količinske omejitve – 1

literatura: PG: 375-418

C, deB: 613-679

uvodni pregled področja

- 28. in 29. člen PES
- definicija QR: Geddo 2/73 (“measures which amount to a total or partial restraint of, according to the circumstances, imports, exports, or goods in tranzit”)
- definicija MHEE: težko definirati: Komisija in ECJ sta dala širok domet pojmu

↓ DIR 70/50 (2., 3.člen)

↓ Dassonville 8/74 itd.

Pomembno: razlika 28 PES / 81,82 PES

(primeri, v katerih se presoja, kdaj gre za državo in kdaj za zasebnika: Buy Irish, Apple and Pear, Pharmaceutical Society, Commission v. France,…)

- Različni sklopi primerov QR: **a) distinctly applicable rules:**

1) določbe, ki drugo blago podrejajo strožjim zahtevam kot domačega oz. zahtev za domače blago sploh ni

Commission v. Italy 154/85

Bouhelier 53/76

Rewe 4/75

2) promocija oz. favoriziranje domačih proizvodov

Commission v. Ireland (Irish products) 249/81

Commission v. UK (labelling of products) 207/83

Commission v. Ireland (Dundalk water supply) 45/87

Commission v. France (postal franking machines) 21/84

3) določanje cen

Van-Tiggele 82/77

Roussel 181/82

4) ukrepi, ki otežujejo ali dražijo uvoz

Schloh 50/85

5) idr.

izjeme: 30. člen PES

b) indistinctly applicable rules: nakazano že v DIR 70/50 (3. člen)

Cassis de Dijon 120/78
Deserbais 286/86
Gilli and Andres 788/79
Rau 261/81
Groenveld 15/79 (izvoz!)
Cineteque 60,61/84
Torfaen 145/88
Keck C-267 and 268/91
Tankstation C-401&402/92
Familiapress C-368/95
Bluhme C-67/97
de Agostini C-34-36/95
Gourmet C-405/98
Leclerc-Siplec C-412/93
idr.

→ **izjeme: case-law: the mandatory requirements**

1. Procureur du Roi v Benoît and Gustave Dassonville

8/74

Postopek:

= REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE TRIBUNAL DE PREMIERE INSTANCE OF BRUSSELS FOR A PRELIMINARY RULING IN THE CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT BETWEEN… AND IN THE CIVIL ACTION BETWEEN…

Predmet primera:

= ON THE INTERPRETATION OF ARTICLES 30 TO 33, 36 AND 85 OF THE EEC TREATY

(pozor: preštevilčenje členov!)

Dejanski stan:

1 THE TRIBUNAL DE PREMIERE INSTANCE OF BRUSSELS REFERRED, UNDER ARTICLE 177 OF THE EEC TREATY, TWO QUESTIONS ON THE INTERPRETATION OF ARTICLES 30, 31, 32, 33, 36 AND 85 OF THE EEC TREATY, **RELATING TO THE REQUIREMENT OF AN OFFICIAL DOCUMENT ISSUED BY THE GOVERNMENT OF THE EXPORTING COUNTRY FOR PRODUCTS BEARING A DESIGNATION OF ORIGIN .**

2 **BY THE FIRST QUESTION** IT IS ASKED **WHETHER A NATIONAL PROVISION PROHIBITING THE IMPORT OF GOODS BEARING A DESIGNATION OF ORIGIN WHERE SUCH GOODS ARE NOT ACCOMPANIED BY AN OFFICIAL DOCUMENT ISSUED BY THE GOVERNMENT OF THE EXPORTING COUNTRY CERTIFYING THEIR RIGHT TO SUCH DESIGNATION, CONSTITUTES A MEASURE HAVING AN EFFECT EQUIVALENT TO A QUANTITATIVE RESTRICTION WITHIN THE MEANING OF ARTICLE 30 OF THE TREATY** .

3 THIS QUESTION WAS RAISED WITHIN THE CONTEXT OF **CRIMINAL PROCEEDINGS INSTITUTED IN BELGIUM AGAINST TRADERS WHO DULY ACQUIRED A CONSIGNMENT OF SCOTCH WHISKY IN FREE CIRCULATION IN FRANCE AND IMPORTED IT INTO BELGIUM WITHOUT BEING IN POSSESSION OF A CERTIFICATE OF ORIGIN FROM THE BRITISH CUSTOMS AUTHORITIES, THEREBY INFRINGING BELGIAN RULES .**

4 IT EMERGES FROM THE FILE AND FROM THE ORAL PROCEEDINGS **THAT A TRADER, WISHING TO IMPORT INTO BELGIUM SCOTCH WHISKY WHICH IS ALREADY IN FREE CIRCULATION IN FRANCE, CAN OBTAIN SUCH A CERTIFICATE ONLY WITH GREAT DIFFICULTY, UNLIKE THE IMPORTER WHO IMPORTS DIRECTLY FROM THE PRODUCER COUNTRY .**

Podlaga odločitve:

5 ALL TRADING RULES ENACTED BY MEMBER STATES WHICH ARE CAPABLE OF HINDERING, DIRECTLY OR INDIRECTLY, ACTUALLY OR POTENTIALLY, INTRA-COMMUNITY TRADE ARE TO BE CONSIDERED AS MEASURES HAVING AN EFFECT EQUIVALENT TO QUANTITATIVE RESTRICTIONS .

→ **formula Dassonville**

Kritični element pri dokazovanju MHEE je **diskriminatorni učinek**, namen ni potreben

ECJ da znak, da zelo široko razume QR/MHEE

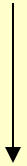
Niti ni potrebno, da gre za razlikovanje med domačimi in uvoženimi produkti (podlaga za Cassis de Dijon!)

6 IN THE ABSENCE OF A COMMUNITY SYSTEM GUARANTEEING FOR CONSUMERS THE AUTHENTICITY OF A PRODUCT'S DESIGNATION OF ORIGIN, IF A MEMBER STATE TAKES MEASURES TO PREVENT UNFAIR PRACTICES IN THIS CONNEXION, IT IS HOWEVER SUBJECT TO THE CONDITION THAT THESE **MEASURES SHOULD BE REASONABLE** AND THAT THE MEANS OF PROOF REQUIRED SHOULD NOT ACT AS A HINDRANCE TO TRADE BETWEEN MEMBER STATES AND SHOULD, IN CONSEQUENCE, BE ACCESSIBLE TO ALL COMMUNITY NATIONALS .

→ podlaga za **rule of reason** (Cassis de Dijon): upravičene, razumne omejitve ne padejo pod prepoved 28. člena

7 EVEN WITHOUT HAVING TO EXAMINE WHETHER OR NOT SUCH MEASURES ARE COVERED BY ARTICLE 36, THEY MUST NOT, IN ANY CASE, BY VIRTUE OF THE PRINCIPLE EXPRESSED IN THE SECOND SENTENCE OF THAT ARTICLE, CONSTITUTE A **MEANS OF ARBITRARY DISCRIMINATION OR A DISGUISED RESTRICTION ON TRADE BETWEEN MEMBER STATES** .

Aplikacija na primer in zaključek:



8 THAT MAY BE THE CASE WITH FORMALITIES, REQUIRED BY A MEMBER STATE FOR THE PURPOSE OF PROVING THE ORIGIN OF A PRODUCT, **WHICH ONLY DIRECT IMPORTERS ARE REALLY IN A POSITION TO SATISFY WITHOUT FACING SERIOUS DIFFICULTIES .**

9 **CONSEQUENTLY**, THE REQUIREMENT BY A MEMBER STATE OF A CERTIFICATE OF AUTHENTICITY WHICH IS LESS EASILY OBTAINABLE BY IMPORTERS OF AN AUTHENTIC PRODUCT WHICH HAS BEEN PUT INTO FREE CIRCULATION IN A REGULAR MANNER IN ANOTHER MEMBER STATE THAN BY IMPORTERS OF THE SAME PRODUCT COMING DIRECTLY FROM THE COUNTRY OF ORIGIN CONSTITUTES A MEASURE HAVING AN EFFECT EQUIVALENT TO A QUANTITATIVE RESTRICTION AS PROHIBITED BY THE TREATY .

(…)

2. EK v Ireland (Buy Irish)

249/81

COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER , ROLF WAGENBAUR , ACTING AS AGENT , ASSISTED BY PETER OLIVER , A MEMBER OF ITS LEGAL DEPARTMENT , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE OFFICE OF ORESTE MONTALTO , JEAN MONNET BUILDING , KIRCHBERG ,

APPLICANT ,

V

IRELAND , REPRESENTED BY LOUIS J . DOCKERY , CHIEF STATE SOLICITOR , ASSISTED BY JOHN D . COOKE , SENIOR COUNSEL AND H . J . O ' FLAHERTY , SENIOR COUNSEL , WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE IRISH EMBASSY ,

DEFENDANT ,

Subject of the case

APPLICATION FOR A DECLARATION THAT , BY TAKING MEASURES TO PROMOTE IRISH GOODS WITHIN IRELAND , IRELAND HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER ARTICLE 30 OF THE EEC TREATY

↳ *glej besedilo primera!*

3. Commission of the European Communities v Ireland (Dundalk water supply)

45/87

Postopek in stranki:

Commission of the European Communities, represented by Eric L . White, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg,
applicant,
supported by
The Kingdom of Spain, represented by Jaime Folguera Crespo, Deputy Director General for Coordination of Community Affairs with responsibility for Legal Affairs, and Rafael Garcia-Valdecasas Fernandez, Head of the Legal Department for matters before the Court of Justice of the European Communities, acting as Agents,
v
Ireland, represented by Louis J . Dockery, Chief State Solicitor, acting as Agent, assisted by E . Fitzsimons, SC, with an address for service in Luxembourg at the Irish Embassy, 28 route d' Arlon,
defendant,

Predmet in dejanski stan primera:

1 By application lodged at the Court Registry on 13 February 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that **by allowing the inclusion in the contract specification for the Dundalk Water Supply Augmentation Scheme - Contract No 4 of a clause providing that the asbestos cement pressure pipes should be certified as complying with Irish Standard 188:1975 in accordance with the Irish Standard Mark Licensing Scheme of the Institute for Industrial Research and Standards (IIRS)** and **consequently refusing to consider (or rejecting without adequate justification) a tender providing for the use of asbestos cement pipes manufactured to an alternative standard providing equivalent guarantees of safety, performance and reliability**, Ireland has failed to fulfil its obligations under Article 30 of the EEC Treaty and Article 10 of Council Directive 71/305/EEC of 26 July 1971 concerning the coordination of procedures for the award of public works contracts (Official Journal, English Special Edition 1971 (II), p . 682).

2 Dundalk Urban District Council is the promoter of a scheme for the augmentation of Dundalk' s drinking water supply . Contract No 4 of that scheme is for the construction of a water-main to transport water from the River Fane source to a treatment plant at Cavan Hill and thence into the existing town supply system . **The invitation to tender for that contract by open procedure was published** in the Official Journal of the European Communities on 13 March 1986 (Official Journal S 50, p . 13).

3 **Clause 4.29** of the specification relating to Contract No 4, which formed part of the contract specification, included the following paragraph :
"Asbestos cement pressure pipes **shall be certified as complying with Irish Standard Specification 188:1975** in accordance with the Irish Standard Mark Licensing Scheme of the Institute for Industrial Research and Standards . All asbestos cement watermains are to have a bituminous coating internally and externally . Such coatings shall be applied at the factory by dipping ."

4 **The dispute stems from complaints made to the Commission by an Irish undertaking and a Spanish undertaking .**

In response to the invitation to tender for Contract No 4, the Irish undertaking had submitted three tenders, one of which provided for the use of pipes manufactured by the Spanish undertaking . In the Irish undertaking' s view, that tender, which was the lowest of the three submitted by it, gave it the best chance of obtaining the contract .

The consulting engineers to the project wrote a letter to the Irish undertaking concerning that contract stating **that there would be no point in its coming to the pre-adjudication interview if proof could not be provided that the firm supplying the pipes was approved by the IIRS as a supplier of products complying with Irish Standard 188:1975 (" IS 188 ").**

It is common ground that the Spanish undertaking in question had not been certified by the IIRS but that its pipes complied with international standards, and in particular with ISO 160:1980 of the International Organization for Standardization .

Kaj bo ECJ upoštevalo:

5 Reference is made to the Report for the Hearing for a fuller account of the relevant provisions, the background to the case and the submissions and arguments of the parties and of the intervener, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court .

Kaj trdi EK:

6 In the Commission' s view, this action raises inter alia **the question of the compatibility with Community law, in particular Article 30 of the EEC Treaty and Article 10 of Directive 71/305**, of the inclusion in a contract specification of clauses like the disputed Clause 4.29 .

It further argues that the **Irish authorities' rejection,** without any examination, of a tender providing for the use of Spanish-made pipes not complying with Irish standards **also infringed those provisions of Community law** .

It is appropriate to examine first the issues raised by Clause 4.29 .

ECJ bo torej obravnaval 2 zadevi:

1) Pogoj irskega standarda
2) Zavrnitev ponudbe brez preverjanja

1. DEL

Directive 71/305 – za nas ne tako pomemben del

7 Article 10 of Directive 71/305, to which the Commission refers, provides that **Member States are to prohibit the introduction into the contractual clauses relating to a given contract of technical specifications which mention products of a specific make or source or of a particular process and which therefore favour or eliminate certain undertakings** . In particular, the indication of types or of a specific origin or production is to be prohibited . **However, such indication is permissible if it is accompanied by the words "or equivalent"** where the authorities awarding contracts are unable to give a description of the subject of the contract using specifications which are sufficiently precise and intelligible to all parties concerned . The words "or equivalent" do not appear in Clause 4.29 of the contract notice at issue in this case .

8 **The Irish Government argues that the provisions of Directive 71/305 do not apply to the contract in question .** It points out that Article 3 (5) of the directive provides that the directive is not to apply to "public works contracts awarded by the production, distribution, transmission or transportation services for water and energy ". There is no doubt that the contract in this case was a public works contract to be awarded by a public distribution service for water .

9 **The Commission** does not deny that fact but points out that Ireland requested the publication of the relevant notice in the Official Journal by reference to the obligatory publication of contract notices laid down by the directive . The Commission, in common with the Spanish Government, which intervened in support of its conclusions, considers that, **having voluntarily brought itself within the scope of the directive, Ireland was obliged to comply with its provisions .**

ECJ glede direktive:

10 **With regard to this point, the Irish Government' s argument must be accepted .** The actual wording of Article 3 (5) is wholly unambiguous, in so far as it excludes public works contracts of the type at issue from the scope of the directive . According to the preamble to the directive, that exception to the general application of the directive was laid down in order to avoid the subjection of distribution services for water to different systems for their works contracts, depending on whether they come under the State and authorities governed by public law or whether they have separate legal personality . There is no reason to consider that the exception in question no longer applies, and the reasons underlying it are no longer valid, where a Member State has a contract notice published in the Official Journal of the European Communities, whether through an error or because it initially intended to seek a contribution from the Community towards the financing of the work .

11 **The application must therefore be dismissed in so far as it is based on the infringement of Directive 71/305 .**

Article 30 of the Treaty – za nas izredno pomembno!

12 It must be observed at the outset that **the Commission maintains** that Dundalk Urban District Council is a public body for whose acts the Irish Government is responsible . Moreover, before accepting a tender, Dundalk Council has to obtain the authorization of the Irish Department of the Environment . Those facts have not been challenged by the Irish Government .

13 It must also be noted that **according to the Irish Government** the requirement of compliance with Irish standards is the usual practice followed in relation to public works contracts in Ireland .

14 **The Irish Government points out that the contract at issue relates not to the sale of goods but to the performance of work**, and the clauses relating to the materials to be used are completely subsidiary . Contracts concerned with the performance of work fall under the Treaty provisions relating to the free supply of services, without prejudice to any harmonization measures which might be taken under Article 100 . Consequently, Article 30 cannot apply to a contract for works .

15 In that connection, **the Irish Government cites the case-law** of the Court and, in particular, the judgment of 22 March 1977 in Case 74/76 Iannelli & Volpi v Meroni ((1977)) ECR 557, according to which the field of application of Article 30 does not include obstacles to trade covered by other specific provisions of the Treaty .

ECJ: zavrne argument Irske:

16 **That argument cannot be accepted . Article 30 envisages the elimination of all measures of the Member States which impede imports in intra-Community trade, whether the measures bear directly on the movement of imported goods or have the effect of indirectly impeding the marketing of goods from other Member States .** The fact that some of those barriers must be considered in the light of specific provisions of the Treaty, such as the provisions of Article 95 relating to fiscal discrimination, in no way detracts from the general character of the prohibitions laid down by Article 30 .

17 The provisions on the freedom to supply services invoked by the Irish Government, on the other hand, are not concerned with the movement of goods but the freedom to perform activities and have them carried out; they do not lay down any specific rule relating to particular barriers to the free movement of goods . Consequently, the fact that a public works contract relates to the provision of services cannot remove a clause in an invitation to tender restricting the materials that may be used from the scope of the prohibitions set out in Article 30 .

18 **Consequently, it must be considered whether the inclusion of Clause 4.29 in the invitation to tender and in the tender specifications was liable to impede imports of pipes into Ireland .**

19 In that connection, it must **first** be pointed out that the inclusion of **such a clause in an invitation to tender may cause economic operators who produce or utilize pipes equivalent to pipes certified as complying with Irish standards to refrain from tendering** .

20 It **further** appears from the documents in the case that only **one undertaking has been certified by the IIRS to IS 188:1975** to apply the Irish Standard Mark to pipes of the type required for the purposes of the public works contract at issue . **That undertaking is located in Ireland . Consequently, the inclusion of Clause 4.29 had the effect of restricting the supply of the pipes needed for the Dundalk scheme to Irish manufacturers alone .**

Zagovori Irske:

21 The Irish Government maintains that it is necessary to specify the standards to which materials must be manufactured, particularly in a case such as this where the pipes utilized must suit the existing network . **Compliance with another standard, even an international standard such as ISO 160:1980, would not suffice to eliminate certain technical difficulties .**

Odgovor ECJ:

22 **That technical argument cannot be accepted** . **The Commission' s complaint does not relate to compliance with technical requirements but to the refusal of the Irish authorities to verify whether those requirements are satisfied where the manufacturer of the materials has not been certified by the IIRS to IS 188 .** By incorporating in the notice in question the words "or equivalent" after the reference to the Irish standard, as provided for by Directive 71/305 where it is applicable, the Irish authorities could have verified compliance with the technical conditions without from the outset restricting the contract only to tenderers proposing to utilize Irish materials .

23 **The Irish Government further objects** that in any event the pipes manufactured by the Spanish undertaking in question whose use was provided for in the rejected tender **did not meet the technical requirements**,

ECJ:

but that argument, too, is irrelevant as regards the compatibility with the Treaty of the inclusion of a clause like Clause 4.29 in an invitation to tender .

24 **The Irish Government further maintains** that **protection of public health** justifies the requirement of compliance with the Irish standard in so far as that standard guarantees that there is no contact between the water and the asbestos fibres in the cement pipes, which would adversely affect the quality of the drinking water .

ECJ:

25 **That argument must be rejected .** As the Commission has rightly pointed out, **the coating of the pipes, both internally and externally, was the subject of a separate requirement in the invitation to tender** . The Irish Government has not shown why compliance with that requirement would not be such as to ensure that there is no contact between the water and the asbestos fibres, which it considers to be essential for reasons of public health .

26 **The Irish Government has not put forward any other argument to refute the conclusions of the Commission and the Spanish Government and those conclusions must consequently be upheld .**

Zaključek ECJ:

27 It must therefore be held that by allowing the inclusion in the contract specification for tender for a public works contract of a clause stipulating that the asbestos cement pressure pipes must be certified as complying with Irish Standard 188:1975 in accordance with the Irish Standard Mark Licensing Scheme of the Institute for Industrial Research and Standards, Ireland has failed to fulfil its obligations under Article 30 of the EEC Treaty .

2. DEL

The rejection of the tender providing for the use of the Spanish-made pipes

28 The second limb of the Commission' s application is concerned with the Irish authorities' attitude to a given undertaking in the course of the procedure for the award of the contract at issue .

29 It became apparent during the hearing that the second limb of the application is in fact intended merely to secure the implementation of the measure which is the subject of the first limb . **It must therefore be held that it is not a separate claim and there is no need to rule on it separately .**

4. Ministčre public du Kingdom of the Netherlands v Jacobus Philippus van Tiggele

82/77

Postopek:

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE GERECHTSHOF , AMSTERDAM , FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN
OPENBAAR MINISTERIE (PUBLIC PROSECUTOR) OF THE KINGDOM OF THE NETHERLANDS
AND
JACOBUS PHILIPPUS VAN TIGGELE , RESIDING IN MAASDAM , NETHERLANDS

Subject of the case

ON THE INTERPRETATION OF ARTICLES 30 TO 37 AND 92 TO 94 OF THE SAID TREATY

Grounds of the judgment

1BY AN ORDER OF 30 JUNE 1977 WHICH WAS RECEIVED AT THE COURT ON 5 JULY 1977 THE GERECHTSHOF , AMSTERDAM , SUBMITTED , PURSUANT TO ARTICLE 177 OF THE EEC TREATY , **TWO QUESTIONS ON THE INTERPRETATION** , **FIRST** , OF ARTICLES 30 TO 37 OF THE TREATY CONCERNING THE ELIMINATION OF QUANTITATIVE RESTRICTIONS ON TRADE BETWEEN MEMBER STATES AND , **SECONDLY** , OF ARTICLES 92 TO 94 OF THE TREATY CONCERNING AIDS GRANTED BY STATES .

2 THOSE QUESTIONS WERE SUBMITTED IN CONNEXION WITH **CRIMINAL PROCEEDINGS INSTITUTED AGAINST A LICENSED VICTUALLER WHO WAS ACCUSED OF SELLING ALCOHOLIC BEVERAGES AT PRICES BELOW THE MINIMUM PRICES FIXED** BY THE PRODUKTSCHAP VOOR GEDISTILLEERDE DRANKEN PURSUANT TO THE ROYAL DECREE OF 18 DECEMBER 1975 (STAATSBLAD NO 746).

3 THE REGULATION OF THE PRODUKTSCHAP OF 17 DECEMBER 1975 CONCERNING THE PRICE OF SPIRITS , APPROVED BY THE MINISTER FOR ECONOMIC AFFAIRS ON 19 DECEMBER 1975 , **ESTABLISHED WITHIN THE COUNTRY A SYSTEM OF MINIMUM RETAIL PRICES WHICH VARIED ACCORDING TO EACH CATEGORY OF SPIRITS .**

(…)

THE FIRST QUESTION

10 THE FIRST QUESTION ASKS IN SUBSTANCE WHETHER ARTICLES 30 TO 37 OF THE TREATY MUST BE INTERPRETED AS MEANING THAT THE PROHIBITION WHICH THEY SET OUT COVERS PRICE-CONTROL RULES SUCH AS THOSE CONCERNED IN THE PRESENT PROCEEDINGS .

11 **ARTICLE 30 OF THE TREATY PROHIBITS IN TRADE BETWEEN MEMBER STATES ALL MEASURES HAVING AN EFFECT EQUIVALENT TO QUANTITATIVE RESTRICTIONS .**

12 **FOR THE PURPOSES OF THIS PROHIBITION IT IS SUFFICIENT THAT THE MEASURES IN QUESTION ARE LIKELY TO HINDER , DIRECTLY OR INDIRECTLY , ACTUALLY OR POTENTIALLY , IMPORTS BETWEEN MEMBER STATES .**

→ **potrditev Dassonvilla**

13 **WHILST NATIONAL PRICE-CONTROL RULES APPLICABLE WITHOUT DISTINCTION TO DOMESTIC PRODUCTS AND IMPORTED PRODUCTS CANNOT IN GENERAL PRODUCE SUCH AN EFFECT THEY MAY DO SO IN CERTAIN SPECIFIC CASES .**

14 THUS IMPORTS MAY BE IMPEDED IN PARTICULAR **WHEN A NATIONAL AUTHORITY FIXES PRICES OR PROFIT MARGINS AT SUCH A LEVEL THAT IMPORTED PRODUCTS ARE PLACED AT A DISADVANTAGE IN RELATION TO IDENTICAL DOMESTIC PRODUCTS EITHER BECAUSE THEY CANNOT PROFITABLY BE MARKETED IN THE CONDITIONS LAID DOWN OR BECAUSE THE COMPETITIVE ADVANTAGE CONFERRED BY LOWER COST PRICES IS CANCELLED OUT .**

18 … **A MINIMUM PRICE FIXED AT A SPECIFIC AMOUNT WHICH , ALTHOUGH APPLICABLE WITHOUT DISTINCTION TO DOMESTIC PRODUCTS AND IMPORTED PRODUCTS , IS CAPABLE OF HAVING AN ADVERSE EFFECT ON THE MARKETING OF THE LATTER IN SO FAR AS IT PREVENTS THEIR LOWER COST PRICE FROM BEING REFLECTED IN THE RETAIL SELLING PRICE .**

Izgovori države in odgovor ECJ:

19 THIS IS THE CONCLUSION WHICH MUST BE DRAWN **EVEN THOUGH THE COMPETENT AUTHORITY IS EMPOWERED TO GRANT EXEMPTIONS** FROM THE FIXED MINIMUM PRICE AND THOUGH THIS POWER IS FREELY APPLIED TO IMPORTED PRODUCTS , SINCE THE REQUIREMENT THAT IMPORTERS AND TRADERS MUST COMPLY WITH THE ADMINISTRATIVE FORMALITIES INHERENT IN SUCH A SYSTEM MAY IN ITSELF CONSTITUTE A MEASURE HAVING AN EFFECT EQUIVALENT TO A QUANTITATIVE RESTRICTION .

20 THE **TEMPORARY NATURE OF THE APPLICATION** OF THE FIXED MINIMUM PRICES IS NOT A FACTOR CAPABLE OF JUSTIFYING SUCH A MEASURE SINCE IT IS INCOMPATIBLE ON OTHER GROUNDS WITH ARTICLE 30 OF THE TREATY .

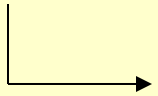
Zaključek ECJ:

21 THE ANSWER TO THE FIRST QUESTION MUST THEREFORE BE THAT ARTICLE 30 OF THE EEC TREATY MUST BE INTERPRETED TO MEAN THAT THE ESTABLISHMENT BY A NATIONAL AUTHORITY OF A MINIMUM RETAIL PRICE FIXED AT A SPECIFIC AMOUNT AND APPLICABLE WITHOUT DISTINCTION TO DOMESTIC PRODUCTS AND IMPORTED PRODUCTS CONSTITUTES , IN CONDITIONS SUCH AS THOSE LAID DOWN IN THE REGULATION MADE BY THE PRODUKTSCHAP VOOR GEDISTILLEERDE DRANKEN ON 17 DECEMBER 1975 , A MEASURE HAVING AN EFFECT EQUIVALENT TO A QUANTITATIVE RESTRICTION ON IMPORTS WHICH IS PROHIBITED UNDER THE SAID ARTICLE 30 .

A 30

Zaprta lista izjem (na področju d.a.r.):

- public morality
- public policy
- public security
- protection of health and life of humans, animals and plants
- protection of national treasures possessing artistic, historic or archaelogical value
- protection of industrial and commercial property



striktna razlaga s strani ECJ

+ test proporcionalnosti!

dokazno breme je na DČ

a) public morality

1. Henn and Darby (34/79)

- uvoz pornografskih artiklov iz NL v GB v nasprotju z GB-zakonom
- H&D se sklicujeta na 28. člen, GB uveljavlja 30. člen – izjemo javne morale
- ECJ ugotovi kršitev 28. člena in se spusti v presojo izjeme:

najprej ugotovi: “it is for each MS to determine the standards of public morality which prevailed in its territory”

nadaljuje: ali tak nacionalni zakon predstavlja prikrito sredstvo za diskriminacijo ali za arbitrarno odločanje? ne, ker velja prepoved tudi za domače blago, GB uspe z A 30

2. Conegate (121/85)

- Conegate uvaža napihljive lutke iz D v GB, na carini jih zaplenijo in ne verjamejo uvozniku, da jih ima za v vitrine in ne kot “love love dolls”, kar sicer piše na njih
- Conegate trdi, da je to v nasprotju z 28. členom in toži carinski urad, NC postavi P? “ali je tak ukrep upravičen, če je v GB sicer dovoljeno proizvajati in tržiti take izdelke

- ECJ ponovi ugotovitev iz H&D, da se MS same odločijo o javni morali na njihovem področju
- nadaljuje: če za enako blago omejitev znotraj MS ni, potem se država ne more sklicevati na javno moralo…GB ne uspe in blago morajo vrniti Conegatu

b) public policy

Centre Leclerc (231/83)

- FR zakonodaja določi minimalne drobnoprodajne cene goriva (skladne z domačimi predelovalnimi cenami in stroški), ECJ ugotovi, da gre za kršitev 28. člena, FR se sklicuje na javno politiko z argumentom, da bi sicer nastali izgredi, blokade etc.
- AG in ECJ zavrneta argument FR, a iz različnih razlogov…

c) public security

Campus Oil (72/83)

- IRL zakonodaja je določala, da morajo uvozniki goriva na IRL tam kupiti 35% sestavin goriva po s strani IRL vlade določeni ceni
- tako pravilo predstavlja kršitev 28. člena, IRL se sklicuje na izjemo javne varnosti: da je za IRL vitalnega pomena, da ohrani svoje neodvisne rafinerijske kapacitete; tožnik trdi, da gre v resnici zgolj za vprašanje, ali bo IRL rafinerija poslovala z dobičkom ali ne in torej za čisto ekonomsko vprašanje in ne vprašanje varnosti
- ECJ prizna, da je varnost države res lahko ogrožena, če v krizi nima goriva, ker ga ne dobi od zunaj, svojega pa nima in da se v takem primeru lahko sklicuje na A 30; ponovi svoje ex ugotovitve, da se izjeme po A 30 ne smejo nanašati na zadeve ekonomske narave – ugotovi, da so v tem primeru te presežene in je izjema utemeljena

d) protection of health and life

1. EK v. UK (40/82)

- UK prepove uvoz perutnine iz večine drugih MS (predvsem FR) z argumentom, da bio preprečili Newcastle disease in s tem zavarovali zdravje ljudi
- ECJ zavrne argument, ker ugotovi, da razlog za ukrep ni zdravje ljudi, ampak zaščita britanskih perutninarjev v božičnem času, ko se je uvoz perutnine v GB iz FR občutno povečal in s tem ogrozil domače rejce + druge DČ so uvedle ukrepe zoper bolezen

2. Sandoz (174/82)

- NL oblasti prepovejo prodajo muesli-tablic (iz D in B), ki vsebujejo vitaminske dodatke, ker naj bi bili vitamini v previsokem odmerku škodljivi zdravju, vendar znanstveno ni bilo dokazano, kje je meja
- ECJ povzame svoje ex ugotovitve, da lahko MS sama uredijo tista področja, kjer ni jasnega znanstvenega odgovora in področje se ni harmonizirano – vendar morajo upoštevati načelo proporcionalnosti!

3. UHT Milk (124/81)

…) ?