conformity with Community law can be derived from Article 2 of the Treaty which describes the task of the European Economic Community.

6. Where a Member State relies on the combined provisions of Articles 56 and 66 of the Treaty in order to justify, by reasons relating to public policy, public security and public health, rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law, must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions provided for in those provisions only if they are compatible with the fundamental rights the observance of which is ensured by the Court. As regards rules relating to television, this means that they must be appraised in the light of freedom of expression, as embodied in Article 10 of the European Convention on Human Rights, as a general principle of law the observance of which is ensured by the Court.

REPORT FOR THE HEARING
in Case C-260/89 *

I — Facts and procedure

1. *Legal background*

1. Under Article 15 of the Hellenic Constitution of 1975 radio and television are subject to direct control by the State and their aims are the objective and balanced broadcasting of information and news and of intellectual and artistic material; the same article provides that the quality of the programmes must always be of a level that accords with their social function and the cultural development of the country.

2. The public limited liability company Elliniki Radiophonia Tiléorassi — Anonimi Etairia (hereinafter referred to as 'ERT'), a public undertaking placed under the control and supervision of the State, was created by Law No 1730/1987 (*Official Journal of the Hellenic Republic* No 145 A of 18 August 1987, p. 144).

ERT comprises Hellenic television (ET1 and ET2), Hellenic radio broadcasting, the Institute of Audiovisual Methods and the production and marketing company for broadcasting and ERT radio and television programmes.

* Language of the case: Greek

Articles 2(1)(2) and (3) of Law No 1730/1987 provides:

'1. The objective of ERT AE shall be to organize, exploit and develop radio and television broadcasting and thereby to contribute: (a) to the information, (b) the culture and (c) the entertainment of the Greek people. Profit-making shall not be one of the aims.

2. The State grants to ERT AE an exclusive franchise radio and television franchise in relation to any activity which contributes to achieving its objective. That franchise shall be inalienable and shall comprise in particular:

(a) The broadcasting of sounds and images of every kind from any part of the country's land, sea and airspace, by means of radio and television broadcasting intended for general reception or reception through special closed circuits, by way of cable or any other means;

(b) The setting-up of service stations for radio and television, that is to say transmitters, relay apparatus, land-based stations for relaying by satellite, wired circuits, transmissions by cable in general, by any technical method and technological application contributing to the broadcasting of sound and image for reception by the public.

3. ERT AE shall produce and exploit by any means radio and television broadcasts, create production units for goods or services of any kind, relating to optical, acoustic and audiovisual mass means of communication and, generally exercise all activities which contribute to achieving the objective of ERT AE.'

Article 16(1) provides:

'No legal or natural person shall engage in broadcasting of any kind for which pursuant to Article 2, ERT holds an exclusive right or franchise.'

Law No 1730/1987, however, provides for an exception to that prohibition. The board of directors of ERT may grant authorization for the installation of internal wired or cabled circuits for radio and television broadcasting of a local nature. However, authorization may be granted only to receive sound and image. The conditions and specifications for the grant of authorizations and certain requirements relating to the functioning of the circuits concerned are to be governed by presidential decree.

Under Article 16 any person who infringes the provisions of the first paragraph is liable to a term of imprisonment of at least three months. At the same time the court may also order the confiscation of the means of broadcasting sound and images for the benefit of ERT.

3. On 6 October 1989 Law No 1866/1989 was adopted. It provides, inter alia, for the possibility of granting, by joint decision of the Spokesman for the Government, the Minister for Home Affairs, the Minister for Finance and the Minister for Transport and

Communications, authorization for the creation and management of television stations of a local nature by public companies or local authorities.

2. *Background to the main proceedings*

4. On New Year's Eve 1988 the company Dimotiki Étairia Pliroforissis (hereinafter referred to as 'DEP') and the Mayor of Thessaloniki, Sotirios Kouvelas, set up in Thessaloniki a television station under the title 'TV 100', which began broadcasting on the same date.

On 24 December 1988 ERT instituted summary proceedings in respect thereof before the District Court, Thessaloniki. In the proceedings ERT claimed that the activity of the DEP and Mayor was unlawful inasmuch as it came within the ambit of 'broadcasting' and 'setting-up' within the meaning of Article 2(2) of Law No 1730/1987, activities prohibited under Article 16(1) of that Law. Furthermore, according to ERT, the activity in question caused it economic damage and considerably disturbed the radio telecommunications system of the country and the pursuit of ERT's activities.

The defendants contended that the action should be dismissed. They maintained that Law No 1730/1987, and in particular Articles 2(2) and 16 thereof were contrary to the Greek Constitution, Article 10 of the Convention for the Protection of Human Rights and to the EEC Treaty, in particular Articles 59 et seq. and 85 et seq.

3. *Preliminary questions*

5. The District Court, Thessaloniki considered that the outcome of the proceedings depended upon the interpretation of Community law and, on 11 April 1989, stayed the proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'(1) Does a law which allows a single television broadcaster to have a television monopoly for the entire territory of a Member State and to make television broadcasts of any kind is consistent with the provisions of the EEC Treaty and of secondary law.

(2) If so, whether and to what extent the fundamental principle of free movement of goods laid down in Article 9 of the EEC Treaty is infringed in view of the fact that the enjoyment by a single broadcaster of an exclusive television franchise entails a prohibition for all other Community citizens on the export, leasing or distribution, by whatever means, to the Member State in question of materials, sound recordings, films, television documentaries or other products which may be used to make television broadcasts, except in order to serve the purposes of the broadcaster who has the exclusive television franchise, when, of course, that broadcaster also has the discretionary power to select and favour national materials and products in preference to those of other Member States of the Community.

(3) Whether and to what extent the grant of a television franchise to a single broadcaster constitutes a measure having equivalent effect to a quantitative restriction on imports, expressly prohibited under Article 30 of the EEC Treaty.

(4) If it is accepted that it is lawful to grant by law to a single broadcaster the exclusive right, for the entire national territory of a Member State, to make television broadcasts of any kind, on the ground that the grant falls within the provisions of Article 36 of the EEC Treaty as it has been interpreted by the European Court, and given that that grant satisfies a mandatory requirement and serves a purpose in the public interest — the organization of television as a service in the public interest — whether and to what extent that intended purpose is exceeded, that is to say whether that purpose, the protection of the public interest, is attained in the least onerous manner, in other words in the manner which offends least against the principle of the free movement of goods.

(5) Whether and to what extent the exclusive rights granted by a Member State to an undertaking (a broadcaster) in respect of television broadcasts, and the exercise of those rights, are compatible with the rules on competition in Article 85 in conjunction with Article 3(f) of the EEC Treaty when the performance by the undertaking of certain activities, in particular the exclusive (a) transmission of advertisements, (b) distribution of films, documentaries and other television material produced within the Community, (c) selection, in its own discretion, distribution and transmission of television broadcasts, films, documentaries and other material, prevents, restricts or distorts competition to the detriment of Community consumers in the sector in which it operates and throughout the national territory of the Member State, even though it is entitled by law to carry out those activities.

(6) Where the Member State uses the undertaking entrusted with the operation of the television service — even with regard to its commercial activities, particularly advertising — as an undertaking entrusted with the operation of services of general economic interest, whether and to what extent the rules on competition contained in Article 85 in conjunction with Article 3(f) are incompatible with the performance of the task assigned to the undertaking.

(7) Whether such an undertaking which has been granted under the law of the Member State a monopoly on television broadcasting of any kind throughout the national territory of that State may be considered to occupy a dominant position in a substantial part of the Common Market, and,

(8) If so, whether and to what extent the imposition (owing to the absence of any other competition in the market) of monopoly prices for television advertisements and of such preferential treatment, at its discretion, to

the detriment of Community consumers, and the performance by that undertaking of the activities mentioned above in question (5), pursued in the absence of competition in the field in which it operates, constitute an abuse of a dominant position.

(9) Whether and to what extent the grant by law to a single broadcaster of a television monopoly for the entire national territory of a Member State, with the right to make television broadcasts of any kind, is compatible today with the social objective of the EEC Treaty (preamble and Article 2), the constant improvement of the living conditions of the peoples of Europe and the rapid raising of their standard of living, and with the provisions of Article 10 of the European Convention for the Protection of Human Rights of 4 November 1950.

(10) Whether the freedom of expression secured by Article 10 of the European Convention for the Protection of Human Rights of 4 November 1950 and the abovementioned social objective of the EEC Treaty, set out in its preamble and in Article 2, impose *per se* obligations on the Member States, independently of the written provisions of Community law in force, and if so what those obligations are.'

In its decision to seek a preliminary ruling the national court referred to certain principles of Community Law and to the case-law of the Court of Justice relating to those principles. It was in particular the articles of the Treaty on the free movement of goods and the rules on competition which caused the national court to doubt the lawfulness from the point of view of Community Law of the television monopoly granted to ERT by Law No 1730/1987.

4. *Procedure*

6. The decision referring the questions for a preliminary ruling was registered at the Court Registry on 16 August 1989.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were lodged by ERT, the plaintiff in the main proceedings, represented by V. Kostopoulos, K. Kalavros and N. Papageorgiou, of the Athens Bar, DEP, a legal person governed by private law, and S. Kouvelas, defendants in the main proceeding, represented by A. Vamvakopoulos, A. Panagopoulos and P. Ladas, of the Thessaloniki Bar, the Government of the French Republic, represented by E. Belliard, Deputy Director in the Legal Affairs Directorate at the Ministry for Foreign Affairs, acting as Agent, and G. de Bergues, Deputy Principal Secretary for Foreign Affairs in the same Ministry, acting as Agent, and the Commission of the European Communities, represented by G. Marenco, B. Jansen and M. Condou-Durande, members of its Legal Service, acting as Agents.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

II — Summary of the observations submitted to the Court

7. The observations submitted to the Court relate to the compatibility of a monopoly in television broadcasting with (1) the provisions of the Treaty relating to the free movement of goods, (2) the provisions on freedom to provide services, (3) the rules on competition, (4) Article 2 of the Treaty and (5) Article 10 of the European Convention on Human Rights.

1. *Free movement of goods*

8. *ERT* refers first of all the judgment of the Court in Case C-155773 *Sacchi* [1974] ECR 409 in which the Court held that the broadcasting by television comes within the rules of the Treaty relating to services. On the free movement of goods the Court held that

'the fact that an undertaking of a Member State has the exclusive right to transmit advertisements by television is not as such incompatible with the free movement of products, the marketing of which such advertisements are intended to promote. It would however be different if the exclusive rights were used to favour, within the Community, particular trade channels or particular commercial operators in relation to others.'

In that respect ERT observes that it does not use its exclusive franchise to favour particular trade channels. On the contrary it obtains the products needed for broadcasts after a tendering procedure at which all companies interested take part.

9. The *French Government* points out that Article 9 of the Treaty, which concerns duties payable on or by reason of imports, in no way prevents the grant by a Member State of a television monopoly to a single operator.

10. As regards Articles 30 and 36, the French Government also cites the aforementioned grounds of the judgment in *Sacchi*. It also states that in that case the Court considered that trade in material, sound recordings and other products used for the television broadcasting was subject to the rules relating to the free movement of goods. The French Government adds that in its judgment in Case C-271/81 *Société Coopérative d'Amélioration de l'Elevage d'Insémination Artificielle du Béarn* v *Mialocq and Others* [1983] ECR 2057, the Court did not exclude the possibility that a monopoly in the provision of services might have an indirect influence upon the trade in goods between Member States. In the Court's view, an undertaking holding a monopoly in the provision of services might infringe the principle of the free movement of goods, if, for example, such a monopoly led to discrimination against imported products as opposed to products of domestic origin. The French Government observes that in the present case the Thessaloniki court has given no indication that this is so.

The *Commission* also refers to the passage from the *Sacchi* case, cited above. It infers that the grant to a single operator of the exclusive right to carry out television broadcasting and to that end, of the power to import material and products needed for that purpose does not fall, as such, within the provisions of Article 30 et seq. of the Treaty. In the Commission's view, it is only where the monopoly is used directly or indirectly *by the State* in order to discriminate against imported products in favour of domestic products that the rules on the free movement of goods may be applied. Where any discrimination is due to the *undertaking's independent decision*, this, in the Commission's view, is rather a matter of an infringement of Article 86. In its view it is for the national court to consider whether ERT exercises its monopoly in a manner which involves discrimination to the detriment of imported products.

2. *Freedom to provide services*

11. *ERT* observes that, according to the judgments of the Court in *Sacchi* and in Case C-52/79 *Debauve* [1980] ECR 833, television broadcasting constitutes the provision of services within the meaning of the Treaty. ERT observes however that in its judgment in Case C-352/85 *Bond Van Adverteerders and Others* v *The Netherlands State* [1988] ECR 2085 the Court recognized that national rules which apply without distinction to the provision of services, of whatever origin, are compatible with Community Law. ERT adds that it follows from the Treaty and the case-law of the Court that Member States may lay down restrictions on activities in the field of radio and television for reasons of public policy, public security and so forth in so far as such restrictions are justified on grounds violating the public interest and are not disproportionate to their objective.

12. Accordingly to the *DEP* and *Mr Kouvelas* the fact that under Greek law neither Greek nationals nor foreigners may engage in any activity in relation to the production, supply, transmission or retransmission of sound or images in Greece infringes the provisions on the freedom to provide services. Furthermore, such an absolute and radical monopoly in the television sector as that which applies in Greece cannot be justified on grounds relating to the public interest or on any other grounds recognized by the legal system.

13. The *Commission* observes that, although it is true that the existence of a broadcasting monopoly by definition prevents the making of contracts for copyright licences between authors of other Member States and television bodies which might exist in the absence of the monopoly, such a restriction nevertheless does not constitute in itself a restriction on the freedom to provide services across frontiers within the meaning of Article 59 of the Treaty. In the Commission's view, there would be such a restriction if the undertaking in question were induced by a State measure to discriminate in favour of national works.

14. As regards freedom of establishment, the Commission states that the exclusive right in question by definition involves prohibiting other persons, including, therefore, economic operators in other Member States, from establishing themselves in Greece. Nevertheless, such a prohibition applies to nationals as well as to aliens. The Commission infers from this that freedom of

establishment is, in principle, not at issue. In its opinion, however, the situation would be different if the exclusive right were conferred, not for reasons relating to the public interest justifying the centralized exercise of the activity in question, but in order to protect the operator enjoying the exclusive right from foreign competition. According to the Commission, the primary broadcasting monopoly seems to be the practical application of the objectives referred to in Article 15 of the Constitution and Article 2 of Law No 1730/1987.

15. The Commission, finally, has doubts about the concentration of two exclusive rights in the hands of ERT, namely the primary broadcasting right and the right to retransmit programmes from other Member States. The Commission states that, although Law No 730/1987 provided for authorizations to be granted for the installation of wire or cable circuits for the reception of sounds and images for radio and television broadcasting, as far as the Commission is aware the necessary presidential decree has never been adopted for that purpose. As regards the retransmission of programmes on Hertz waves, the Commission states that the law has provided for no derogation from ERT's monopoly although an exclusive right does not appear necessary to avoid interferences for the allocation of frequencies can be made the subject of strict planning. The Commission cites Case C-59/75 *Manghera* [1976] ECR 91 as authority for concluding that the aggregation of the monopolies in primary broadcasting and retransmission constitutes a restriction and a form of discrimination prohibited by the rules on the freedom to provide services. Whereas by virtue of its monopoly ERT has the opportunity and an interest in transmitting its own programmes there is no such interest in relation to the programmes of other Member States.

3. *The rules on competition*

16. *ERT* states that it is an undertaking operating services of general interest and is predominantly public in nature. It considers that it must be regarded as an undertaking of the kind referred to in Article 90(2) of the Treaty and therefore not subject to the specific rules of Article 86. In its opinion, the rules on competition apply to it only in so far as their application does not obstruct the performance of the particular task entrusted to it.

17. In the alternative, ERT makes certain observations in relation to Articles 85 and 86 of the Treaty.

As regards Article 85, it states that it has never had recourse to concerted practices which prevent, restrict or distort competition to the detriment of consumers.

As regards Article 86, it observes that there is no abuse by it of a dominant position on the common market or in any substantial part of it that could affect trade between Member States in the radio and television sector. in ERT's opinion the Court must first of all consider whether the Greek national territory constitutes a substantial part of the common market.

As regards the non-exhaustive list of practices prohibited by Article 86 of the Treaty, ERT maintains that none of those practices exist: the undertaking's customers do not pay excessive prices. ERT does not impose extremely low prices on suppliers. It

freely negotiates with associations of categories of workers and concludes framework contracts with them. ERT in no way limits production, markets or technical development to the prejudice of consumers. By reason of its public nature and the direct supervision exercised over it by the Government, ERT has no opportunity of applying dissimilar conditions to equivalent transactions with other trading parties or making the conclusions of contracts subject to acceptance by the other parties of supplementary obligations which have no connection with the subject of such contracts.

18. *DEP* and *Mr Kouvelas* maintain that the object and effect of ERT's exclusive rights are to distort competition. They consider that ERT's franchise is in no way affected by the use of a television channel occupied by their station. They observed that in Greece 49 channels are available for the television broadcasting. ERT for the moment uses only four at Thessaloniki. The fact that the defendants use one frequency in no way prevents ERT from carrying out its task on the other available channels. DEP and Mr Kouvelas conclude that in attempting to prohibit all forms of television activity on Greek territory by natural or legal persons ERT is abusing the dominant position which its exclusive rights confer on it.

19. The *French Government* observes that the grant to a single operator of a television monopoly on the territory of a Member State cannot, by definition, fall under Article 85 of the Treaty. That article is concerned with agreements between several undertakings. Furthermore there is nothing in the decision making the reference for a preliminary ruling to justify the assumption that there is an agreement between the Greek undertaking and another television operator.

As regards Article 86 of the Treaty, the French Government refers to the judgment in *Sacchi* in which the Court held:

'Nothing in the Treaty prevents Member States, for consideration of public interest, of a non-economic nature, from removing radio and television transmissions, including cable transmissions, from the field of competition by conferring on one or more establishments an exclusive right to conduct them.

However, for the performance of their tasks these establishments remain subject to the prohibitions against discrimination and, to the extent that this performance comprises activities of an economic nature, fall under the provisions referred to in Article 90 relating to public undertakings and undertakings to which Member States grant special or exclusive rights.'

The French Government infers from this that the fact that an undertaking to which a State has granted exclusive rights has a monopoly is not, as such, incompatible with Article 86. It observes that according to the Court it is for the national court to determine whether there is conduct on the part of the undertaking that is capable of constituting abuse. The French Government points out, however, that, as the Court has stated, it is necessary also to take account of Article 90(2) under which undertakings entrusted with the operation of services of general economic interest are subject to the rules contained in the Treaty in so far as they do not obstruct the performance of their task.

20. The *Commission* observes, as a preliminary point, that Articles 85 and 86 concern the conduct of undertakings. In the present case, the creation of a monopoly for broadcasting and retransmission in the field of television emanates from the State. In that respect the Commission points out that the Court has consistently held that Article 5 of the Treaty requires Member States not to take or maintain in force any measures likely to deprive the rules on competition of their effectiveness. Accordingly, it is contrary to that obligation for a Member State to impose or encourage abusive practices, for example the imposition of excessive prices by an undertaking which holds a dominant position. The Commission however considers that in the present case there is nothing to suggest that ERT charges excessive prices or that the public authorities intervene in the formation of the prices at issue. It states that the creation of a monopoly and, thereby, a dominant position still does not, as such, constitute an abuse. For the State to adopt such a measure is thus not in itself contrary to the provisions of Articles 5 and 86 of the Treaty.

21. The Commission then refers to Article 90 of the Treaty. In its opinion ERT comes under that article because it is a public undertaking to which the State has granted exclusive rights. The Commission points out in that respect that according to the case-law of the Court Article 90(1) does not prevent the creation of a monopoly in the field of television. Such a measure is justified on grounds of a non-economic nature relating to the public interest. The Commission observes that the same article requires the Member State concerned to ensure that the other provisions of the Treaty are respected. In its opinion observance by the Member State of the provisions of Article 90(1), in conjunction with those of Article 86, precludes an aggregation of exclusive rights, namely of primary broadcasting and retransmission. In the Commission's view such aggregation gives rise to opposing interests within one and the same undertaking, which in the nature of things, will be led to neglect one of its activities in favour of the other. That amounts to limiting production within the meaning of Article 86(b). The Commission points out in that respect that according to information in its possession ERT has refrained, since its creation in 1975 until October 1988, from broadcasting programmes of other Member States. In its opinion it follows that the Greek legislature has created a conflict of interests within ERT, which must give priority to one of its activities to the detriment of the other and in consequence abuse it dominant position. It can make its choice without taking into account market patterns, since these do not exist.

The Commission considers the question whether infringement by the Greek State of the provisions of Article 90(1) in conjunction with Article 86 may be justified on the basis of Article 90(2). Although the Commission admits that the broadcasting and retransmission of television programmes may be regarded as services of general economic interest, the aggregation of the two monopolies within a single undertaking does not appear to be justified.

4. *Article 2 of the Treaty*

22. The *French Government* argues that it follows from the fact that the grant of the television monopoly on the territory of a Member State is compatible with Articles 30

to 36 and 85 to 90 of the Treaty that this exclusive right is not contrary to Article 2.

The French Government adds that where a Member State enacts legislation such as the Greek law in question it must observe, in the same way as it does Article 2 of the Treaty, the principles enshrined in the European Convention on Human Rights. However, the Greek legislation appears to it as such to be quite compatible with Article 10 of the Convention.

23. The *Commission* observes that the preamble to the Treaty and Article 2 constitute general obligations which the Community must take into account when it adopts measures at the Community level. In view, however, of their general nature they cannot be interpreted in such a way as to impose on Member States a precise obligation such as the obligation to abolish a monopoly.

5. *Article 10 of the European Convention on the Protection of Human Rights*

24. In *ERT*'s view under Article 10 of the Convention the national legislature is free to adopt the scheme of organization which it considers appropriate and which may take either the form of a State monopoly or that of a purely private radio and television monopoly in so far as the conditions for the grant of the relevant authorizations are satisfied. ERT claim furthermore that the right guaranteed by Article 10 is a negative right. It is a protective freedom and not a right to a service. In ERT's opinion it therefore does not include a right to require that radio and television frequency time should be made available to it.

ERT maintains that Article 10 of the Convention cannot be submitted for interpretation by the Court. In that respect ERT cites the judgment of the Court in Joined Cases C-60/84 and C-61/84 *Cinéthèque and Others* v *Fédération Nationale des Cinémas Français* [1985] ECR 2605 in which the Court held that

'although it is true that it is the duty of this Court to ensure observance of fundamental rights in the field of Community Law, it has no power to examine the compatibility with the European Convention of national legislation which concerns, as in this case, an area which falls within the jurisdiction of the national legislature.'

In ERT'S view the Greek law in question falls within that jurisdiction.

25. *DEP* and *Mr Kouvelas* maintain that Law No 1730/1987 is directly contrary to Article 10 of the Convention and to Articles 59 et seq. 85, 86 and 90 et seq. of the Treaty. In their opinion the provisions of the Treaty must also be interpreted in the spirit of the provisions of the Convention. From that point of view ERT's absolute monopoly cannot be justified by applying the derogations allowed in Community law.

26. The *French Government* considers, with reference to the judgment in the *Cinéthèque* case, that the Court of Justice has no jurisdiction to consider whether national legislative complies with Article 10 of the Convention.

27. The *Commission* also argues that it follows from the judgment in the *Cinéthèque* case that the compatibility of national legislation with the Convention is not a question of interpretation of Community law.

6. *Answers to the preliminary questions proposed by the Commission*

28. On the basis of its observations, the Commission proposes that the Court should answer the questions put to it by the Thessaloniki District Court as follows:

'(1) a law which authorizes a single operator to hold a television monopoly covering the entire territory of a Member State and to make television broadcasts of any kind is not as such incompatible with the free movement of goods and services which that undertaking needs for the pursuit of its activity. It would be otherwise, however, if as a result of a State measure the exclusive right were used to favour domestic goods or services to the detriment of the goods or services of other Member States.

(2) A law of the kind referred to in paragraph 1 is incompatible with Article 59 of the Treaty in so far as the monopoly to broadcast television programmes is granted to the same undertaking which also holds a monopoly in the retransmission of television programmes from other Member States. Such a law is also incompatible with the provisions of Article 90(1) in conjunction with those of Article 86 where the undertaking holding the monopoly has a dominant position in a substantial part of the common market.

(3) The preamble to and Article 2 of the Treaty do not impose specific obligations on Member States.

(4) The compatibility of the legislation of a Member State with the provisions of the European Convention on the Protection of Human Rights is not a question of interpretation of Community law.'

P. J. G. Kapteyn
Judge-Rapporteur