Joined Cases C-430/93 and C-431/93

Jeroen van Schijndel and Johannes Nicolaas Cornelis van Veen
v
Stichting Pensioenfonds voor Fysiotherapeuten

(References for a preliminary ruling
from the Hoge Raad der Nederlanden)

(Treatment of an occupational pension fund as an undertaking — Compulsory membership of an occupational pension scheme — Compatibility with the rules of competition — Whether a point of Community law may be raised for the first time in cassation, thereby altering the subject-matter of the proceedings and entailing an examination of facts)

Summary of the Judgment

Community law — Direct effect — Individual rights — Protection by national courts and tribunals — Legal proceedings — Detailed national procedural rules — Conditions of application — Assessment by national courts of their own motion of a plea alleging a breach of Community law — Limits — Principle that civil courts have only a passive role
(EEC Treaty, Arts 3(f), 5, 85, 86, 90 and 177)

In proceedings concerning civil rights and obligations freely entered into by the parties, it is for the national court or tribunal to apply binding Community provisions such as Articles 3(f), 85, 86 and 90 of the Treaty even when the party with an interest in application of those provisions has not relied on them, where domestic law allows such application by the national court or tribunal.

Pursuant to the principle of cooperation laid down in Article 5 of the Treaty, it is for national courts and tribunals to ensure the legal protection which individuals derive from the direct effect of provisions of Community law.

However, Community law does not require national courts to raise of their own motion an issue concerning the breach of provisions of Community law where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of those provisions bases his claim.

In the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from the direct effect of Community law. However, such rules must not be less favourable than those governing similar domestic actions nor render virtually impossible or excessively difficult the exercise of rights conferred by Community law. A rule of national law preventing the procedure laid down in Article 177 of the Treaty from being followed must, in this regard, be set aside.

Each case which raises the question whether a national procedural provision renders application of Community law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances. In the light of that analysis the basic principles of the domestic judicial system, such as protection of the rights of the defence, the principle of legal certainty and the proper conduct of procedure, must, where appropriate, be taken into consideration.

In that regard, the principle that in a civil suit it is for the parties to take the initiative, the court or tribunal being able to act of its own motion only in exceptional cases where the public interest requires its intervention, reflects conceptions prevailing in most of the Member States as to the relations between the State and the individual, safeguards the rights of the defence and ensures proper conduct of proceedings by, in particular, protecting them from the delays inherent in examination of new pleas.