

Breach of the principles of the right to property and the right to pursue a trade or business

The Applicant has been prohibited from using his holding to the extent of the suspension of a proportion of the reference quantities and, where a portion of the reference quantities withdrawn do not have their origin in Article 5c (1) and (3) of Regulation (EEC) No 804/68, the submission made herein is reinforced. The nature of his business is such that it cannot easily be converted from milk production to other uses without a great deal of expense being incurred.

It is submitted that, given the nature of reference quantities and the penalties imposed by way of the additional levy if they are exceeded, together with the difficulty of putting the holding to which reference quantities are attached to other uses, the effects of restricting the producer further by suspending or withdrawing a proportion of reference quantities without compensation and exposing such a producer to the charge of the penal additional levy at an earlier stage infringes his right to property as guaranteed by Community law.

Associated with the right to property and the principle of legitimate expectations is the principle of the right to carry on a trade or business. Whilst the Applicant accepts that certain limitations may be imposed in the public interest on this fundamental right, it is submitted that the nature of the measure contained in Regulation (EEC) No 816/92 cannot be justified in the public interest.

Breach of the principle of proportionality

It is submitted that there is nothing in the Regulation to justify the omission of compensation for the temporary suspension or withdrawal of a proportion of the reference quantities for the milk marketing year 1 April 1992 to 31 March 1993. This is particularly the case when the Regulation is compared with the provision which existed heretofore. Accordingly, it is submitted that a disproportionate burden has been imposed upon the Applicant by reason of this measure which should be declared invalid as being contrary to the principle of proportionality.

Breach of the principle of non-discrimination

The application of the temporary suspension or withdrawal of a proportion of reference quantities at a uniform rate without compensation has greater effects on producers than suspension or withdrawal with a fixed rate of compensation, those effects being felt even more strongly in the case of a producer, such as the Applicant, who has also suffered the withdrawal of reference quantities which do not come within Article 5c (1) of Regulation (EEC) No 804/68 and which were granted

because of his special category status. It is submitted that, because of the particular situation of Ireland *vis-à-vis* other Member States in so far as it relates to milk or milk products, and the reliance placed on the dairy industry, Irish producers are in a different position from producers in other Member States and that the measure contained in the contested Regulation has different effects upon Irish producers and producers in the other Member States. Accordingly, the effects of the measure on the Applicant are discriminatory and infringe the principle of non-discrimination.

**Reference for a preliminary ruling by the Pretura Civile, Rome (Castelnuovo di Porto Division), by order of that court of 16 December 1992, in the case of Punto Casa SpA against the Mayor of the Municipality of Capena and the Municipality of Capena**

(Case C-69/93)

(93/C 124/14)

Reference has been made to the Court of Justice of the European Communities by an order of the Pretura Civile, Rome, of 16 December 1992, which was received at the Court Registry on 12 March 1993, for a preliminary ruling in the Case of Punto Casa SpA against Mayor of the Municipality of Capena and the Municipality of Capena, on the following questions:

1. Does a provision of national law which (save for certain products) requires retail shops to close on Sunday, but does not prohibit Sunday employment, and imposes the penalty of forced closure in the event of breach of that requirement, thus significantly reducing the sales of such shops, including sales of goods produced in other Member States of the Community, with a consequent reduction in the volume of imports from such States, constitute:
  - (a) a measure having an effect equivalent to a restriction of imports within the meaning of Article 30 of the EEC Treaty and subsequent Community legislation adopted to implement the principles laid down therein;
  - (b) or a means of arbitrary discrimination or a concealed restriction on trade between Member States;
  - (c) or a measure that is disproportionate and inappropriate in relation to the aim which the national provision purports to pursue;

in view of the fact that:

- large stores in general sell a quantity of products imported from other Community countries which is greater than that sold by small and medium-sized businesses,
  - the sales turnover achieved by large stores on a Sunday cannot be compensated for by purchases in place thereof by customers on other days of the week, they being purchases which are orientated towards a commercial network which, as a whole, obtains its supplies from national producers.
2. If the first question is answered in the affirmative, does the national measure in question fall within the scope of the derogations from Article 30 provided for in Article 36 of the EEC Treaty or other derogations provided for by Community law?

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**Action brought on 24 March 1993 by Thomas Cronin against the Council of the European Communities**

(Case C-106/93)

(93/C 124/15)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 24 March 1993 by Thomas Cronin, of Ardmore, Waterford (Ireland), represented by Anthony Burke, Solicitor, of Mason Hayes & Curran, Dublin, with an address for service in Luxembourg at the Chambers of Kronshagen, 12, boulevard de la Foire.

The Applicant claims:

1. an order that Regulation (EEC) No 816/92<sup>(1)</sup> is invalid, null and void;
2. damages in the sum of ECU 535,2 (£ Irl 512,33) or such other sum which the Court of Justice rules is appropriate;
3. interest on such sum at the rate of 8 % per annum from the first day of April 1993 pursuant to the provisions of the Courts Act 1981;
4. costs.

Pleas in law and main arguments adduced in support are similar to those in case C-67/93<sup>(2)</sup>.

<sup>(1)</sup> OJ No L 86, 1. 4. 1992, p. 83.

<sup>(2)</sup> See p. 9 of Official Journal.

**Reference for a preliminary ruling by the Tribunal de Relação, Lisbon, by order of that court of 12 March 1993, in the case of SIVA — Sociedade de Importação de Veículos Automóveis SA against Ministério Público**

(Case C-127/93)

(93/C 124/16)

Reference has been made to the Court of Justice of the European Communities by an order of the Tribunal de Relação, Lisbon, of 12 March 1993, which was received at the Court registry on 25 March 1993, for a preliminary ruling in the case of SIVA — Sociedade de Importação de Veículos Automóveis SA against Ministério Público, on the following questions:

having regard to Article 85 (3) and Regulation (EEC) No 123/85, a decision is requested as to whether the clause in the new contract at folio 680 of the file on the case, namely Article 4 (2), which states 'the concessionaire shall not undertake any sale of or assistance with other makes or products competing with the Contractual Programme', is valid; and,

as to whether the commercial practice referred to in the circular of June 1988 (at folio 10), between the appellant and the concessionaires, whereby the latter are precluded from purchasing from third parties parts which the appellant is able to supply, is valid.

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**Action brought on 30 March 1993 by James Reidy against the Council of the European Communities**

(Case C-129/93)

(93/C 124/17)

An action against the Council of the European Communities was brought before the Court of Justice of the European Communities on 30 March 1993 by James Reidy, of Carrowreagh, Cooper, Tubbercurry, County Sligo (Ireland), represented by Anthony Burke, solicitor, of Mason Hayes & Curran, Dublin, with an address for service in Luxembourg at the Chambers of Kronshagen, 12, boulevard de la Foire.

The Applicant claims:

1. an order that Regulation (EEC) No 816/92<sup>(1)</sup> is invalid, null and void;

<sup>(1)</sup> OJ No L 86, 1. 4. 1992, p. 83.