consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question, in particular its price system.

3. Regulation No 121/67/EEC of the Council and Regulation (EEC) No 805/68 of the Council, on the common organizations of the markets in pigmeat and in beef and veal, respectively, both viewed in the light of Regulations Nos 2305/71, 1351/73 and 1133/74 as regards pigmeat and Regulations Nos 1652/72, 1192/73 and 667/74 as regards beef and veal, do not prohibit the unilateral fixing by a Member State of a maximum gross profit margin for the retail of pigmeat or beef and veal which is calculated essentially on the basis of the purchase prices charged at previous marketing stages and which varies according to those prices, provided that the purchase prices used in the calculation of the profit margin are increased by the marketing and import costs actually borne by the retailer at the supply stage and at the stage of sale to consumers and that the margin is fixed at a level which does not impede intra-Community trade.

In Joined Cases 95 and 96/79

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de Première Instance [Court of First Instance], Namur, (Criminal Chamber), for a preliminary ruling in the actions pending before that court between

THE PROCUREUR DU ROI [Public Prosecutor]

and

CHARLES KEFER (Case 95/79)

LOUIS DELMELLE (Case 96/79)

on the interpretation of provisions of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) and, as regards Case 95/79 only, of provisions of Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat (Official Journal, English Special Edition 1967, p. 46),

THE COURT

composed of: H. Kutscher, President, A. O'Keeffe and A. Touffait (Presidents of Chambers), J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, G. Bosco, T. Koopmans and O. Due, Judges,

Advocate General: H. Mayras
Registrar: A. Van Houtte

gives the following

## JUDGMENT

## Facts and Issues

I — Facts and written procedure

1. Under the provisions of Article 2 (1) and (2) of the Belgian Law on economic control and prices, resulting from the Law of 30 July 1971 (Moniteur Belge of 31 August 1971) amending the Decree Law of 22 January 1945 (Moniteur Belge of 24 January 1945), the Minister for Economic Affairs may fix maximum prices for products, substances, foodstuffs, goods or animals as well as the limit of the profit to be made by any seller or middleman.

The Belgian Government has exercised that power, in particular as regards the retail of beef and veal and pigmeat. At the date of the facts which form the basis of the main actions, the rules applicable resulted from the Ministerial Order of 27 March 1975 (Moniteur Belge of 29 March 1975), as last amended by the Ministerial Order of 14 July 1976 (Moniteur Belge of 24 July 1976), providing *inter alia* as follows:

*Article 1:*

"The selling prices to the consumer, including value-added tax, for beef and veal charged by retail butchers may not exceed the amounts resulting from the *weighted average purchase price as increased by a maximum gross profit margin* of Bfr 22 and value-added tax calculated in accordance with Article 3".

*Article 2:*

"The selling prices to the consumer, including value-added tax, for pigmeat charged by retail butchers may not exceed the amounts resulting from the *weighted average purchase price as increased by a maximum gross profit*

*margin* of Bfr 22 and value-added tax, calculated in accordance with Article 3".

2. Mr Charles Kefer, the accused in the main action in Case 95/79, and Mr Louis Delmelle, the accused in the main action in Case 96/79, are retail butchers in Andenne and Namur respectively. Criminal proceedings have been brought against them before the Criminal Chamber of the Tribunal de Première Instance, Namur, on the charge that, on 14 October 1976 and 13 April 1977 respectively, they increased the selling prices to the consumer for beef and veal and for pigmeat so as to exceed the maximum gross profit of Bfr 22 per kilogram provided for by the Ministerial Order of 27 March 1975.

The two accused have not contested the facts of the cases and have explained the increase in the selling prices by the fact that the gross profit margin of Bfr 22 per kilogram did not enable them to cover their running expenses and overheads.

Moreover, they claimed that that ministerial order was illegal in relation to Community law and in particular in relation to the provisions of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) and of Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat (Official Journal, English Special Edition 1967, p. 46).

The accused in the main action in Case 96/79 claimed moreover that the judgment given with regard to him on 21 March 1979 could in no way have taken into account the judgment of the Court of Justice of 29 June 1978 in Case 154/77, *Procureur du Roi* v *P. Dechmann* [1978] ECR 1573, in which the Court replied to a question referred to it for a preliminary ruling by the Tribunal de Première Instance, Neufchâteau, which was required to give a ruling on the validity of the Ministerial Order of 27 March 1975 in relation to Community law, and in particular to the above-mentioned Regulation No 127/67/EEC.

The Tribunal de Première Instance, Namur, called upon to give a ruling on the appeal lodged by the two accused against the judgment given by its Fifth Chamber, decided in each case to stay the proceedings and to refer to the Court of Justice under Article 177 of the EEC Treaty a question on the interpretation of the Community regulations in question.

In Case 95/79, the above-mentioned court submitted to the Court of Justice the following question by judgment of 7 May 1979:

"Did the Ministerial Order of 27 March 1975, fixing the selling price to consumers of beef and veal or of pigmeat, contain an infringement of:

1. Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, in particular, Article 5.3.1; Article 6 (1) (a) and (b) and of the regulations fixing the basic price of beef and veal, in particular the regulations as implemented by Regulations:

   — No 1652/72 of 31 July 1972;

   — No 1192/73 of 8 May 1973;

   — No 667/74 of 28 March 1974;

2. Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat, in particular, Article 3.4.1;

Article 5 (1), second indent, and of the regulations fixing the basic price of pigmeat, in particular the regulations as implemented by Regulations:

— No 2305/71 of 29 October 1971;

— No 1351/73 of 15 May 1973;

— No 1133/74 of 29 April 1974?"

In Case 96/79, the same court, finding that, as a result of the judgment of the Court of 29 June 1978 in Case 154/77, the *Dechmann* case, it was necessary to consider that the ministerial order was contrary to Regulation No 121/67/EEC of the Council on the common organization of the market in pigmeat, limited the subject-matter of the reference to the Court to the interpretation of Regulation No 805/68 on the common organization of the market in beef and veal and, by judgment of 30 May 1979, referred to the Court the following question:

"Do the provisions of the Ministerial Order of 27 March 1975 fixing the selling price to the consumer of beef and veal and of pigmeat contain an infringement of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal?"

3. Copies of the orders for reference were received at the Court on 15 June in Case 95/79 and on 19 June 1979 in Case 96/79.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted in the two cases by the Belgian Government, represented by Emile M. Knops, on behalf of P. Legros, acting as Agent, and by the Commission of the European Communities, represented by Hans Peter Hartvig, acting as Agent, assisted by Jacques Delmoly, members of the Legal Service.

After hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, by order of 3 October 1979, to join the two cases for the purposes of the oral procedure and the final judgment and opened the oral procedure without any preparatory inquiry.

## II — Written observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice

The *Belgian Government* first of all examines the structure of the Community regulations on the common organization of the markets in beef and veal and pigmeat respectively. With regard to the latter common organization of the market, which is mentioned solely in Case 95/79 *(Kefer)*, it observes that at the time when the facts took place the market in pigmeat was governed by Regulation (EEC) No 2759/75 of the Council of 29 October 1975 and not by Regulation No 121/67/EEC of the Council of 13 June 1967, as mentioned incorrectly in the question referred to the Court for a preliminary ruling. This is however not of practical importance since Regulation No 2759/75 is only the codified version of the previous regulation, so that the principles valid for one are also valid for the other. It then sets out the Belgian rules following from the Ministerial Order of 27 March 1975, as amended by the Ministerial Order of 14 July 1976. The principal characteristic of the system

set up by those rules is the fixing of a fixed gross profit margin on the basis of a fluctuating purchase price. The retail price of beef and veal and pigmeat is made up of the wholesale price freely negotiated by the retailer and by a gross profit margin added to the wholesale price which alone is limited. This implies that the system can have no influence on the previous marketing and production stages. Since the formation of wholesale prices is completely free, the objectives or the functioning of the common organizations of the markets in those products are in no way jeopardized.

The observations lodged by the Belgian Government in Case 95/79 *(Kefer)* differ from those lodged in Case 96/79 *(Delmelle)* in that they also broach the problems of the interpretation of the regulation on the common organization of the market in pigmeat. In this respect, the Belgian Government states that the Court has already had occasion to give a specific ruling on a similar question by means of the judgment of 29 June 1978 in Case 154/77, the *Dechmann* case, and that it is therefore sufficient to refer the national court to that judgment. As regards the question relating to the common organization of the market in beef and veal (which is common to both cases), the Belgian Government recalls the development of Community case-law on the fixing of prices through the judgment in the *Galli* case (Case 31/74), the *Tasca* case (Case 65/75), the *SADAM* case (Joined Cases 88 to 90/75) and the *Dechmann* case (Case 154/77). In paragraphs 18 to 20 of the decision in the latter judgment, the Court stated that in principle the fixing of a maximum profit margin for retailers to charge when selling to the ultimate consumer is not apt to jeopardize the aims or functioning of a common organization of the market, whilst specifying that such a margin might nevertheless be incompatible with Community law if it did not take sufficient account of the marketing and importing costs or did not ensure that the retailer obtained fair remuneration for his activity. There is nothing to prevent this reasoning being applied to the market in beef and veal. It was in fact applied to that market by the Court in its recent judgment in the *Grosoli* case (Case 223/78).

With this in mind, it is necessary to recall that the Belgian system:

— concerns solely the sale of beef and veal by retailers to the consumer, and not the wholesale trade;

— does not impose any retail price freeze at a specific level independent of the market trend and of the particular features of certain specific situations;

— essentially varies in time and space on the basis of the sources of supply chosen by the retailer and of the price trend on the markets concerned;

— merely fixes a gross profit margin which covers running expenses and selling costs and the retailer's profit and which is adjusted, where necessary, after consultation of the Belgian Commission for Price Control, which includes representatives of the groups concerned.

The gross profit margin of Bfr 22 per kilogram was moreover described as reasonable by the Commission in the statement lodged by the latter in the *Dechmann* case.

It is therefore necessary to conclude that national rules of the type in question cannot be considered to be incompatible with Regulation (EEC) No 805/68 of the Council of 27 June 1968.

The *Commission of the European Communities* observes, first of all, that the only new factors in Joined Cases 95 and 96/79 by comparison with Case 154/77, the *Dechmann* case, are on the one hand, the date of the facts in the main actions (October 1976 and April 1977 respectively in the present cases and a period in 1975 in the *Dechmann* case) and, on the other, in the fact that on this occasion the questions referred to the Court concern not only the common organization of the market in pigmeat but also the common organization in force in the market in beef and veal. In view of the fact that neither the national rules in question nor the common organization of the market in pigmeat have been fundamentally amended between 1975 and 1977, the interpretation given by the Court in the *Dechmann* case remains wholly valid with regard to the market in pigmeat. It only remains therefore to consider whether that interpretation is also applicable to the common organization of the market in beef and veal.

In the opinion of the Commission, the arguments which form the basis of the judgment of the Court in the *Dechmann* case with regard to the common organization of the market in pigmeat are still completely valid as regards the rules relating to the common organization of the market in beef and veal and, in particular, Regulation No 805/68.

The common organization of the market in beef and veal aims, by setting up a single market in that product, to stabilize the markets and to ensure a fair standard of living for the agricultural community concerned. For this purpose, Regulation No 805/68 contains rules on prices, which are however valid only for the production and wholesale stages, as well as rules intended to ensure the abolition of all obstacles to the free movement of the products within the Community.

In order to tell whether a maximum gross profit margin fixed nationally for the retail trade is compatible with the rules of the common organization of the market in beef and veal, it is therefore necessary to consider its effects on the free movement of the products.

The determining factor to take into consideration is, as in the case of pigmeat, to what extent the margin in question is fixed at a level calculated to cover the marketing and importing costs borne by the retailer and to ensure fair remuneration for him. In fact, if that were not the case, the margin would have on the previous marketing stages the effect of a true maximum price and would encourage in particular producers to export instead of supplying the national market or else would have the effect of handicapping the sale of imported products.

It is for the national court to settle *in concreto* the question of compatibility on the basis both of all the facts pointed out at the time of the dispute which comes before it and of the general rule of interpretation set out above.

On the basis of the preceding considerations, the Commission proposes that the question referred to the Court for a preliminary ruling should be answered as follows:

"Regulations Nos 805/68 and 2759/75 must be interpreted as not prohibiting the unilateral fixing by a Member State of a maximum gross profit margin for the retail of beef and veal or pigmeat which is calculated essentially on the basis of the purchase prices charged at the previous marketing stages and which varies according to the trend in those prices, provided that the margin is fixed at a level which does not form an obstacle to intra-Community trade".

III — Oral procedure

The accused in the main action in Case 96/79, represented by J. M. Van Hille, Advocate of the Ghent Bar, the Belgian Government, represented by E. Knops, and the Commission of the European Communities, represented by J. Delmoly, presented oral argument at the hearing on 21 November 1979.

The Advocate General delivered his opinion at the hearing on 13 December 1979.

## Decision

1 By judgments of 7 and 30 May 1979, which were received at the Court on 15 and 19 June 1979 respectively, the Tribunal de Première Instance [Court of First Instance], Namur, (Criminal Chamber), referred to the Court of Justice under Article 177 of the EEC Treaty questions for a preliminary ruling on the interpretation of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (Official Journal, English Special Edition 1968 (I), p. 187) and of Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat (Official Journal, English Special Edition 1967, p. 46).

2 These questions were raised during criminal proceedings brought against two retail butchers in Andenne (Case 95/79) and Namur (Case 96/79) on the charge that on 14 October 1976 and 13 April 1977 respectively they increased the retail prices of beef and veal and pigmeat to an extent contrary to the provisions of the Belgian Ministerial Order of 27 March 1975 (Moniteur Belge of 29 March 1975), Articles 1 and 2 of which provide that the selling prices to the consumer for beef and veal and pigmeat respectively charged by retail butchers may not exceed the amounts resulting from the weighted average purchase price as increased by a maximum gross profit margin of Bfr 22 per kilogram and value-added tax. For this purpose,

Article 2 (4) of the above-mentioned order specifies that the weighted average purchase price is calculated by dividing the total of the invoices by type of purchase, excluding value-added tax, for the previous four weeks by the corresponding number of kilograms, less 2.5 %.

3 The two accused claimed that the above-mentioned provisions are incompatible with the Community regulations which established the common organizations of the markets in pigmeat and in beef and veal and cannot for that reason form the legal basis of the two criminal proceedings brought against them.

4 So as to clarify this problem, the national court referred to the Court of Justice in Case 95/79 the following questions:

"Did the Ministerial Order of 27 March 1975, fixing the selling price to consumers of beef and veal or of pigmeat, contain an infringement of:

1. Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, in particular, Article 5.3.1; Article 6 (1) (a) and (b) and of the regulations fixing the basic price of beef and veal, in particular the regulations as implemented by Regulations:

   — No 1652/72 of 31 July 1972;

   — No 1192/73 of 8 May 1973;

   — No 667/74 of 28 March 1974;

2. Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat, in particular, Article 3.4.1; Article 5 (1), second indent, and of the regulations fixing the basic price of pigmeat, in particular the regulations as implemented by Regulations:

   — No 2305/71 of 29 October 1971;

   — No 1351/73 of 15 May 1973;

   — No 1133/74 of 29 April 1974?"

In Case 96/79, that court referred to the Court of Justice the following question:

"Do the provisions of the Ministerial Order of 27 March 1975 fixing the selling price to the consumer of beef and veal and of pigmeat contain an infringement of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal?"

5 Although, within the framework of proceedings brought under Article 177 of the EEC Treaty, it is not for the Court to give a ruling on the compatibility of rules of internal law with provisions of Community law, the Court is competent to supply the national court with any criteria of interpretation coming within Community law enabling that court to determine whether such rules are compatible with the Community rule evoked. It is therefore appropriate to consider the questions which have been referred to this Court as asking whether and to what extent Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat and Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal allow a power to continue to exist on the part of the Member States to regulate by means of internal rules selling prices to consumers in the above-mentioned sectors. In view of the fact that these questions are related it is appropriate to consider them jointly.

6 In this instance, it follows from Articles 1 and 2 of the Ministerial Order of 27 March 1975 to which the national court refers that the national measures in question relate to price formation at the stage of sale to consumers. On the other hand, it is an established fact that the products whose prices are affected by the above-mentioned measures are governed by the common organization established by Regulation No 121/67/EEC in the market in pigmeat and by Regulation (EEC) No 805/68 in the market in beef and veal.

7 As the Court indicated in its judgment of 29 June 1978 in the *Dechmann* case, Case 154/77 [1978] ECR 1573, as regards Regulation No 121/67/EEC, and in its judgment of 12 July 1979 in the *Grosoli* case, Case 223/78, as regards Regulation (EEC) No 805/68, the common organization of the markets established by those regulations are intended to create in the market in pigmeat and the market in beef and veal respectively a single market for

the Community subject to common administration. In order to bring about these single markets, those regulations established a system of rules and a framework for organization in which a central place is held by the "price system" applicable to the production and wholesale stages. These special features of the common organizations of the markets established by Regulation No 121/67/EEC and Regulation (EEC) No 805/68 are not affected either by the regulations adopted subsequently by the Council and referred to by the national court, which are solely intended to implement the above-mentioned basic regulations by fixing in respect of each period under consideration certain components of their price system or marketing conditions, nor, as regards more particularly Regulation No 121/67/EEC, by Regulation (EEC) No 2759/75 of the Council of 2 October 1975 (Official Journal 1975, L 282, p. 1) which merely presents a codified version of Regulation No 121/67/EEC and of the subsequent amendments thereto.

8 As the Court has moreover stated in its case-law — judgment of 23 January 1975 in the *Galli* case, Case 31/74 [1975] ECR 427; judgments of 29 February 1976 in the *Tasca* case, Case 65/75 [1976] ECR 291 and the *SADAM* case, Joined Cases 88 to 90/75 [1976] ECR 323; judgment of 29 June 1978 in the *Dechmann* case, Case 154/77 [1978] ECR 1573; judgment of 12 July 1979 in the *Grosoli* case, Case 223/78, judgment of 18 October 1979 in the *Buys* case, Case 5/79, and judgment of 11 November 1979 in the *Danis* case, Joined Cases 16 to 20/79 — in sectors covered by a common organization of the market, and *a fortiori* when this organization is based on a common price system, Member States can no longer take action, through national provisions adopted unilaterally, affecting the machinery of price formation as established under the common organization. It held in the same judgments that provisions of a Community agricultural regulation which comprise a price system applicable at the production and wholesale stages leave Member States free — without prejudice to other provisions of the Treaty — to take appropriate measures relating to price formation at the retail and consumption stages, on condition that they do not jeopardize the aims or functioning of the common organization of the market in question, in particular its price system.

9 In principle the fixing of a maximum gross profit margin for retailers to charge when selling to the ultimate consumer is not apt to jeopardize the aims or functioning of such an organization, so long as the profit margin is

calculated essentially on purchase prices as charged at the production and wholesale stages, so as not to affect the functioning of the price system on which the common organization of the market concerned is based.

10 This is not however the case where the purchase prices taken into consideration do not take into account marketing and importation costs which the retailer has in fact borne both at the supply stage and at that of sale to consumers or where the gross profit margin itself is fixed at a level which, taking into account the detailed rules for the calculation of purchase prices, is not capable of ensuring that the retailer obtains fair remuneration for his activity. A gross profit margin which does not fulfil these conditions could in fact freeze maximum retail selling prices, and this would be apt to affect at prior stages of marketing the price mechanism resulting from the common organization of the markets or to affect intra-Community trade by an appreciable reduction in imports.

11 For those reasons it is necessary to reply to all the questions referred to this Court that Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat and Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, both viewed in the light of the other regulations mentioned by the national court, do not prohibit the unilateral fixing by a Member State of a maximum gross profit margin for the retail of pigmeat or beef and veal which is calculated essentially on the basis of the purchase prices charged at previous marketing stages and which varies according to those prices, provided that the purchase prices used in the calculation of the profit margin are increased by the marketing and import costs actually borne by the retailer at the supply stage and at the stage of sale to consumers and that the margin is fixed at a level which does not impede intra-Community trade.

## Costs

12 The costs incurred by the Belgian Government and the Commission of the European Communities which have submitted observations to the Court are not recoverable. As these proceedings are, in so far as the parties to the main

action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions submitted to it by the Tribunal de Première Instance, Namur, by judgment of 7 May 1979 in Case 95/79 and 30 May 1979 in Case 96/79, hereby rules:

**Regulation No 121/67/EEC of the Council of 13 June 1967 on the common organization of the market in pigmeat and Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal, both viewed in the light of the other regulations mentioned by the national court, do not prohibit the unilateral fixing by a Member State of a maximum gross profit margin for the retail of pigmeat or beef and veal which is calculated essentially on the basis of the purchase prices charged at the previous marketing stages and which varies according to those prices, provided that the purchase prices used in the calculation of the profit margin are increased by the marketing and import costs actually borne by the retailer at the supply stage and at the stage of sale to consumers and that the margin is fixed at a level which does not impede intra-Community trade.**

Kutscher O'Keeffe Touffait Mertens de Wilmars Pescatore

Mackenzie Stuart Bosco Koopmans Due

Delivered in open court in Luxembourg on 17 January 1980.

A. Van Houtte
Registrar

H. Kutscher
President