

COURT OF JUSTICE

JUDGMENT OF THE COURT

of 6 October 1976

in Case 12/76 (reference for a preliminary ruling made by the Oberlandesgericht Frankfurt am Main): *Industrie Tessili Italiana Como v. Dunlop A.G.* ⁽¹⁾

(Language of the Case: German)

In Case 12/76, reference under Article 1 of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters by the Oberlandesgericht Frankfurt am Main for a preliminary ruling in the action pending before that court between Industrie Tessili Italiana Como, Como (Italy), and Dunlop A.G., Hanau am Main (Federal Republic of Germany) on the interpretation of the concept of 'place of performance of the obligation in question' within the meaning of Article 5 (1) of the Convention of 27 September 1968 — the Court, composed of R. Lecourt, President, H. Kutscher and A. O'Keefe, (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, M. Sørensen, Lord Mackenzie Stuart and F. Capotorti, Judges; Advocate-General: H. Mayras; Registrar: A. Van Houtte, gave a judgment on 6 October 1976 the operative part of which is as follows:

The 'place of performance of the obligation in question' within the meaning of Article 5 (1) of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters is to be determined in accordance with the law which governs the obligation in question according to the rules of conflict of laws of the court before which the matter is brought.

⁽¹⁾ OJ No C 57, 11. 3. 1976.

JUDGMENT OF THE COURT

of 13 October 1976

in Case 32/76 (reference for a preliminary ruling made by the Tribunal du Travail, Charleroi): *Alfonsa Reale, née Saieva, v. La Caisse de Compensation des Allocations Familiales* for the mining industry of the Charleroi and Basse-Sambre coalfields ⁽¹⁾

(Language of the Case: French)

In Case 32/76, reference to the Court under Article 177 of the EEC Treaty by the Tribunal du Travail (Labour Tribunal), Charleroi, for a preliminary ruling in the

⁽¹⁾ OJ No C 104, 7. 5. 1976.

proceedings pending before that court between Alfonsa Reale, née Saieva, residing at Montaperto, Italy, and La Caisse de Compensation des Allocations Familiales for the mining industry of the Charleroi and Basse-Sambre coalfields, Charleroi, Belgium — on the interpretation of Article 42 (5) of Council Regulation No 3 of 25 September 1958 concerning social security for migrant workers (Official Journal No 30 of 16 December 1958, page 561/58), as amended by Council Regulation No 1/64/EEC of 18 December 1963 (Official Journal No 1 of 8 January 1964, page 1), and Article 94 (5) of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (Official Journal No L 149 of 5 July 1971, page 2) — the Court, composed of H. Kutscher, President, A. M. Donner and P. Pescatore (Presidents of Chambers), J. Mertens de Wilmars, M. Sørensen, Lord Mackenzie Stuart and A. O'Keefe, Judges; Advocate-General: H. Mayras, Registrar: A. Van Houtte, gave a judgment on 13 October 1976 the operative part of which is as follows:

1. *Article 42 (5) of Regulation No 3 must be interpreted as determining the legislation applicable to the payment of family allowances to the children of a worker who died as a result of an accident at work and as meaning that the right of the children of the deceased to family allowances is not linked to the award of an orphan's pension;*
2. *Article 94 (5) of Regulation (EEC) No 1408/71 must be interpreted as meaning that the competent institution of a Member State is not entitled to substitute itself for an insured person with regard to the review of the rights which that person acquired before the Regulation came into force.*

Reference for a preliminary ruling by the Oberlandesgericht Karlsruhe — 4th Civil Senate, Freiburg — dated 7 October 1976 in the case of Hoffmann-La Roche AG v. Centrafarm Vertriebsgesellschaft pharmazeutischer Erzeugnisse mbH

(Case 107/76)

The Court of Justice of the European Communities has received a reference for a preliminary ruling by order of the Oberlandesgericht (Higher Regional Court) Karlsruhe — 4th Civil Senate, Freiburg — dated 7 October 1976 in the case of Hoffmann-La Roche AG, Grenzbach-Whylen, against Centrafarm Vertriebsgesellschaft pharmazeutischer Erzeugnisse mbH, Bentheim, lodged at the Court Registry on 17 November 1976, on the following questions:

1. Is the court of a Member State under a duty to refer a question concerning the interpretation of Community law under the third paragraph of Article 177 of the Treaty establishing the European Economic Community to the Court of Justice of the European Communities for a ruling when this question arises during interlocutory proceedings for an interim injunction, when in such proceedings no appeal lies against the court's decision, but when on the other hand it is open to the parties to have the question concerning the subject matter of the interlocutory proceedings made the subject matter of an ordinary action, during which a reference under the third paragraph of Article 177 of the Treaty establishing the European Communities would have if necessary to be made?

If question one is answered in the affirmative a ruling on the following questions is requested:

2. Is the person entitled to a trade-mark right protected for his benefit both in Member State A and in Member State B empowered under Article 36 of the EEC Treaty, in reliance on this right, to prevent a parallel importer from buying from the proprietor of the mark or with his consent in Member State A of the Community medicinal preparations which have been put on the market with his trade mark lawfully affixed