FOR CONTENTIOUS DIPLOMATIC AFFAIRS, ACTING AS AGENT, ASSISTED BY M . CONTI, AVVOCATO DELLO STATO,*

*THE COMMISSION OF THE EUROPEAN COMMUNITIES, IN THE WRITTEN PROCEDURE BY AUKE HAAGSMA, A MEMBER OF ITS LEGAL DEPARTMENT, ACTING AS AGENT, REPLACED AT THE HEARING BY R . C . FISCHER, LEGAL ADVISER, ACTING AS AGENT,*

*HAVING REGARD TO THE REPORT FOR THE HEARING AND FURTHER TO THE HEARING ON 3 FEBRUARY 1987,*

*AFTER HEARING THE OPINION OF THE ADVOCATE GENERAL DELIVERED AT THE SITTING ON 17 MARCH 1987,*

*GIVES THE FOLLOWING*

*JUDGMENT*

## **Grounds**

*1 BY AN ORDER OF 3 FEBRUARY 1986, WHICH WAS RECEIVED AT THE COURT ON 14 MARCH 1986, THE ARRONDISSEMENTSRECHTBANK, ARNHEM, SUBMITTED TO THE COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY FOUR QUESTIONS ON THE INTERPRETATION OF COMMUNITY LAW WITH REGARD TO THE EFFECT OF A DIRECTIVE*

UNDER THE NATIONAL LAW OF A MEMBER STATE WHICH HAS NOT YET ADOPTED THE MEASURES NEEDED TO IMPLEMENT THAT DIRECTIVE .

2 THOSE QUESTIONS AROSE IN CRIMINAL PROCEEDINGS BROUGHT AGAINST AN UNDERTAKING RUNNING A CAFE FOR STOCKING FOR SALE AND DELIVERY A BEVERAGE WHICH IT CALLED "MINERAL WATER" BUT WHICH CONSISTED OF TAP-WATER AND CARBON DIOXIDE . THE UNDERTAKING IS CHARGED WITH INFRINGING ARTICLE 2 OF THE KEURINGSVERORDENING ( INSPECTION REGULATION ) OF THE MUNICIPALITY OF NIJMEGEN WHICH PROHIBITS THE STOCKING FOR SALE AND DELIVERY OF GOODS INTENDED FOR TRADE AND HUMAN CONSUMPTION WHICH ARE OF UNSOUND COMPOSITION .

3 BEFORE THE POLITIERECHTER ( MAGISTRATE DEALING WITH COMMERCIAL OFFENCES ), THE OFFICIER VAN JUSTITIE ( PUBLIC PROSECUTOR ) RELIED INTER ALIA UPON COUNCIL DIRECTIVE 80/777/EEC OF 15 JULY 1980 ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE EXPLOITATION AND MARKETING OF NATURAL MINERAL WATERS ( OFFICIAL JOURNAL 1980, L\*229, P.\*1 ). THE DIRECTIVE PROVIDES IN PARTICULAR THAT THE MEMBER STATES ARE TO TAKE THE MEASURES NECESSARY TO ENSURE THAT ONLY WATERS EXTRACTED FROM THE GROUND OF A MEMBER STATE AND RECOGNIZED BY THE RESPONSIBLE AUTHORITY OF THAT MEMBER STATE AS NATURAL MINERAL WATERS SATISFYING THE PROVISIONS OF ANNEX I, SECTION I, OF THE DIRECTIVE MAY BE MARKETED AS NATURAL MINERAL WATERS . THAT PROVISION OF THE DIRECTIVE OUGHT TO HAVE BEEN IMPLEMENTED WITHIN FOUR YEARS AFTER THE DIRECTIVE WAS NOTIFIED, THAT IS TO SAY BY 17 JULY 1984, BUT THE NETHERLANDS LEGISLATION WAS AMENDED ONLY WITH EFFECT FROM 8 AUGUST 1985, WHEREAS THE OFFENCES WITH WHICH THE ACCUSED IN THE MAIN PROCEEDINGS IS CHARGED TOOK PLACE ON 7 AUGUST 1984 .

4 UNDER THOSE CIRCUMSTANCES THE ARRONDISSEMENTSRECHTBANK SUBMITTED TO THE COURT THE FOLLOWING QUESTIONS :

"( 1 ) CAN AN AUTHORITY OF A MEMBER STATE ( IN THIS CASE THE PROSECUTING BODY ) RELY AS AGAINST NATIONALS OF THAT MEMBER STATE ON A PROVISION OF A DIRECTIVE IN A CASE WHICH IS NOT COVERED BY THE STATE' S OWN LEGISLATION OR IMPLEMENTING PROVISIONS?

( 2 ) IS A NATIONAL COURT OBLIGED, WHERE A DIRECTIVE HAS NOT BEEN IMPLEMENTED, TO GIVE DIRECT EFFECT TO PROVISIONS OF THE DIRECTIVE WHICH LEND THEMSELVES TO SUCH TREATMENT EVEN WHERE THE INDIVIDUAL CONCERNED DOES NOT SEEK TO DERIVE ANY RIGHT FROM THOSE PROVISIONS?

( 3 ) WHERE A NATIONAL COURT IS REQUIRED TO INTERPRET A NATIONAL RULE, SHOULD OR MAY THAT COURT BE GUIDED IN ITS INTERPRETATION BY THE PROVISIONS OF AN APPLICABLE DIRECTIVE?

( 4 ) DOES IT MAKE A DIFFERENCE TO THE ANSWERS TO QUESTIONS 1, 2 AND 3 IF ON THE MATERIAL DATE ( IN THIS CASE 7 AUGUST 1984 ) THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED?"

5 REFERENCE IS MADE TO THE REPORT FOR THE HEARING FOR A FULLER ACCOUNT OF THE FACTS OF THE MAIN PROCEEDINGS, THE RELEVANT COMMUNITY AND NATIONAL RULES AND THE OBSERVATIONS SUBMITTED TO THE COURT, WHICH ARE MENTIONED OR DISCUSSED HEREINAFTER ONLY IN SO FAR AS IS NECESSARY FOR THE REASONING OF THE COURT .

THE FIRST TWO QUESTIONS

6 THE FIRST TWO QUESTIONS CONCERN THE POSSIBILITY WHETHER THE PROVISIONS OF A DIRECTIVE WHICH HAS NOT YET BEEN IMPLEMENTED IN NATIONAL LAW IN THE MEMBER STATE IN QUESTION MAY BE APPLIED AS SUCH .

7 IN THIS REGARD IT SHOULD BE RECALLED THAT, ACCORDING TO THE ESTABLISHED CASE-LAW OF THE COURT ( IN PARTICULAR ITS JUDGMENT OF 19 JANUARY 1982 IN CASE 8/81 BECKER V FINANZAMT MUENSTER-INNENSTADT (( 1982 )) ECR 53 ), WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR, AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED, TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE, THOSE PROVISIONS MAY BE RELIED UPON BY AN INDIVIDUAL AGAINST THE STATE WHERE THAT STATE FAILS TO IMPLEMENT THE

*DIRECTIVE IN NATIONAL LAW BY THE END OF THE PERIOD PRESCRIBED OR WHERE IT FAILS TO IMPLEMENT THE DIRECTIVE CORRECTLY .*

*8 THAT VIEW IS BASED ON THE CONSIDERATION THAT IT WOULD BE INCOMPATIBLE WITH THE BINDING NATURE WHICH ARTICLE 189 CONFERS ON THE DIRECTIVE TO HOLD AS A MATTER OF PRINCIPLE THAT THE OBLIGATION IMPOSED THEREBY CANNOT BE RELIED ON BY THOSE CONCERNED . FROM THAT THE COURT DEDUCED THAT A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE WITHIN THE PRESCRIBED PERIOD MAY NOT PLEAD, AS AGAINST INDIVIDUALS, ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS .*

*9 IN ITS JUDGMENT OF 26 FEBRUARY 1986 IN CASE 152/84 MARSHALL V SOUTH-WEST HAMPSHIRE AREA HEALTH AUTHORITY (( 1986 )) ECR 723, THE COURT EMPHASIZED, HOWEVER, THAT ACCORDING TO ARTICLE 189 OF THE EEC TREATY THE BINDING NATURE OF A DIRECTIVE, WHICH CONSTITUTES THE BASIS FOR THE POSSIBILITY OF RELYING ON THE DIRECTIVE BEFORE A NATIONAL COURT, EXISTS ONLY IN RELATION TO "EACH MEMBER STATE TO WHICH IT IS ADDRESSED ". IT FOLLOWS THAT A DIRECTIVE MAY NOT OF ITSELF IMPOSE OBLIGATIONS ON AN INDIVIDUAL AND THAT A PROVISION OF A DIRECTIVE MAY NOT BE RELIED UPON AS SUCH AGAINST SUCH A PERSON BEFORE A NATIONAL COURT .*

*10 THE ANSWER TO THE FIRST TWO QUESTIONS SHOULD THEREFORE BE THAT A NATIONAL AUTHORITY MAY NOT RELY, AS AGAINST AN INDIVIDUAL, UPON A PROVISION OF A DIRECTIVE WHOSE NECESSARY IMPLEMENTATION IN NATIONAL LAW HAS NOT YET TAKEN PLACE .*

#### *THE THIRD QUESTION*

*11 THE THIRD QUESTION IS DESIGNED TO ASCERTAIN HOW FAR THE NATIONAL COURT MAY OR MUST TAKE ACCOUNT OF A DIRECTIVE AS AN AID TO THE INTERPRETATION OF A RULE OF NATIONAL LAW .*

*12 AS THE COURT STATED IN ITS JUDGMENT OF 10 APRIL 1984 IN CASE 14/83 VON COLSON AND KAMANN V LAND NORDRHEIN-WESTFALEN (( 1984 )) ECR 1891, THE MEMBER STATES' OBLIGATION ARISING FROM A DIRECTIVE TO ACHIEVE THE RESULT ENVISAGED BY THE DIRECTIVE AND THEIR DUTY UNDER ARTICLE 5 OF THE TREATY TO TAKE ALL APPROPRIATE MEASURES, WHETHER GENERAL OR PARTICULAR, TO ENSURE THE FULFILMENT OF THAT OBLIGATION, IS BINDING ON ALL THE AUTHORITIES OF MEMBER STATES INCLUDING, FOR MATTERS WITHIN THEIR JURISDICTION, THE COURTS . IT FOLLOWS THAT, IN APPLYING THE NATIONAL LAW AND IN PARTICULAR THE PROVISIONS OF A NATIONAL LAW SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT THE DIRECTIVE, NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY .*

*13 HOWEVER, THAT OBLIGATION ON THE NATIONAL COURT TO REFER TO THE CONTENT OF THE DIRECTIVE WHEN INTERPRETING THE RELEVANT RULES OF ITS NATIONAL LAW IS LIMITED BY THE GENERAL PRINCIPLES OF LAW WHICH FORM PART OF COMMUNITY LAW AND IN PARTICULAR THE PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY . THUS THE COURT RULED IN ITS JUDGMENT OF 11 JUNE 1987 IN CASE 14/86 PRETORE DE SALO V X (( 1987 )) ECR ... THAT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A NATIONAL LAW ADOPTED BY A MEMBER STATE FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .*

*14 THE ANSWER TO THE THIRD QUESTION SHOULD THEREFORE BE THAT IN APPLYING ITS NATIONAL LEGISLATION A COURT OF A MEMBER STATE IS REQUIRED TO INTERPRET THAT LEGISLATION IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY, BUT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A LAW ADOPTED FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .*

#### *THE FOURTH QUESTION*

15 THE QUESTION WHETHER THE PROVISIONS OF A DIRECTIVE MAY BE RELIED UPON AS SUCH BEFORE A NATIONAL COURT ARISES ONLY IF THE MEMBER STATE CONCERNED HAS NOT IMPLEMENTED THE DIRECTIVE IN NATIONAL LAW WITHIN THE PRESCRIBED PERIOD OR HAS IMPLEMENTED THE DIRECTIVE INCORRECTLY . THE FIRST TWO QUESTIONS WERE ANSWERED IN THE NEGATIVE . HOWEVER, IT MAKES NO DIFFERENCE TO THOSE ANSWERS IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED . AS REGARDS THE THIRD QUESTION CONCERNING THE LIMITS WHICH COMMUNITY LAW MIGHT IMPOSE ON THE OBLIGATION OR POWER OF THE NATIONAL COURT TO INTERPRET THE RULES OF ITS NATIONAL LAW IN THE LIGHT OF THE DIRECTIVE, IT MAKES NO DIFFERENCE WHETHER OR NOT THE PERIOD PRESCRIBED FOR IMPLEMENTATION HAS EXPIRED .

16 THE ANSWER TO THE FOURTH QUESTION MUST THEREFORE BE THAT IT MAKES NO DIFFERENCE TO THE ANSWERS SET OUT ABOVE IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED .

### **Decision on costs**

#### *COSTS*

17 THE COSTS INCURRED BY THE NETHERLANDS GOVERNMENT, THE ITALIAN GOVERNMENT, THE UNITED KINGDOM AND THE COMMISSION OF THE EUROPEAN COMMUNITIES, WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED, A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL COURT, THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

### **Operative part**

ON THOSE GROUNDS,  
THE COURT ( SIXTH CHAMBER )  
HEREBY RULES :

( 1 ) A NATIONAL AUTHORITY MAY NOT RELY, AS AGAINST AN INDIVIDUAL, UPON A PROVISION OF A DIRECTIVE WHOSE NECESSARY IMPLEMENTATION IN NATIONAL LAW HAS NOT YET TAKEN PLACE .

( 2 ) IN APPLYING ITS NATIONAL LEGISLATION, A COURT OF A MEMBER STATE IS REQUIRED TO INTERPRET THAT LEGISLATION IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY, BUT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A LAW ADOPTED FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .

( 3 ) IT MAKES NO DIFFERENCE TO THE ANSWERS SET OUT ABOVE IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED .

61992J0091

**Judgment of the Court of 14 July 1994. - Paola Faccini Dori v Recreb Srl. - Reference for a preliminary ruling: Giudice conciliatore di Firenze - Italy. - Consumer protection in the case of contracts negotiated away from business premises - Availability in disputes between private individuals. - Case C-91/92.**

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**Summary**

**Parties**

**Grounds**

**Decision on costs**

**Operative part**

**Keywords**

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1. Approximation of laws ° Consumer protection in the case of contracts negotiated away from business premises ° Directive 85/577 ° Article 1(1) and (2) and Article 5 ° Determination of the persons for whose benefit they were adopted and of the minimum period within which the right of cancellation must be exercised ° Unconditional and sufficiently precise

(Directive 85/577, Art. 1(1) and (2) and Art. 5)

2. Measures adopted by the Community institutions ° Directives ° Direct effect ° Limits ° Possibility of relying on a directive against an individual ° Excluded

(EEC Treaty, Art. 189)

3. Approximation of laws ° Consumer protection in the case of contracts negotiated away from business premises ° Directive 85/577 ° Possibility of relying on the right of cancellation against a private individual in the absence of measures transposing the directive ° Excluded

(EEC Treaty, Art. 189, third para.; Directive 85/577, Art. 1(1) and (2) and Art. 5)

4. Measures adopted by the Community institutions ° Directives ° Implementation by the Member States ° Need to ensure that directives are effective ° Obligations of the national courts

(EEC Treaty, Art. 189, third para.)

5. Community law ° Rights conferred on individuals ° Breach by a Member State of the obligation to transpose a directive ° Obligation to make good the damage caused to individuals ° Conditions ° Procedures for providing compensation ° Application of national law

(EEC Treaty, Art. 189, third para.)

**Summary**

1. The provisions of Article 1(1) and (2) and Article 5 of Directive 85/577, concerning protection of the consumer in respect of contracts negotiated away from business premises, are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given. Although Articles 4 and 5 of the directive allow the Member States some latitude regarding

*consumer protection when information on the right of cancellation is not provided by the trader and in determining the time-limit and conditions for cancellation, that latitude does not make it impossible to determine minimum rights which must on any view be provided to consumers.*

*2. The possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to each Member State to which it is addressed and has been established in order to prevent a State from taking advantage of its own failure to comply with Community law. It would be unacceptable if a State, when required by Community legislature to adopt certain rules intended to govern the State's relations ° or those of State entities ° with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefit of those rights.*

*The effect of extending that principle to the sphere of relations between individuals would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations.*

*It follows that, in the absence of measures of transposition within the prescribed time-limit, an individual may not rely on a directive in order to claim a right against another individual and enforce such a right in a national court.*

*3. In the absence of measures transposing within the prescribed time-limit Directive 85/577, concerning protection of the consumer in respect of contracts negotiated away from business premises, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract away from business premises or enforce such a right in a national court.*

*4. The Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, is binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts. It follows that, when applying national law, whether adopted before or after the directive, the national court that has to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the Treaty.*

*5. If a Member State fails to comply with the obligation to transpose a directive which it has under the third paragraph of Article 189 of the Treaty and if the result prescribed by the directive cannot be achieved by way of interpretation of national law by the courts, Community law requires that Member State to make good the damage caused to individuals through failure to transpose the directive, provided that three conditions are fulfilled, namely that the result prescribed by the directive must entail the grant of rights to individuals, the content of those rights must be identifiable on the basis of the provisions of the directive and there must be a causal link between the breach of the State's obligation and the damage suffered. In those circumstances, it is for the national court to uphold the right of aggrieved persons to obtain reparation in accordance with national law on liability.*

## **Parties**

*In Case C-91/92,*

*REFERENCE to the Court under Article 177 of the EEC Treaty by the Giudice Conciliatore di Firenze (Judge-Conciliator, Florence), Italy, for a preliminary ruling in the proceedings pending before that court between*

*Paola Faccini Dori*

*and*

*Recreb Srl*

*on the interpretation of Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31),*

*THE COURT,*

*composed of: O. Due, President, G.F. Mancini, J.C. Moitinho de Almeida, M. Diez de Velasco and D.A.O. Edward (Presidents of Chambers), C.N. Kakouris, R. Joliet (Rapporteur), F. A. Schockweiler, G.C. Rodríguez Iglesias, F. Grévisse, M. Zuleeg, P.J.G. Kapteyn and J.L. Murray, Judges,*

*Advocate General: C.O. Lenz,*

*Registrar: H. von Holstein, Deputy Registrar,*

*after considering the written observations submitted on behalf of:*

*° Paola Faccini Dori, by Vinicio Premuroso, of the Milan Bar, and Annalisa Premuroso and Paolo Soldani Benzi, of the Florence Bar,*

*° Recreb Srl, by Michele Trovato, of the Rome Bar, and Anna Rita Alessandro, Procuratore, Florence,*

*° the German Government, by Ernst Roeder, Ministerialrat in the Federal Ministry of Economic Affairs, and Claus-Dieter Quassowski, Regierungsdirektor in the same Ministry, acting as Agents,*

*° the Greek Government, by Vasileios Kontolaimos, Assistant Legal Adviser, and Panagiotis Athanasoulis, judicial representative, acting as Agents,*

*° the Italian Government, by Luigi Ferrari Bravo, Head of the Contentious Diplomatic Affairs Department of the Ministry of Foreign Affairs, acting as Agent, assisted by Marcello Conti, Avvocato dello Stato,*

*° the Commission of the European Communities, by Lucio Gussetti, of its Legal Service, acting as Agent,*

*having regard to the answers given to the written question put by the Court:*

*° for the German Government, by Ernst Roeder and Claus-Dieter Quassowski,*

*° for the French Government, by Jean-Pierre Puissochet, Director, Direction des Affaires Juridiques, Ministry of Foreign Affairs, and Catherine de Salins, Adviser in the same Ministry, acting as Agents,*

*having regard to the Report for the Hearing,*

*after hearing the oral observations of the Danish Government, represented by Joergen Molde, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent, the German Government, represented by Ernst Roeder and Claus-Dieter Quassowski, acting as Agents, the Greek Government, represented by Vasileios Kontolaimos and Panagiotis Athanasoulis, acting as Agents, the French Government, represented by Catherine de Salins, acting as Agent, the Italian Government, represented by Luigi Ferrari Bravo, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato, the Netherlands Government, represented by Ton Heukels, Assistant Legal Adviser in the Ministry of Foreign Affairs, the United Kingdom, represented by J.E. Collins, acting as Agent, assisted by Derrick Wyatt, Barrister, and the Commission, represented by Lucio Gussetti, acting as Agent, at the hearing on 16 March 1993,*

*after hearing the Opinion of the Advocate General at the sitting on 9 February 1994,*

*gives the following*

*Judgment*

## **Grounds**

*1 By order of 24 January 1992, received at the Court on 18 March 1992, the Giudice Conciliatore di Firenze (Judge-Conciliator, Florence), Italy, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Council Directive 85/577/EEC, concerning protection of the consumer in respect of contracts negotiated away from business premises (OJ 1985 L 372, p. 31, hereinafter "the directive"), and on the possibility of relying on that directive in proceedings between a trader and a consumer.*

*2 The question was raised in proceedings between Paola Faccini Dori, of Monza, Italy, and Recreb Srl ("Recreb").*



3 It appears from the order for reference that on 19 January 1989, without having been previously approached by her, Interdiffusion Srl concluded a contract with Miss Faccini Dori at Milan Central Railway Station for an English language correspondence course. Thus the contract was concluded away from Interdiffusion's business premises.

4 Some days later, by registered letter of 23 January 1989, Miss Faccini Dori informed that company that she was cancelling her order. The company replied on 3 June 1989 that it had assigned its claim to Recreb. On 24 June 1989, Miss Faccini Dori wrote to Recreb confirming that she had cancelled her subscription to the course, indicating inter alia that she relied on the right of cancellation provided for by the directive.

5 As is apparent from its preamble, the directive is intended to improve consumer protection and eliminate discrepancies between national laws providing such protection, which may affect the functioning of the common market. According to the fourth recital in the preamble, where contracts are concluded away from the business premises of the trader, it is as a rule the trader who initiates the negotiations, for which the consumer is wholly unprepared and is therefore often taken by surprise. In most cases, the consumer is not in a position to compare the quality and price of the offer with other offers. According to the same recital, that surprise element generally exists not only in contracts made on the doorstep but also in other forms of contract for which the trader takes the initiative away from his business premises. The purpose of the directive is thus, as indicated by the fifth recital in its preamble, to grant the consumer a right of cancellation for a period of at least seven days in order to enable him to assess the obligations arising under the contract.

6 On 30 June 1989, Recreb asked the Giudice Conciliatore di Firenze to order Miss Faccini Dori to pay it the agreed sum with interest and costs.

7 By order of 20 November 1989, the judge ordered Miss Faccini Dori to pay the sums in question. She lodged an objection to that order with the same judge. She again stated that she had withdrawn from the contract under the conditions laid down by the directive.

8 However, it is common ground that at the material time Italy had not taken any steps to transpose the directive into national law, although the period set for transposition had expired on 23 December 1987. It was not until the adoption of Decreto Legislativo No 50 of 15 January 1992 (GURI, ordinary supplement to No 27 of 3 February 1992, p. 24), which entered into force on 3 March 1992, that Italy transposed the directive.

9 The national court was uncertain whether, even though the directive had not been transposed at the material time, it could nevertheless apply its provisions.

10 It therefore referred the following question to the Court for a preliminary ruling:

"Is Community Directive 85/577/EEC of 20 December 1985 to be regarded as sufficiently precise and detailed and, if so, was it capable, in the period between the expiry of the 24-month time-limit given to the Member States to comply with the directive and the date on which the Italian State did comply with it, of taking effect as between individuals and the Italian State and as between individuals themselves?"

11 The directive requires the Member States to adopt certain rules intended to govern legal relations between traders and consumers. In view of the nature of the dispute, which is between a consumer and a trader, the question submitted by the national court raises two issues, which should be considered separately. The first is whether the provisions of the directive concerning the right of cancellation are unconditional and sufficiently precise. The second is whether a directive which requires the Member States to adopt certain rules specifically intended to govern relations between private individuals may be relied on in proceedings between such persons in the absence of measures to transpose the directive into national law.

Whether the provisions of the directive concerning the right of cancellation are unconditional and sufficiently precise

12 Article 1(1) of the directive provides that the directive is to apply to contracts concluded between a trader supplying goods and services and a consumer, either during an excursion organized by the trader away from his business premises or during a visit by him to the consumer's home or place of work, where the visit does not take place at the express request of the consumer.

13 Article 2 states that "consumer" means a natural person who, in transactions covered by the directive, is acting for purposes which can be regarded as outside his trade or profession and that "trader" means a natural or legal person who, for the transaction in question, acts in his commercial or professional capacity.

14 Those provisions are sufficiently precise to enable the national court to determine upon whom, and for whose benefit, the obligations are imposed. No specific implementing measure is needed in that regard. The national court may confine itself to verifying whether the contract was concluded in the circumstances described by the directive and whether it was concluded between a trader and a consumer as defined by the directive.

15 In order to protect consumers who have concluded contracts in such circumstances, Article 4 of the directive provides that traders are to be required to give consumers written notice of their right of cancellation, together with the name and address of a person against whom that right may be exercised. It adds that, in the case of Article 1(1), that information must be given to the consumer at the time of conclusion of the contract. Finally, it provides that Member States are to ensure that their national legislation lays down appropriate consumer protection measures for cases where the information in question is not supplied.

16 Furthermore, pursuant to Article 5(1) of the directive, the consumer is to have the right to renounce the effects of his undertaking by sending notice within a period of not less than seven days from the time at which the trader informed him of his rights in accordance with the terms and conditions laid down by national law. Article 5(2) provides that the giving of such notice is to have the effect of releasing the consumer from any obligations under the contract.

17 Admittedly, Articles 4 and 5 allow the Member States some latitude regarding consumer protection when information is not provided by the trader and in determining the time-limit and conditions for cancellation. That does not, however, affect the precise and unconditional nature of the provisions of the directive at issue in this case. The latitude allowed does not make it impossible to determine minimum rights. Article 5 provides that the cancellation must be notified within a period of not less than seven days after the time at which the consumer received the prescribed information from the trader. It is therefore possible to determine the minimum protection which must on any view be provided.

18 As regards the first issue therefore, the answer to be given to the national court must be that Article 1(1), Article 2 and Article 5 of the directive are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given.

Whether the provisions of the directive concerning the right of cancellation may be invoked in proceedings between a consumer and a trader

19 The second issue raised by the national court relates more particularly to the question whether, in the absence of measures transposing the directive within the prescribed time-limit, consumers may derive from the directive itself a right of cancellation against traders with whom they have concluded contracts and enforce that right before a national court.

20 As the Court has consistently held since its judgment in Case 152/84 *Marshall v Southampton and South-West Hampshire Health Authority* [1986] ECR 723, paragraph 48, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against an individual.

21 The national court observes that if the effects of unconditional and sufficiently precise but untransposed directives were to be limited to relations between State entities and individuals, this would mean that a legislative measure would operate as such only as between certain legal subjects, whereas, under Italian law as under the laws of all modern States founded on the rule of law, the State is subject to the law like any other person. If the directive could be relied on only as against the State, that would be tantamount to a penalty for failure to adopt legislative measures of transposition as if the relationship were a purely private one.

22 It need merely be noted here that, as is clear from the judgment in *Marshall*, cited above (paragraphs 48 and 49), the case-law on the possibility of relying on directives against State entities is based on the fact that under Article 189 a directive is binding only in relation to "each

Member State to which it is addressed". That case-law seeks to prevent "the State from taking advantage of its own failure to comply with Community law".

23 It would be unacceptable if a State, when required by the Community legislature to adopt certain rules intended to govern the State's relations ° or those of State entities ° with individuals and to confer certain rights on individuals, were able to rely on its own failure to discharge its obligations so as to deprive individuals of the benefits of those rights. Thus the Court has recognized that certain provisions of directives on conclusion of public works contracts and of directives on harmonization of turnover taxes may be relied on against the State (or State entities) (see the judgment in Case 103/88 *Fratelli Costanzo v Comune di Milano* [1989] ECR 1839 and the judgment in Case 8/81 *Becker v Finanzamt Muenster-Innenstadt* [1982] ECR 53).

24 The effect of extending that case-law to the sphere of relations between individuals would be to recognize a power in the Community to enact obligations for individuals with immediate effect, whereas it has competence to do so only where it is empowered to adopt regulations.

25 It follows that, in the absence of measures transposing the directive within the prescribed time-limit, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court.

26 It must also be borne in mind that, as the Court has consistently held since its judgment in Case 14/83 *Von Colson and Kamann v Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 26, the Member States' obligation arising from a directive to achieve the result envisaged by the directive and their duty under Article 5 of the Treaty to take all appropriate measures, whether general or particular, is binding on all the authorities of Member States, including, for matters within their jurisdiction, the courts. The judgments of the Court in Case C-106/89 *Marleasing v La Comercial Internacional de Alimentación* [1990] ECR I-4135, paragraph 8, and Case C-334/92 *Wagner Miret v Fondo de Garantía Salarial* [1993] ECR I-6911, paragraph 20, make it clear that, when applying national law, whether adopted before or after the directive, the national court that has to interpret that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result it has in view and thereby comply with the third paragraph of Article 189 of the Treaty.

27 If the result prescribed by the directive cannot be achieved by way of interpretation, it should also be borne in mind that, in terms of the judgment in *Joined Cases C-6/90 and C-9/90 Francovich and Others v Italy* [1991] ECR I-5357, paragraph 39, Community law requires the Member States to make good damage caused to individuals through failure to transpose a directive, provided that three conditions are fulfilled. First, the purpose of the directive must be to grant rights to individuals. Second, it must be possible to identify the content of those rights on the basis of the provisions of the directive. Finally, there must be a causal link between the breach of the State's obligation and the damage suffered.

28 The directive on contracts negotiated away from business premises is undeniably intended to confer rights on individuals and it is equally certain that the minimum content of those rights can be identified by reference to the provisions of the directive alone (see paragraph 17 above).

29 Where damage has been suffered and that damage is due to a breach by the State of its obligation, it is for the national court to uphold the right of aggrieved consumers to obtain reparation in accordance with national law on liability.

30 So, as regards the second issue raised by the national court, the answer must be that in the absence of measures transposing the directive within the prescribed time-limit consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court. However, when applying provisions of national law, whether adopted before or after the directive, the national court must interpret them as far as possible in the light of the wording and purpose of the directive.

## **Decision on costs**

*Costs*

*31 The costs incurred by the Danish, German, Greek, French, Italian, Netherlands and United Kingdom Governments and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.*

### **Operative part**

*On those grounds,*

*THE COURT,*

*in answer to the question referred to it by the Giudice Conciliatore di Firenze, by order of 24 January 1992, hereby rules:*

*Article 1(1), Article 2 and Article 5 of Council Directive 85/577/EEC of 20 December 1985, concerning protection of the consumer in respect of contracts negotiated away from business premises, are unconditional and sufficiently precise as regards determination of the persons for whose benefit they were adopted and the minimum period within which notice of cancellation must be given.*

*In the absence of measures transposing Directive 85/577 within the prescribed time-limit, consumers cannot derive from the directive itself a right of cancellation as against traders with whom they have concluded a contract or enforce such a right in a national court. However, when applying provisions of national law, whether adopted before or after the directive, the national court must interpret them as far as possible in the light of the wording and purpose of the directive.*