courts of the Member State concerned have an obligation to ensure, when performing their duties, that the Court's judgment is complied with.

2. If the Court finds in proceedings under Articles 169 to 171 of the Treaty that a Member State's legislation is incompatible with the obligations which it has under the Treaty, the courts of that State are bound by virtue of Article 171 to draw the necessary inferences from the judgment of the Court. However, it should be understood that where the Court has found that a Member State has failed to comply with a provision of Community law having direct effect in the internal legal order, the rights accruing to individuals derive not from the judgment finding that that State has failed to fulfil its obligations but from the actual provisions of Community law.

In Joined Cases 314 to 316/81 and 83/82

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Paris for a preliminary ruling in the cases pending before that court between

(1) PROCUREUR DE LA REPUBLIQUE [Public Prosecutor]

and (in the first three groups of cases)

(2) COMITÉ NATIONAL DE DÉFENSE CONTRE L'ALCOOLISME [National Committee for the Campaign against Alcoholism], an association recognized to be of public benefit having its registered office in Paris, civil party,

and

ALEX WATERKEYN, JEAN GIRAUDY, JACQUES DAUPHIN, HENRI RENOUARD-LARIVIERE, CLAUDE DOUCE, HENRI LEJEUNE, MARC POULBOT, MAURICE BREBART, DOMINIQUE FERRY, MICHEL HOUSSIN, DANIEL FILIPACCHI, MARIE-DENISE SERVAN-SCHREIBER, NEE BRESARD, and the companies responsible in civil law (Case 314/81),

JEAN CAYARD, ANDRE GAYOT, MARCEL MINCKES, PAUL PICTET, OLIVIER CHEVRILLON, DANIEL FILIPACCHI and the companies responsible in civil law (Case 315/81),

RODOLPHE JOËL, PIERRE DE ROBINET DE PLAS and the companies responsible in civil law (Case 316/81),

JEAN CAYARD, JEAN-CLAUDE DECAUX, JACQUES ZADOK, JACQUES FOBY, RENE MARTAUD, MARCEL MINCKES, ANDRÉ BOUSSEMART, MAURICE BRÉBART and the companies responsible in civil law (Case 83/82),

on the effect within the internal French legal order, and more specifically on Articles L 1, L 18 and L 21 of the French Code on the Retail of Beverages and Measures against Alcoholism, of Article 30 of the EEC Treaty and the judgment of the Court of Justice of 10 July 1980 concerning the advertising of alcoholic beverages,

THE COURT

composed of J. Mertens de Wilmars, President, P. Pescatore and A. O'Keeffe (Presidents of Chambers), G. Bosco, T. Koopmans, O. Due and Y. Galmot, Judges,

Advocate General: S. Rozès
Registrar: J. A. Pompe, Deputy Registrar

gives the following

## JUDGMENT

## Facts and issues

The facts of the case, the course of the proceedings and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community may be summarized as follows:

### I — Facts and written procedure

Article L 1 of the French Code on the Retail of Beverages and Measures against Alcoholism (hereinafter referred to as "the Code") (Decree of 8 February 1955, Order No 59-107 of 7 January 1959) divides beverages into five groups for the purpose of regulating their manufacture, sale and consumption.

*Group 1* comprises "non-alcoholic" beverages (beverages without alcohol): mineral or aerated waters, fruit or vegetable juices unfermented or not containing traces of alcohol in excess of 1° after the commencement of fermentation, flavoured aerated waters, cordials, infusions, milk, coffee, tea, chocolate, and so forth.

The four other groups, which comprise "alcoholic" beverages, are as follows:

*Group 2* (Order No 60-1253 of 29 November 1960): undistilled fermented beverages, namely wine, beer, cider, perry and mead, to which are added natural sweet wines coming under the tax arrangements applying to wine as well as blackcurrant liqueurs and fermented fruit or vegetable juices containing 1 to 3° of alcohol;

*Group 3:* natural sweet wines other than those belonging to Group 2, liqueur wines, wine-based aperitifs and strawberry, raspberry, blackcurrant or cherry liqueurs containing no more than 18° of pure alcohol;

*Group 4* (Law of 27 June 1957): rums, tafias, spirits obtained from the distillation of wines, ciders, perries or fruits not containing any added essence, as well as liqueurs sweetened with sugar, glucose or honey in a minimum amount of 400 grams per litre in the case of aniseed-flavoured liqueurs and 200 grams per litre in the case of other liqueurs which do not contain more than half a gram of essence per litre;

*Group 5:* all other alcoholic beverages.

Chapter II of the Code regulates the advertising of beverages and in particular contains, in Section 2, concerning alcoholic beverages, the following provisions:

Article L 17 (1) (Order No 59-107 of 7 January 1959):

No person shall engage in advertising of any kind of beverages the manufacture and sale of which are prohibited or of beverages comprised in the fifth group.

Article L 17 (2) (Order No 60-1253 of 29 November 1960):

No person shall engage in advertising of any kind of beverages in stadiums, public or private sports grounds, premises containing swimming pools or in halls in which sporting events habitually take place or in any premises occupied by youth clubs or community education groups.

Article L 18 (Order No 60-1253 of 29 November 1960):

Subject to the provisions of the second paragraph of Article L 17 advertising in respect of the beverages comprised in the third group (Order No 59-107 of 7 January 1959) the manufacture and sale of which are not prohibited shall be permitted if it indicates exclusively the name and composition of the product, the name and address of the manufacturer, his agents and stockists.

The type of bottling and labelling may be reproduced only if it bears exclusively the name and the composition of the product, the name and address of the manufacturer, his agents and stockists.

No person shall engage in advertising of any kind in respect of matters other than those set out in the third paragraph of this article.

As regards alcoholic beverages, those rules do not specifically restrict the advertising of beverages comprised in the second and fourth groups. On the other hand advertising is restricted with regard to beverages comprised in the third group and prohibited in the case of beverages comprised in the fifth group.

Article L 21 of the Code (Order No 59-107 of 7 January 1959) provides for the imposition of fines on any importer,

manufacturer, stockist, wholesaler or retailer of beverages who carries out, causes to be carried out or persists in advertising prohibited by Articles L 17 and L 18. The same fines may be imposed on advertising agents, advertisers and producers of advertising material, publishing directors and distribution and production managers who carry out, cause to be carried out or persist in unlawful advertising.

At the beginning of 1977 Henri Lejeune, chairman and managing director of Saint Raphaël SA asked Claude Douce, chairman and managing director of Bélier SA to arrange an advertising campaign for an alcoholic beverage, *Saint Raphaël Bitter.* It was conducted by means of advertisements appearing on hoardings and in the press. The advertisements were placed on hoardings in the second half of 1977 by Alex Waterkeyn, chairman and managing director of the company More O'Ferrall, Jacques Dauphin, chairman and managing director of Dauphin Office Technique d'Affichage SA, Henri Renouard-Larivière, chairman and managing director of Marignan Publicité SA and Jean Giraudy, chairman and managing director of Affichage Giraudy SA. From April to June 1977 advertisements appeared in the weekly magazine *L'Express* directed by Marie-Denise Servan-Schreiber, née Brésard on behalf of Groupe Express SA and in the magazines *Paris Match,* directed by Daniel Filipacchi on behalf of the company Cogedi-Presse, *Femmes d'Aujourd'hui* directed by Maurice Brébart on behalf of Les Éditions du Hennin Sàrl, *La Vie* directed by Michel Houssin on behalf of Les Publications de Vie Catholique SA, *Chez Nous* directed by Marc Poulbot on behalf of Union Interfamiliale d'Édition SA and *Télé Sept Jours* directed by Dominique Ferry on behalf of Télé Sept Jours Sàrl.

That advertising campaign did in fact indirectly concern the *Saint Raphaël* aperitifs, which are beverages classified in Group 3 by Article L 1 of the Code in respect of which advertising is permitted by Article L 18 only on condition that it is restricted to the name and compostion of the product, the name and address of its manufacturer, his agents and stockists. However, the advertising posters and designs focused attention on the brand *Saint Raphaël* and encouraged the consumption of that product.

Jean Cayard, chairman and managing director of the company La Martiniquaise instructed the agency R. H. M. to arrange an advertising campaign in 1974 and 1975 for *Cruz* port. The advertising was conducted by means of advertisements appearing in the magazine *Libre Service Actualité* directed by Paul Pictet on behalf of the company Libre Service Actualité, in the weekly magazine *Le Point* directed by Olivier Chevrillon on behalf of Presse Information SA and in the magazines *Jours de France* directed by Marcel Minckes on behalf of Jours de France SA, *Pariscope* directed by Daniel Filipacchi on behalf of the company Publications Hebdomadaires Parisiennes and in *Le Nouveau Guide Gault et Millau* directed by André Gayot on behalf of the company *Jour Azur.* Port wine, being a natural sweet wine, falls within the third group of alcoholic beverages defined by the Code. However, by arousing interest and desire

through alluring pictures and words the advertising campaign went beyond the limits laid down for that class of beverages.

At the end of 1974 Rodolphe Joël, chairman and managing director of La Compagnie Générale des Produits Dubonnet-Cinzano-Byrrh SA, instructed Pierre de Robinet de Plas, chairman and managing director of De Plas Troost SA, to arrange an advertising campaign for *Cintra* port. The advertising was carried out by the insertion of a two-page spread in the magazines *Paris Match* and *Elle* and thus by arousing particular attention and interest exceeded the publicity permitted by Article L 18 of the Code.

During 1975 Jean Cayard, chairman and managing director of La Martiniquaise SA, instructed the agency R. H. M. to mount an extensive advertising campaign for a drink called *Liqueur d'Écosse Label 5* classified by Article L 1 of the Code on the retail of beverages in the fourth group of beverages in respect of which advertising is unrestricted. The campaign was conducted by means of advertisements posted on billboards by the Régie Publicitaire des Transports Parisiens directed by Jacques Foby, the company J. C. Decaux-Paris Publicité Abribus directed by Jean Claude Decaux and the company Intermag Régie Circuit H directed by Jacques Zadok, by the reproduction of advertisements in reduced form on matchboxes by the company Publistop Promotion directed by René Martaud, and by the insertion of advertisements in the magazines *Femme d'Aujourd'hui* and *Femme Pratique* published by Éditions du Hennin SA directed by Maurice Brébart, *Auto Journal* published by the company Socpress, whose publishing director was André Boussemart, and *Jours de France*, published by Jours de France SA, its responsible officer being Marcel Minckes. The campaign in fact promoted *Whisky Label 5*, an alcoholic beverage falling within Group 5 in respect of which Article L 17 of the Code prohibits all advertising.

The manufacturers and importers of beverages, advertising agents and publishing directors in question together with the companies having responsibility for them in civil law were summoned by the Procureur de la République before the Tribunal de Grande Instance, Paris, for offences against Article L 18 of the Code. In the first three groups of cases the Comité National de Défense contre l'Alcoolisme joined the proceedings as civil party.

Before that court the accused based their defence in particular on the judgment of the Court of Justice of 10 July 1980 in Case 152/78 *Commission* v *French Republic* [1980] ECR 2299. They contended that the proceedings brought against them were groundless for the want of validity, in French internal law, of Articles L 1, L 17, L 18 and L 21 of the Code which according to the judgment of the Court were contrary to the provisions of Article 30 of the EEC Treaty.

In a circular dated 10 October 1980 the Garde des Sceaux, the Minister of Justice, stated that "French criminal courts must be guided" by the Court's judgment of 10 July and that it was therefore necessary to ascertain its scope. Since "the Court of Justice of the

Community . . . condemns the legislation only in so far as it causes discrimination against a product imported from one of the Member States", a distinction had to be drawn between the two situations which might be put to the national court before which proceedings had been brought under Article L 21 of the Code.

If the product considered to have been unlawfully advertised was a product which was not imported from one of the Member States of the EEC, French courts did not have to take account of the judgment. The aim of the judgment was merely to ensure that competing products from different Member States should be treated equally and Community law could not supplant national law in regulating situations governed by national law only.

If the beverage considered to have been unlawfully advertised was a beverage imported from a Member State it was for the criminal court to inquire whether Articles L 17 and L 18 of the Code enacted rules which were less favourable to the product in question than to other products which might be considered to be in competition with that product. It would not be a simple matter to decide whether the beverage in question was actually in competition with another beverage to which less strict rules applied. It would therefore be the duty of the Public Prosecutor to bring a prosecution each time an imported product was advertised in breach of the national legislation and it would be for the court before which the prosecution was brought to inquire whether the various factors existed which would compel it to make the judgment of the Court of Justice prevail over national law, or, after establishing that there was no discrimination against the product concerned, to apply the provisions of Article L 21.

The circular stated that the principles which it set out also applied to prosecutions then in progress.

It also mentioned that even before the Court's decision the French Government had laid a bill before Parliament "taking account of the various criticisms of the legislation on the advertising of alcoholic beverages".

By judgments delivered on 30 January 1981 in the first group of cases, on 12 February 1981 in the second group, on 30 January 1981 in the third group and on 6 January 1982 in the fourth group of cases the 16th Chamber of the Tribunal de Grande Instance, Paris, held that the advertising in question was unlawful. It also noted that according to Article 56 of the French Constitution "national law shall not conflict with Community law". After citing Article 171 of the EEC Treaty, concerning judgments in which the Court of Justice holds that a Member State has failed to fulfil its obligations under the Treaty, it held:

"As a result it does not seem that Community law, although having an authority superior to that of domestic French laws, has necessarily to be directly and immediately applicable within the internal legal order.

In the present case it is therefore necessary to determine whether Community law, as recently laid down by the Court of Justice of the European Communities by its judgment of 10 July

1980, renders directly and immediately inapplicable in French internal law Articles L 1, L 18 and L 21 of the Code on the Retail of Beverages and Measures against Alcoholism.

Under Article 177 of the Treaty of Rome the Court of Justice of the European Communities must in this case be requested to give a preliminary ruling since the question raised involves the interpretation of a measure which it, a Community institution, has adopted within the legislative framework of the Treaty establishing and regulating the European Economic Community."

Consequently the Tribunal de Grande Instance, Paris, decided to reserve judgment on the application of the national provisions in question until the Court of Justice had, pursuant to Article 177 of the EEC Treaty,

given a decision upon the direct and immediate effect, within the French internal legal order, of Community law as established by its judgment of 10 July 1980, having regard also to the provisions of Article 171 of that Treaty.

The first three judgments of the Tribunal de Grande Instance, Paris, were registered at the Court on 18 December 1981 and the fourth judgment on 8 March 1982 under Nos 314/81 to 316/81 and 83/82 respectively.

By order of 10 March 1982 the Court decided to join Cases 314 to 316/81 for the purposes of the procedure and the judgment and later, by an order of 31 March 1982, it decided to join those cases with Case 83/82.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community, written observations were lodged on 18 February 1982 by Jean Giraudy and Affichage Giraudy SA, represented by Louis Sitruk, Advocate at the Cour de Paris, on 26 February by André Gayot and the company Jour Azur, represented by Eric Bernard, Advocate at the Cour de Paris, on 10 March and 14 May by the Commission of the European Communities, represented by its Legal Adviser, René Christian Béraud, on 22 March by Marc Poulbot, Maurice Brébart and Michel Houssin, represented by André Simonard, Advocate at the Cour de Paris, on 26 March by Marie-Denise Servan-Schreiber, née Brésard and Groupe Express SA, represented by Raoul Castelain, Advocate at the Cour de Paris, on 1 April by the Government of the French Republic represented by Guy Legras, Deputy Secretary General of the Comité Interministériel pour les Questions de Coopération Économique Européenne [Interministerial Committee for Matters of European Economic Co-operation], on 2 April by Jacques Dauphin and Dauphin Office Technique d'Affichage SA, represented by Paul-François Ryziger, Advocate at the Conseil d'État and the Cour de Cassation, on 5 April by the Comité National de Défense contre l'Alcoolisme, represented by Perrine Crosnier of the Bar of Seine Saint-Denis, on 30 April by André Boussemart, represented by Albert Bénatar, Advocate at the Cour de Paris, on 26 May by Jean Cayard and La Martiniquaise SA, represented by François Greffe, Advocate at the Cour de Paris, on 28 May by René Martaud and the company A. M. P. represented by Jacques Krief, Advocate at the Cour de Paris, on 3 June by Rodolphe Joël and the company Cusenier, the successor to the company C. D. C., represented by François Deby and Robert Collin, Advocates at the Cour de Paris, on 7 June by Jean-Claude Decaux and J. C.

Decaux-Paris Publicité Abribus SA, represented by Henri Sarfati, Advocate at the Cour de Paris, and on 10 June 1982 by Olivier Chevrillon, represented by Jean-François Josserand, Advocate at the Cour de Paris.

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 inquiry.

## II — Written observations lodged with the Court

The *Comité National de Défense contre l'Alcoolisme* observes that before the effects of Article 171 of the EEC Treaty are considered the area of application of Community law covered by the judgment of the Court of Justice of 10 July 1980 should be assessed. The very way in which that judgment is worded indicates that the French legislation on the advertising of alcoholic beverages was condemned only in so far as it caused discrimination between national products and those imported from Member States of the EEC and recognized as being in competition with the national products. Therefore national law continues to be applicable where the prosecutions concern products imported from non-member countries or national products.

In any event it is for the national court, when considering each case, to decide whether Articles L 17 and L 18 of the Code are less favourable to beverages imported from a Member State than the provisions applied to other products likely to be in competition with them. If the product in question was not imported from a Member State or is not likely to compete with a national product, a question left to the national court to decide, national legal rules are the only ones applicable.

In the main proceedings which gave rise to Cases 315/81 and 316/81 the national provisions must clearly apply as the products in question are both imported from Portugal.

The Tribunal de Grande Instance ought to have dismissed the objection raised by the accused and convicted them as the matters before that court are governed by national law alone. In any event Articles L 17, L 18 and L 21 of the Code cannot be directly and immediately applicable.

As to the meaning of Article 171 of the EEC Treaty, it is not part of the function of courts judging the substance of cases to apply principles of Community law established in decided cases before the national legislation has been amended. National courts are bound by the national legal system of which they form part. Article 171 provides for a transitional period in which the Member State may clarify, by laws or regulations, what effect Community law will have on national law. Before those decisions of the State come into effect national courts can only observe national legal rules. Judgments of the Court of Justice of the European Communities cannot lead to a *de facto* abrogation. It is for the executive and legislature to draw up new national legal rules which are compatible with the principles of Community law.

Moreover, it is in fact expedient that national legislation should remain in force during the transitional stage. It is vital that legislation, which despite its defects is essentialy a means of combating alcoholism and protecting public health, should continue to remain in force.

At any rate, Articles 36 and 171 of the EEC Treaty taken together ought to make it possible to avoid a legal vacuum which would simply undo the efforts made in recent decades to fight alcoholism in France.

*Jean Giraudy* and *Affichage Giraudy SA* take the view that it follows from the judgment of the Court of Justice of 10 July 1980 that the provisions pursuant to which the prosecutions were brought before the national court are contrary to Community law. Community law is an independent body of law. In many circumstances it has direct effect and this is true of Article 30 of the EEC Treaty. Community law prevails over national law, past and future. The Court has held in particular than a national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means. The same applies to provisions of national criminal law. It is necessary to draw the consequences of this situation in regard to the main proceedings particularly as regards the immediate inapplicability of Articles L 17 and L 18 of the Code.

*Jacques Dauphin* and *Dauphin Office Technique d'Affichage SA* take the view that in general terms the question of the applicability of rules of Community law in the internal legal order of Member States and the supremacy of Community rules over national rules has been clearly resolved by the Court in its decisions.

As regards the question of the scope and effects of judgments delivered by the Court pursuant to Article 171 of the EEC Treaty in actions for a declaration that a State has failed to fulfil its obligations, a distinction should be made depending on whether the judgment has to do with a breach of a rule which is directly, or not directly, applicable. In the first case the Court's judgment has a declaratory effect which is binding on everyone, but the basis of the right accorded to individuals to rely on the provision in question before their national courts is the provision's direct applicability and not the judgment establishing the breach of obligations. If the judgment consists of a declaration that a Member State has acted in breach of a rule which is not directly applicable, individuals may not rely upon it. In the present case the Court has declared that the French Republic has infringed Article 30 of the EEC Treaty the direct applicability of which has never been called in issue.

If Articles L 17, L 18 and L 21 of the Code applied to the advertising of certain French beverages and yet, by virtue of the judgment of 10 July 1980, might no longer be applied to the

advertising of certain foreign beverages, there would be "reverse" discrimination against French manufacturers of beverages. However, the Court of Justice has condemned reverse discrimination.

To convict the undertakings which advertised French beverages when they could not have been convicted if they had advertised foreign beverages in the same group would, in the cases in point, be tantamount to introducing discrimination on grounds of nationality contrary to Article 7 of the Treaty and, secondly, and most importantly, a breach of the principle of equality of treatment in the matter of economic rules which is one of the general principles of Community law.

To prohibit, to the detriment of French undertakings producing aperitifs, certain kinds of advertising which may be lawfully carried out in respect of beverages made by foreign undertakings would perhaps remedy an infringement of Article 30 by the French Republic and put an end to a measure having an effect equivalent to a restriction on imports, but it would lead to a breach of the principle of equality in competition on the French market, and therefore within the Community market, and undoubtedly cause discrimination on grounds of nationality.

*Henri Lejeune* cites case-law of the Court according to which every national court must, in a case within its jurisdiction, apply Community law in its entirety and protect rights which that law confers on individuals and must accordingly set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule. The Tribunal de Grande Instance, Paris, must therefore take account of the direct and immediate effect of Community law which was found by the judgment of 10 July 1980 to render Articles L 17 and L 18 of the Code inapplicable.

The primacy of Community law has, moreover, been recognized by the Cour de Paris in a judgment of the Chambre d'Accusation of 12 February 1982 in which it was held that, in so far as Article 171 of the EEC Treaty requires a Member State to comply with judgments in which the Court of Justice declares that it has failed to fulfil its obligations, that article applies to all State institutions, including those responsible for exercising judicial functions, and that if the principle of the primacy of Community law is to be observed it is necessary to declare that Articles L 17, L 18 and L 21 of the Code, which have still not been repealed, have ceased to be applicable ever since the Court of Justice, in its judgment of 10 July 1980, declared them to be contrary to Article 30 of the EEC Treaty.

*Marc Poulbot, Maurice Brébart* and *Michel Houssin* take the view that it follows from Article 164 of the EEC Treaty and Article 56 of the French Constitution that Articles L 17 to L 21 of the Code must yield to the prohibition

laid down by Article 30 of the EEC Treaty, as was held in the judgment of the Court of Justice of 10 July 1980. Moreover, in the field of taxation the French Government, by the Finance Law for 1981, gave proper legal effect to the Court's judgment by radically amending the specific tax rules on alcoholic beverages in order to bring them into line with Community law as defined. *A fortiori* no prosecutions may be validly brought for alleged offences against provisions of national law which are invalid because they have been found to conflict with Community law in a judgment having the definitive and absolute force of *res judicata*.

*Marie-Denise Servan-Schreiber, née Brésard* and *Groupe Express SA* take the view that it is possible to envisage several courses of action where a Member State does not conform with a judgment in which the Court of Justice finds that it has failed to fulfil its obligations.

The Commission or another Member State could initiate fresh proceedings at the end of which the Court would find that there had been a breach of the obligations arising from its first judgment. In that event the nationals of Member States would have no right of action enabling them to enforce compliance with the right which has become part of their legal heritage and which arises from the obligation, which Article 171 of the EEC Treaty imposes on the Member State against which judgment is given, to adopt the necessary measures.

In proceedings in which reliance is placed on provisions which have previously been the subject of an action for a declaration that a Member State has failed to fulfil its obligations, nationals of the Member States may request the competent national court to make a reference to the Court of Justice for a preliminary ruling on the question whether the provisions in question are compatible with certain articles of the Treaty.

Both alternatives would mean that the Court would again be asked to rule upon a question which it has already resolved.

A third solution would be for the Court to hold that judgments given in cases of failure of Member States to fulfil their obligations have direct effect so that the national court would be obliged to set aside the provisions which caused judgment to be given against the Member State in question. In that event the rules of Community law would be strengthened and in particular it would be possible for Article 5 to be fully effective.

The last solution is to be preferred. It is in keeping with the general trend of the case-law of the Court, has the merit of being in accord with its case-law on the protection of fundamental rights, avoids unnecessary delay in proceedings and protects the individual against inconsistencies in the case-law of national courts.

*Jean Cayard* and *La Martiniquaise SA* believe that the answer to the question whether Community law must have direct effect in the internal French legal order in this case must definitely and unarguably be in the affirmative.

By virtue of the principle of the primacy of Community law over national law, French courts must give full effect to the provisions of the Treaty of Rome and therefore set aside provisions of national law which are contrary to it. In the absence of a judgment of the Court of Justice, the French court ought to have inquired whether the argument that the provisions in question of the Code on the retail of beverages are discriminatory and contrary to the EEC Treaty is well founded and, if it had found that to be the case, should have set aside the provisions of national law. In view of the tenor of the judgment of 10 July 1980 the Tribunal de Grande Instance, Paris, ought to have found that the provisions of the Code had been established as discriminatory and contrary to Community law by a judgment having the force of *res judicata*. It was under an obligation to set aside those provisions and find that the prosecutions brought before it had no legal basis.

*André Gayot* and *Jour Azur SA* take the view that by virtue of the Court's judgment of 10 July 1980 the Tribunal de Grande Instance, Paris, has no choice but to find that Articles L 18 and L 21 of the Code cannot be applied in any manner whatever. The primacy of Community law over national law means that a judgment of the Court finding that a Member State has failed to fulfil its obligations does not simply require that State to repeal the rule of national law which is contrary to the Community rule; it also prohibits that rule of national law from being applied, even before it has been expressly repealed by the State in question. The effect of a judgment in which the Court of Justice declares that a Member State has failed to fulfil a Community obligation which it has found to be directly applicable is to prohibit as from the date of the judgment, any application by that State of the rule of national law. Failing or pending its express repeal, the rule of national law is automatically abrogated as a result of the findings of the Court which have the authority of *res judicata*.

According to *Olivier Chevrillon*, it is plain from the decisions of the Court of Justice that the Tribunal de Grande Instance, Paris, must take account of the direct and immediate effect of Community law which, in the judgment of 10 July 1980, was held to render Articles L 17 and L 18 of the Code inapplicable.

The primacy of Community law over internal French law has, moreover, been recognized by the Cour de Paris in a judgment of the Chambre d'Accusation of 12 February 1982 on the occasion of a prosecution based on the same provisions of French law.

*Rodolphe Joël* and the company *Cusenier* point out that the Tribunal de Grande Instance, Paris, has resolved the problem of the scope of the judgment of the Court of Justice of 10 July 1980 with regard to the validity of the provisions in question of the Code by finding that they have been declared to be contrary to Community law and are therefore

inapplicable as from that date. The question submitted to the Court therefore concerns the consequences of the Court's judgment for the national court and, more particularly, the point whether the national court is directly bound by that finding of inapplicability and the question as to when the said provisions become inapplicable.

According to a consistent line of decisions of the Court, consideration of the principle of the precedence of Community law over national law together with the principle of its direct applicability enables a national court to resolve conflict between the legislation of a Member State and a provision of the EEC Treaty in favour of the latter, even when the Court has not given a ruling on the matter. Once it has found that the French legislation on the advertising of alcoholic beverages is incompatible with Article 30 of the Treaty, which is a directly applicable provision, the national court must set that legislation aside of its own motion. That course is even more appropriate when the Court has given a clear and express ruling on such incompatability.

A judgment on a Member State's failure to fulfil its obligations is declaratory in nature inasmuch as it finds that a provision of national law is incompatible with Community law, in which case that provision must be regarded as having lost its legal effect for the very reason that it conflicts with Community law. Such a judgment, however, produces direct effects in the internal order inasmuch as it places direct obligations on the authorities of the Member States and confers rights upon individuals. The obligations upon the Member State in question arise from Article 171 of the Treaty, which concerns the courts of a Member State as well as its legislature. The courts of that Member State may not continue to apply or sanction a statutory provision which has been held to be contrary to the Treaty. A Member State whose courts did not act in conformity with the obligations entailed in complying with a judgment in which that State was found to have failed to fulfil its obligations would be in breach of the commitments undertaken by virtue of Article 5 of the Treaty.

As the counterpart of the obligations placed on the national authorities, a judgment in which a State is found to have failed to fulfil its obligations also produces effects which benefit individuals. The judgment is declaratory of a specific legal situation that is valid *erga omnes*. Any individual affected by the outcome of the judgment is entitled to rely upon it before the national courts which must give direct effect to it.

Moreover, if the Court of Justice finds that a provision of national law is incompatible with Community law that finding means that the judicial authorities are automatically and immediately prohibited from continuing to apply that provision.

The prohibition may not be evaded on the pretext that the provisions in question have not yet been formally repealed by the competent authority.

*Jean-Claude Decaux* and *J. C. Decaux-Paris Publicité Abribus SA* state that the beverage in question in the proceedings which gave rise to Case 83/82 is one imported from a Member State of the Community and that therefore there can be no question of not giving effect to the judgment of the Court of Justice of 10 July 1980 in which it was declared that by subjecting advertising in respect of

alcoholic beverages to discriminatory rules and thereby maintaining obstacles to the freedom of intra-Community trade, the French Republic had failed to fulfil its obligations under Article 30 of the EEC Treaty. The effect of Community law, as laid down by the Court, can only be to render directly and immediately inapplicable in French internal law Articles L 1, L 18 and L 21 of the Code.

The interpretation which the Court is requested to provide of its own decision pursuant to Article 177 of the Treaty can only be that Community law as established by its judgment of 10 July 1980 has direct and immediate effect within the French internal legal order. Article 30 of the Treaty requires all discriminatory measures affecting a beverage imported from one of the Member States to be avoided so that freedom of intra-Community trade is not adversely affected.

It follows from the decision of the Court that Articles L 1, L 17, L 18 and L 21 of the Code may not be applied in this case.

*René Martaud* and the company *A. M. P.* state that they rest their case entirely on the consistent line of decisions of the Court of Justice on this matter.

*André Boussemart* takes the view that the question put to the Court of Justice ought never to have been submitted. It is not necessary for the Court to reconfirm what it has expressly decided in its judgment of 10 July 1980 and the French Constitution makes clear, without the slightest possible ambiguity, that the authority of Community law is superior to that of national laws. What is more, it follows *inter alia* from a judgment of the French Cour de Cassation of 14 January 1980 that there is no point in requesting an interpretation when the question raised is materially the same as that which has already been ruled on by the Court. Finally, on 23 February 1981 the Tribunal de Grande Instance, Evry (Essone) held in a similar case that Articles L 17 and L 21 of the Code must no longer be applied because they are contrary to the EEC Treaty.

There is no reason to request the Court of Justice for a preliminary ruling on the direct or immediate effect, within the French internal legal order, of Community law as established by its judgment of 10 July 1980. It is a matter for French law, pursuant to Article 55 of the French Constitution, to draw the necessary conclusion, namely that the provisions in question of the Code are inapplicable.

In this instance the only possible outcome of the decision to make a reference will be that the Court of Justice will consider the provisions in question to be inapplicable because they are contrary to Community law.

The *Government of the French Republic* stresses that the judgment of the Court of Justice of 10 July 1980 condemns the French legislation on the advertising of alcoholic beverages only in so far as it discriminates against a product imported from one of the Member States. In principle that legislation has become inapplicable before the national courts, and the criminal courts in particular, in so far as it is contrary to Article 30 of the EEC Treaty. Two types of situation

must be distinguished, however. If the advertising at issue was for a beverage imported from one of the Member States of the EEC, the Court's judgment of 10 July 1980 applies in full and has the effect of rendering inapplicable those provisions of the Code which create discrimination. If the advertising was for a beverage which did not originate in one of the Member States, the provisions of the EEC Treaty, in particular Articles 30 and 36, and the case-law of the Court can have no application as their purpose is simply to ensure that competing products from different Member States are treated equally. To that extent a distinction should be made between national products and products imported from non-member countries.

In the absence of a uniform body of Community rules governing the advertising of alcoholic beverages national products continue to be subject to the national law of the Member State in question. Member States retain full power to regulate the advertising of national alcoholic beverages and are also entitled to subject those beverages to more stringent, and therefore discriminatory, rules compared to those governing beverages from the rest of the Community. Such reverse discrimination would not appear to be contrary to the case-law of the Court. Its case-law on internal taxation may be readily applied to the free movement of goods.

Since the advertising in France of national beverages does not affect intra-Community trade it cannot be subject to Article 30 *et seq.* of the EEC Treaty and the case-law on those articles. It may legitimately be subjected to rules more stringent than those applying to beverages from the other Member States of the Community.

Products directly imported from non-member countries are not covered by Article 30 of the EEC Treaty, which applies only to Community products, or *a fortiori* by the Court's judgments in which that provision is applied. In the absence of any harmonization of legislation on the advertising of alcoholic beverages originating in non-member countries, Member States retain the power to enact such legislation.

The *Commission* observes, as regards the formulation of the question submitted to the Court, that the reference made to Article 171 of the EEC Treaty in order to support the assertion that the supremacy of Community law over national law does not necessarily mean that Community law is directly and immediately applicable results from a misunderstanding. If a Member State fails to discharge the obligation to adopt the measures required to comply with a judgment of the Court that failure does not mean that the relevant provision of Community law is not directly applicable by national courts in their internal legal order. The obligation is a general one and applies to the entire body of Community law as interpreted by the Court in the judgment in question, irrespective of whether the provision of Community law which was not complied with has direct effect or not. It is not therefore a matter of determining whether Article 171 has direct effect in national law but a question whether the provisions which gave rise to the

proceedings to establish the failure to fulfil the obligation may have that effect.

However, if in the cases in point the Court were merely to answer the question whether Article 30 has direct effect that answer would not contribute to the effectiveness of preliminary rulings given by the Court. There is some doubt whether the Tribunal de Grande Instance, Paris, has really expressed its views on the question whether the contested national legislation would be inoperative if the Court should answer that Article 30 has direct effect. In any event it is for the national court, and it alone, to decide whether or not it has already settled this point of law. It is a matter of legitimate concern that all courts, whether those already concerned or those which may become so as the result of fresh prosecutions, should be aware of the consequences which the direct effect of Article 30 has upon the contested legislation.

When stating the reasons for its judgment the Court ought at least to consider the consequences of that direct effect on legislation such as that now at issue.

In addition, the Tribunal de Grande Instance should also be given guidance on the question whether the legislation has become inoperative in its entirety on the ground that it is contrary to Community law, or whether it may still apply where intra-Community trade is not affected.

Lastly, the question submitted to the Court should be re-framed as follows:

Does Article 30 of the EEC Treaty, as construed by the Court of Justice in its judgment of 10 July 1980, have direct effect in the internal legal order of the Member States?

If not, how far does legislation on the advertising of alcoholic beverages, such as that enacted in Articles L 1, L 17, L 18 and L 21 of the French Code, continue to be applicable?

(a) On the question whether Article 30 of the EEC Treaty has direct effect in the internal legal order of the Member States, it need only be recalled that this has been confirmed by the Court in several of its judgments. The prohibition of quantitative restrictions and measures having equivalent effect has direct effect in national law so that the national court must give effect to that prohibition and set aside any provisions of national law which are shown to offend against it.

It follows from the judgment of the Court of 10 July 1980 that the provisions of the French legislation on the advertising of alcoholic beverages which are contrary to the prohibition laid down in Article 30 may no longer be relied on as against the persons concerned and that the penal sanctions laid down by that legislation no longer have any legal basis in their case.

(b) On the question of the consequences of the direct effect of Article 30 upon the contested national legislation, it should be recalled that in the Court's judgment of 10 July 1980 the legislation was held to be contrary to the prohibition laid down in Article 30 inasmuch as it subjected the advertising of alcoholic beverages to rules which discriminated against imported products and thereby maintained obstacles to intra-Community trade.

It follows from its judgment that the Court condemns and treats as a measure having an effect equivalent to a quantitative restriction prohibited by Article 30 the actual classification, in Article 1 of the Code, of the various kinds of alcoholic beverages. Furthermore, any imported alcoholic beverage is at a disadvantage compared to a competing national product since many national products are classified in the groups of beverages which may be advertised without any restriction at all. According to the Court's definition of "competing products", imported products, whichever they are, are in fact in competition with those national alcoholic beverages. Therefore the contested legislation may not be applied in respect of any alcoholic beverage imported from other Member States.

The prohibition of the measures having equivalent effect which are referred to in Article 30 does not therefore prevent the contested legislation from remaining in force as far as the prohibitions or restrictions on the advertising of all national products are concerned. In such a case there is what is called "reverse discrimination". The Court's case-law on Article 95 of the EEC Treaty provides ground for believing that Article 30 does not prohibit Member States from treating imported products less strictly than national products.

Such reverse discrimination may not be regarded as a measure having an effect equivalent to a quantitative restriction on exports prohibited by Article 34 of the Treaty. In so far as the contested legislation tends to lessen the value of national products this is likely to happen only on the national market and not on the markets of other Member States. It can only encourage manufacturers and sellers to concentrate their efforts on external markets, thus promoting exports. In any event such legislation is covered by Article 36, the second sentence of which clearly only concerns imported products.

Article 3 (f) of the Treaty does not prevent the contested legislation from being applied to national products. That provision establishes one of the principles on which the Community is founded and merely refers to specific provisions of the Treaty.

Nor is the "discrimination" suffered by national products, and hence by the manufacturers and sellers concerned, contrary to the first paragraph of Article 7 of the Treaty. It is true that many arguments could be advanced to support the applicability of Article 7 in this case: the principle of equal treatment is one of the fundamental principles of the Treaty; Article 7 has direct effect; Articles 48, 37 and the second subparagraph of Article 40 (3) of the Treaty do not limit the concept of discrimination to the nationals of other Member States; in some Member States "fundamental rights" may be invoked against the application of legislation to national products alone. But the general scheme of the Treaty is based on the implementation of rules designed to compel Member States not to "discriminate" against the nationals of the other Member States, and leaves each State to protect its own nationals. In fact, in the final analysis, the alleged "reverse discrimination" more often than not has a purpose which indirectly benefits all the nationals of the Member State concerned. It is implicit in Articles 100 and 102 that reverse discrimination

is not prohibited *per se* by the Treaty. Article 92 gives Member States the right, but does not compel them, to introduce certain kinds of aid when the conditions for this are fulfilled. The prohibition of discrimination laid on the Community legislature must be considered at the Community level in view of the fact that the citizens of each Member State are all citizens of the Community, whereas the obligations of the Member States are at the national level. In short, reverse discrimination should be abolished by harmonization.

The fact, shocking though it may appear, that the contested legislation is applicable only to national products, is not to be attributed to Community law. It is for the Member State in question to enact new legislation which is compatible with the Treaty and terminates the reverse discrimination and, in the meantime, it is free to withdraw the proceedings against its own manufacturers. Moreover, the manufacturers and sellers concerned may rely upon the constitutional principle that the law must not discriminate which is laid down in the Declaration of Human Rights and adopted not only by the French Constitution but also by the European Convention on Human Rights.

Cases 315/81 and 316/81 concern products originating in Portugal. There is, in fact, an Agreement beetween the EEC and Portugal which was concluded and adopted on behalf of the Community by Council Regulation (EEC) No 2844/72 of the Council of 19 December 1972 (Official Journal, English Special Edition 1972 (31 December), p. 166). Articles 14 (2) and 23 of the Agreement are the same as Articles 30 and 36 of the EEC Treaty. In view of the Court's judgment of 9 February 1982 in Case 270/80 *Polydor* v *Harlequin Record Shops* it would appear that the concept of a measure having an effect equivalent to a quantitative restriction, as gradually developed by the Court in its decisions concerning the Community, cannot be transposed to the scheme of the Agreement between the EEC and Portugal. The protection of health may indeed be regarded as an objective concept which does not allow any distinction to be made depending on whether intra-Community trade is involved or not. On the other hand, the concept of a measure having equivalent effect, which, even in the Community, leaves room for many interpretations, must be still more imprecise where non-member countries are concerned so that Article 14 of the Agreement between the EEC and Portugal cannot have direct effect in this respect.

Any difference of opinion should be settled in regular meetings between the contracting parties. It would not be desirable to try to compel the Community alone, by legal action, to comply with the obligation arising from Article 14 of the Agreement when Portugal could continue to insist on its own interpretation.

## III — Oral procedure

At the hearing on 13 October 1982 the oral argument was presented and questions put by the Court were answered by: Mr Crosnier for the Comité National de Défense contre l'Alcoolisme; Mr Krief for René Martaud and the company A. M. P.; Mr Sarfati for Jean-Claude Decaux and the company J. C. Decaux-Paris Publicité Abribus SA; Robert Farré, Advocate at the Cour de Paris, for Claude Douce

and Bélier SA; Mr Castelain, for Marie-Denise Servan-Schreiber, née Brésard, and Groupe Express SA; Mr Collin for Rodolphe Joël and the company Cusenier; Mr Ryziger for Jacques Dauphin and Henri Renouard-Larivière and Dauphin Office Technique d'Affichage SA and Marignan Publicité SA; Noël Museux, Deputy Director for Legal Affairs at the Ministry of External Relations, for the Government of the French Republic; and Mr Béraud for the Commission.

The *Comité National de Défense contre l'Alcoolisme* argued that the national legislation on the advertising of alcoholic beverages should remain in force except with regard to products imported from the EEC and genuinely capable of competing with national products subjected to less stringent rules.

The *accused in the main proceedings and the companies responsible for them in civil law* contended in particular that the Court's judgment of 10 July 1980 was general in its effect and no distinction should be made depending on the origin of the products in question. Such effect had been recognized in France in several judgments of appeal courts. When read together Articles 171 and 5 of the EEC Treaty indicated that national courts must refrain from imposing penal sanctions for offences against a provision of national law which the Court of Justice had held to be contrary to Community law. The prohibition against distorting competition within the Member States and the fundamental principle of equality before the criminal law did not allow national beverages to be treated less favourably than foreign ones. Article 30 of the EEC Treaty was also applicable to products in free circulation from non-member countries. Article 14 of the Agreement between the EEC and Portugal must be given direct effect and must therefore operate to the advantage of products imported from Portugal.

The *Government of the French Republic* stated that the judgment of the Court of 10 July 1980 declared the French legislation on the advertising of alcoholic beverages to be contrary to Article 30 of the EEC Treaty only in so far as it was discriminatory towards products originating in other Member States. It was therefore logical to distinguish between the products in question according to their origin. The French legislation was not affected as far as French products were concerned. According to the decisions of the Court, trade restrictions which were unjustified within the Common Market might be permissible in relations between a Member State and Portugal. French courts must uphold the direct effect, within the internal French legal order, of Article 30 of the Treaty with regard to products imported from another Member State.

The *Commission* again stated that in principle Community law was not in

point if the products advertised were national products or came from non-member countries and that the national legislation might not be invoked against any alcoholic beverage imported from another Member State. The Court's judgment of 10 July 1980 indicated that it was the classifications themselves which constituted a measure having an effect equivalent to a quantitative restriction prohibited by Article 30.

The *Advocate General* delivered her opinion at the sitting on 17 November 1982.

## Decision

1 By two judgments of 30 January 1981 and a judgment dated 12 February 1981 which were received at the Court on 18 December 1981 and a judgment of 6 January 1982 which was received at the Court on 8 March 1982 the Tribunal de Grande Instance [Regional Court], Paris, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 171 of the EEC Treaty in order to obtain guidance on the inferences to be drawn from the judgment of 10 July 1980 (Case 152/78 *Commission* v *French Republic* [1980] ECR 2299) by which the Court declared that "by subjecting advertising in respect of alcoholic beverages to discriminatory rules and thereby maintaining obstacles to the freedom of intra-Community trade, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty".

2 The preliminary question submitted by the national court, which is the same in all four cases, was raised in the course of prosecutions brought against the responsible officers of various undertakings (manufacturers and importers of alcoholic beverages, advertising agents and publishers) for offences against the provisions of the French Code on the REtail of Alcoholic Beverages and Measures against Alcoholism (hereinafter referred to as "the Code") resulting from advertising campaigns to promote various alcoholic beverages, namely an apéritif made in France (Case 314/82, two brands of port imported from Portugal (Cases 315 and 316/81) and a brand of whisky imported from the United Kingdom (Case 83/82).

3 The accused contended before the national court that the judgment of 10 July 1980 declared the provisions of the Code which they were alleged to have infringed to be contrary to Community law and that therefore all proceedings against them ought to be withdrawn.

4 Considering that in this instance it was necessary to determine whether Community law, as laid down by that judgment, renders Articles L 1, L 17, L 18 and L 21 of the Code directly and immediately inapplicable, the national court requested the Court of Justice to explain the effect of its judgment of 10 July 1980 having regard to the provisions of Article 171 of the Treaty.

5 In the proceedings before the Court the accused expanded upon their view that the judgment of 10 July 1980 had "general effect" inasmuch as the Court had condemned in its entirety the French legislation on the advertising of alcoholic beverages as laid down in the Code. They argued that there was therefore no need to distinguish between the products in question on the basis of their origin. In particular, it was not permissible to treat national products differently from products imported from other Member States to the detriment of the former. The accused emphasized that such "general effect" had been recognized in France in judgments given by several courts of first instance and of appeal.

6 That view was contested by the Comité National de Défense contre l'Alcoolisme, civil party in the proceedings before the national court, and by the Commission and the French Government. These submit that the Court found the French legislation to be contrary to Article 30 of the Treaty only in so far as the marketing of alcoholic products originating in other Member States is subject, *de facto* or *de jure,* to more stringent provisions than those applying to competing national products. As regards products imported from Portugal, the Commission and the French Government point out that Article 30 of the EEC Treaty governs intra-Community trade only and that the system applicable to those products comes under the Agreement on free-

trade concluded on 22 July 1972 with that State (Official Journal, English Special Edition 1972 (31 December), p. 167) without prejudice to the effect which that Agreement may have in the matter.

7 In view of the doubts which have thus arisen following the judgment of 10 July 1980 it is necessary to recall the scope of that judgment before answering the question submitted by the national court.

## Scope of the judgment of 10 July 1980

8 The Commission's application which led to the judgment of 10 July 1980 sought a declaration that the French Republic had failed to fulfil its obligations under Article 30 of the EEC Treaty by regulating the advertising of alcoholic beverages in a way discriminatory to products originating in other Member States. The Commission contended that the rules laid down by the Code were structured in such a way that the advertising of certain imported alcoholic products was prohibited or subject to restrictions whilst the advertising to promote national products was entirely unrestricted or less restricted.

9 In its judgment the Court held that the rules on the advertising of alcoholic beverages laid down by the Code are contrary to Article 30 of the EEC Treaty inasmuch as they constitute an indirect restriction on the importation of alcoholic products originating in other Member States to the extent to which the marketing of those products is subject, in law or in fact, to more stringent provisions than those which apply to national or competing products.

10 In this regard the Court emphasized in particular that since they come under the tax arrangements applying to wine French natural sweet wines enjoy unrestricted advertising whilst imported sweet wines and liqueur wines are subjected to a system of restricted advertising. Similarly, whilst distilled spirits typical of national produce, such as rum and spirits obtained from the distillation of wines, cider or fruit, enjoy completely unrestricted advertising,

it is prohibited in regard to similar products which are mainly imported products, notably grain spirits such as whisky and geneva.

11 Contrary to the contention advanced by the accused, the judgment of 10 July 1980 only affects the treatment of products imported from other Member States and the French legislation was declared to be contrary to Article 30 only in so far as it enacts rules which are less favourable to those products than towards national products which may be regarded as being in competition with them.

12 It follows, in the first place, that the breach of obligations found by the Court does not concern the rules applicable to national products and, secondly, that the Court was not called upon to consider the rules applicable to products imported from non-member countries. The only inference which must be drawn from the judgment to which the preliminary question refers is therefore that, as far as advertising is concerned, the French Republic must treat alcoholic products originating in other Member States in the same way as competing national products and consequently it must revise the classification set out in Article L 1 of the Code in so far as that classification has the effect of putting at a disadvantage, in fact or in law, certain products imported from other Member States.

## Effect of the judgment of 10 July 1980

13 Article 171 states that "if the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice".

14 All the institutions of the Member States concerned must, in accordance with that provision, ensure within the fields covered by their respective powers, that judgments of the Court are complied with. If the judgment declares that certain legislative provisions of a Member State are contrary to the Treaty the authorities exercising legislative power are then under the duty to amend the provisions in question so as to make them conform with the requirements

of Community law. For their part the courts of the Member State concerned have an obligation to ensure, when performing their duties, that the Court's judgment is complied with.

15 However, it must be emphasized in this regard that the purpose of judgments delivered under Articles 169 to 171 is primarily to lay down the duties of Member States when they fail to fulfil their obligations. Rights for the benefit of individuals flow from the actual provisions of Community law having direct effect in the Member States' internal legal order, as is the case with Article 30 of the Treaty prohibiting quantitative restrictions and all measures having equivalent effect. Nevertheless, where the Court has found that a Member State has failed to fulfil its obligations under such a provision, it is the duty of the national court, by virtue of the authority attaching to the judgment of the Court, to take account, if need be, of the elements of law established by that judgment in order to determine the scope of the provisions of Community law which it has the task of applying.

16 Therefore the answer to the question submitted must be that if the Court finds in proceedings under Articles 169 to 171 of the EEC Treaty that a Member State's legislation is incompatible with the obligations which it has under the Treaty the courts of that State are bound by virtue of Article 171 to draw the necessary inferences from the judgment of the Court. However, it should be understood that the rights accruing to individuals derive, not from that judgment, but from the actual provisions of Community law having direct effect in the internal legal order.

## Costs

17 The costs incurred by the Government of the French Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are in the nature of a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT

in answer to the question submittd to it by the Tribunal de Grande Instance, Paris, by judgments of 30 January 1981, 12 February 1981, 30 January 1981 and 6 January 1982, hereby rules:

**If the Court finds in proceedings under Articles 169 to 171 of the EEC Treaty that a Member State's legislation is incompatible with the obligations which it has under the Treaty the courts of that State are bound by virtue of Article 171 to draw the necessary inferences from the judgment of the Court. However, it should be understood that the rights accruing to individuals derive not from that judgment, but from the actual provisions of Community law having direct effect in the internal legal order.**

Mertens de Wilmars Pescatore O'Keeffe

Bosco Koopmans Due Galmot

Delivered in open court in Luxembourg on 14 December 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President