JUDGMENT OF THE COURT
12 NOVEMBER 1969[1]

Erich Stauder
v City of Ulm, Sozialamt[2]
(Reference for a preliminary ruling by the Verwaltungsgericht Stuttgart)

Case 29/69

Summary

1. *Measures adopted by an institution — Decision addressed to all Member States — Interpretation — Criteria — Consideration of different language versions of the measure in question*
   (EEC Treaty, Article 189)

2. *Community law — General principles — Fundamental human rights included — Respect for these ensured by the Court*

1. When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, and in the light in particular of the versions in all four languages.
2. The provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

In Case 29/69

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht Stuttgart for a preliminary ruling in the action pending before that court between

ERICH STAUDER, 15 Marienweg, 79 Ulm,

and

CITY OF ULM, SOZIALAMT (Social Welfare Office),

on the following question:

'Can the fact that the Decision of the Commission of the European Communities of 12 February 1969 (69/71/EEC) makes the sale of butter at a

1 — Language of the Case: German.
2 — CMLR.

reduced price to beneficiaries under certain welfare schemes dependent on revealing the name of the beneficiary to the sellers be considered compatible with the general principles of Community law in force?,'

THE COURT

composed of: R. Lecourt, President, R. Monaco and P. Pescatore, Presidents of Chambers, A. M. Donner, W. Strauß, A. Trabucchi and J. Mertens de Wilmars (Rapporteur), Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The decision by the Commission of 12 February 1969 on measures to allow certain categories of consumers to buy butter at a reduced price (Official Journal 1969 L 52/9) authorizes Member States to make butter available at a reduced price to certain categories of consumers who are beneficiaries under a social welfare scheme and whose income does not enable them to buy butter at normal prices.

Article 4 of this decision provides in the German version that:

> 'Die Mitgliedstaaten treffen alle erforderlichen Maßnahmen damit . . . die Begünstigten der in Artikel 1 vorgesehenen Maßnahmen Butter nur gegen einen *auf ihren Namen ausgestellten Gutschein* erhalten können.' ('Member States shall take all measures necessary to ensure that . . . those entitled to benefit from the measures laid down in Article 1 may only receive butter in exchange for *a coupon issued in their names.*')

The French version states that the butter may only be obtained in exchange for a *'bon individualisé'*, the Dutch version states that it may only be obtained in exchange for an *'op naam gestelde bon'*, and the Italian version, lastly, says that it may only be obtained in exchange for a *'buono individualizzato'*.

The Federal Republic of Germany made use of this authorization and issued cards in accordance with the 'Richtlinien für die Abgabe verbilligter Butter an Empfänger bestimmter sozialen Hilfen' ('Directives regarding the issue of cheap butter to persons in receipt of certain welfare benefits') of 11 March 1969 (Bundesanzeiger No 52 of 15 March 1969, p. 3). The cards consisted of detachable coupons with a stub which had, in order to be valid, to bear the name and address of the beneficiary.

According to Chapter V of the above directives, the retailer may only accept when selling the butter at a reduced price coupons which are still attached to the stub, on which must appear, among other things, the name of the beneficiary.

The plaintiff in the main action is entitled to buy butter at reduced prices because he is a beneficiary of the welfare scheme for those disabled in the war. However, he considers it illegal to make the appearance of the *name* of the beneficiary on the stub mentioned above a condition for buying the butter.
On those grounds:

1. He lodged by letter of 22 April 1969 a constitutional complaint with the Bundesverfassungsgericht (Federal Constitutional Court) on the grounds of infringement of, *inter alia*, Articles 1 and 3 of the Grundgesetz (Basic Law) of the Federal Republic of Germany;
2. He brought an action by letter of 22 May 1969 in the Verwaltungsgericht Stuttgart (Stuttgart Administrative Court) against the City of Ulm in which he sought an interim order for the removal of this requirement.

On 18 June the Verwaltungsgericht Stuttgart made the order for reference containing the question now before the Court. On 9 August 1969, that is, after the order making the reference had been lodged, there appeared in the Official Journal of the European Communities a Decision of the Commission of 29 July 1969 (69/244/EEC, Official Journal L 200, p. 29), Article 2 of which provides as follows:

'1. In the German version of Article 4, second indent, of the said Decision (of 12 February 1969) the words "auf ihren Namen ausgestellten" shall with effect from 17 February 1969 be replaced by the word "individualisierten";
2. In the Dutch version of Article 4, second indent, of the said Decision the words "op naam gestelde" shall with effect from 17 February 1969 be replaced by the word "geïndividualiseerde".'

According to the order making the reference a strict interpretation of the wording of Article 4 of the Decision of 12 February 1969 makes it impossible to avoid revealing the name of the beneficiary to retailers, who do not normally have a role to play in the provision of social welfare to the underprivileged. The Verwaltungsgericht doubts whether such a condition accords with the law, and considers it in any case contrary to the German concept of social welfare and to the German system of protection of fundamental rights which must, at least in part, be guaranteed equally by the Community institutions as part of the protection afforded by the provisions of a Community law which has a superior status.
The order making the reference was lodged at the Court Registry on 26 June 1969.
Written observations were lodged by the Commission of the European Communities under Article 20 of the Protocol on the Statute of the Court of Justice.
The Commission of the European Communities made its oral observations at the hearing on 14 October 1969.
The Advocate-General delivered his opinion at the hearing on 29 October 1969.

II — Observations submitted to the Court under Article 20 of the Statute

Only the Commission presented observations, and these may be summarized as follows:

A — *Admissibility*

The Commission considers that the question of interpretation referred by the Verwaltungsgericht comprises a question concerning the validity of the Decision of 12 February 1969. Both the text of the question put, which mentions the issue of compatibility with Community law, and the reasons given for making

the reference, which are concerned with the lawfulness and validity of the obligation to state the name, point to this.
The question concerning the compatibility with the general principles of Community law only indicates the reason why the provision concerning the indication of name might be void.
The Commission considers that although it is badly formulated, the admissibility of the question is not in doubt.

B — *The validity of Article 4 of the Decision of 12 February 1969*

Principally, the Commission contests the claim that the decision in question makes the sale of butter at a reduced price conditional on revealing to retailers the name of the beneficiary. It claims that although such an indication is carried in the wording of the German and Dutch texts, unlike the French and Italian texts which only mention the requirement that coupons shall refer to the person concerned, the provision in the second paragraph of Article 4 can have only one meaning in all four official versions and this is proved by the fact that the decision constitutes, in substance, a uniform measure and by its purpose and origins.
The version to be preferred is the French version if the origin of the decision is borne in mind. In fact the Management Committee expressly decided at its meeting of 29 January 1969 to modify, in the draft decision drawn up by the Commission, the clause to the effect that beneficiaries could only obtain butter in exchange for a coupon referring to the person concerned, *'détaché d'une carte portant l'identité de l'acheteur'* ('detached from a card indicating the buyer's identity'). Those last words were removed from the draft approved by the Management Committee. When the final versions of the texts were drawn up the rectification of Article 4 in the Dutch and German versions was overlooked.
However, if the Commision had wished to depart from the text approved by the Management Committee it should, in accordance with Article 30(3) of EEC Regulation No 804/68, have notified the Council and this it did not do.
In any event, in order to avoid all doubt the Commission has expressly amended the German and Dutch versions of Article 4, second indent, by Article 2 of its Decision of 29 July 1969 with effect from 17 February 1969 (Official Journal 1969 L 200/29).
The Commission concludes that the Decision of 12 February 1969 did not at any time make the authorization to purchase butter at a reduced price dependent on presentation of a coupon mentioning the beneficiary by name. Since the objection of the Stuttgart Court was directed solely against the obligation to state the name, its question is deprived of substance.
Secondarily, should the Court judge it necessary to reply to the question whether the requirement that a coupon be presented stating the name of the beneficiary is contrary to Community law, the Commission makes the following observations:
1. The question put to the Court concerns the compatibility of the contested measure with the general principles of *Community law* in force.
That is in fact the only law with which it could be concerned because Community institutions are subject only to that law and the Court of Justice can only examine regulations adopted by those institutions in the light of that law.
The protection guaranteed by fundamental rights is, as regards Community law, assured by various provisions in the Treaty, such as Articles 7 and 40(3); this is written law supplemented in its turn by unwritten Community law, derived from the general principles of law in force in Member States.
2. As regards the *written* law, the only relevant provision can be the prohibition of any kind of discrimination expressed as a general principle in Article 7 and

more specifically in the second subparagraph of Article 40(3) of the EEC Treaty, according to which a common organization of agricultural markets shall exclude any discrimination between producers or consumers within the Community.

But there is no question of discrimination in the present case because, although the persons entitled to purchase butter at a reduced price are not treated in the same manner as those who buy butter at the normal price, the circumstances of these two categories of persons are objectively distinguishable (cf. judgment of 17 July 1963, *Government of the Italian Republic* v *Commission of the EEC*, Case 13/63 [1963] E.C.R. 165).

Moreover, Article 40(3) is not applicable during the transitional period.

As far as Article 7 of the EEC Treaty is concerned it has no effect where the more specific prohibition of Article 40 applies; furthermore, it cannot apply in the absence of discrimination, and in any case this means in the absence of discrimination based on grounds of nationality.

3. As regards unwritten Community law, the Commission observes that the substantive constitutionality of the obligation to reveal identity can only be placed in doubt, under German constitutional law, by the principle that the means must be proportionate to the end. This results from the principle of the State founded on the rule of law.

The Court of Justice has repeatedly applied this principle in its judgments to certain aspects of the acts of Community institutions without however, holding that it applies to all the activities of the Communities or in particular to the legislative measures of the Council and of the Commission.

However that may be, this rule has not been violated in this case.

In fact the principal aim of selling butter at a reduced price is to reduce the stocks of butter by selling to customers whose income is not normally sufficient to enable them to purchase butter at the normal price.

It is therefore in no way a public welfare measure and it was necessary to prevent the butter from being purchased by persons with higher incomes or its benefit from being converted by beneficiaries by using it to produce other goods; in both cases the economic aim of the measure—to increase consumption—would not have been achieved.

The best method—which is impracticable because of the cost—would have been for the authorities in Member States to sell the butter themselves. As that was impossible, the butter had to be sold through the trade. In order to make it possible to check that supplies were being properly used at the time of sale, it was considered necessary to mark each coupon (for instance by numbering) so as to make it possible to discover to whom the butter had been delivered.

It is easier to identify the beneficiary if his name is on the coupon. The removal of anonymity from the coupon also constitutes a psychological deterrent against abuse. The means used was therefore proportionate to the ends pursued.

Furthermore, there is no question of there having been a breach of the principle of proportionality because the Decision of 12 February 1969 does not *necessarily* entail any legal disadvantage for the person concerned. The reduced price is a concession which the beneficiary can refuse to take up. There is therefore no real *encroachment* on his rights in the classical sense of the word.

Lastly, regard for the principle of proportionality need not entail substitution of a judicial assessment for the discretion allowed to the institution having the power to issue the contested measure. One can only consider that the principle has been violated if the means decided upon as suitable for achievement of the end in view can in no way be justified,

whatever the objective criteria used in assessing it, and that is not so in the present case.

Accordingly the Commission proposes in the first place a reply in the following terms:

—Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart has revealed no ground for holding that the Decision of the Commission of 12 February 1969 is void to the extent to which it makes 'purchase of butter at a reduced price dependent on the presentation of a coupon referring to the person concerned.'

Alternatively, it proposes that the question should be answered in the negative.

Grounds of judgment

1 By an order of 18 June 1969 received by the Court Registry on 26 June 1969 the Verwaltungsgericht Stuttgart has referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty the question whether the requirement in Article 4 of Decision No 69/71 EEC of the Commission of the European Communities that the sale of butter at reduced prices to beneficiaries under certain social welfare schemes shall be subject to the condition that the name of beneficiaries shall be divulged to retailers can be considered compatible with the general principles of Community law in force.

2 The abovementioned decision is addressed to all the Member States and authorizes them, with a view to stimulating the sale of surplus quantities of butter on the Common Market, to make butter available at a lower price than normal to certain categories of consumers who are in receipt of certain social assistance. This authorization is subject to certain conditions designed, *inter alia*, to ensure that the product, when marketed in this way, is not prevented from reaching its proper destination. To that end Article 4 of Decision No 69/71 stipulates in two of its versions, one being the German version, that the States must take all necessary measures to ensure that beneficiaries can only purchase the product in question on presentation of a 'coupon indicating their names', whilst in the other versions, however, it is only stated that a 'coupon referring to the person concerned' must be shown, thus making it possible to employ other methods of checking in addition to naming the beneficiary. It is therefore necessary in the first place to ascertain exactly what methods the provision at issue prescribes.

3 When a single decision is addressed to all the Member States the necessity for uniform application and accordingly for uniform interpretation makes it impossible to consider one version of the text in isolation but requires that it be interpreted on the basis of both the real intention of its author and the aim he seeks to achieve, in the light in particular of the versions in all four languages.

4 In a case like the present one, the most liberal interpretation must prevail, provided that it is sufficient to achieve the objectives pursued by the decision in question. It cannot, moreover, be accepted that the authors of the decision intended to impose stricter obligations in some Member States than in others.

5 This interpretation is, moreover, confirmed by the Commission's declaration that an amendment designed to remove the requirement that a name shall appear on the coupon was proposed by the Management Committee to which the draft of Decision No 69/71 was submitted for its opinion. The last recital of the preamble to this decision shows that the Commission intended to adopt the proposed amendment.

6 It follows that the provision in question must be interpreted as not requiring—although it does not prohibit—the identification of beneficiaries by name. The Commission was thus able to publish on 29 July 1969 an amending decision to this effect. Each of the Member States is accordingly now able to choose from a number of methods by which the coupons may refer to the person concerned.

7 Interpreted in this way the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court.

Costs

8 The costs incurred by the Commission of the European Communities, which has submitted its observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Verwaltungsgericht Stuttgart the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 7, 40 and 177;
Having regard to Regulation (EEC) No 804/68 of the Council of 27 June 1968;
Having regard to the Decisions of the Commission of the European Communities Nos 69/71 of 12 February 1969 and 69/244 of 29 July 1969;

Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the question referred to it by the Verwaltungsgericht Stuttgart by order of that court of 18 June 1969 hereby rules:

1. **The second indent of Article 4 of Decision No 69/71/(EEC) of 12 February 1969, as rectified by Decision No 69/244/(EEC), is to be interpreted as only requiring the identification of those benefiting from the measures for which it provides; it does not, however, require or prohibit their identification by name so as to enable checks to be made;**

2. **Examination of the question referred to the Court by the Verwaltungsgericht Stuttgart reveals nothing capable of affecting the validity of the said Decision.**

Lecourt Monaco Pescatore

Donner Trabucchi Strauß Mertens de Wilmars

Delivered in open court in Luxembourg on 12 November 1969.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 29 OCTOBER 1969[1]

Mr President,
Members of the Court,

The excess butter production in the Community and the failure until now to produce effective measures to prevent increases in production has made it ever more imperative to attempt to reduce the butter surplus with the aid of measures designed to increase consumption.
This was the intention behind the Decision of the Commission of 12 February 1969 (Official Journal L 52 69) taken in pursuance of Articles 28 and 35 of Regulation No 804/68 of the Council

1 — Translated from the German.