EXERCISES EUROPEAN UNION ECONOMICS
TOPIC 5: SINGLE MARKET

After reading the PRESS RELEASE about the Judgement of the Court of Justice in each Case, answer TRUE OR FALSE to the following statements

a) 16 May 2000. THE ACTION BROUGHT BY BELGIUM AGAINST SPAIN CONCERNING RIOJA WINE IS DISMISSED

> **The Spanish rules violate the Article 3 of the Treaty of Rome (free movement of goods), but they are compatible with Community Law since Rioja wine reputation needs to be protected.**

b) 26 September 2000. SPARE PARTS FOR MOTOR VEHICLES WHICH ARE LAWFULLY PRODUCED AND MARKETED IN MEMBER STATES MUST BE ABLE TO CIRCULATE FREELY WITHIN THE COMMUNITY

> **The French legislation (10 days of detention) does not violate the Article 3 of the Treaty of Rome (free movement of goods) since 10 days of detention is reasonable time for checking during the transit of one good from one place to another.**

c) 7 November 2000. THE COURT REJECTS THE ACTION BROUGHT BY THE GRAND DUCHY OF LUXEMBOURG AND CONFIRMS THE VALIDITY OF THE DIRECTIVE TO FACILITATE PRACTICE OF THE PROFESSION OF LAWYER ON A PERMANENT BASIS IN A MEMBER STATE OTHER THAN THAT IN WHICH THE QUALIFICATION WAS OBTAINED

> **The Luxemburg legislation does violate the Article 3 of the Treaty of Rome (freedom of establishment and provision of services and mutual recognition of diplomas) since lawyers can exercise their job without restrictions in any State Member.**

d) 5 December 2000. THE COURT FINDS THAT FRENCH LEGISLATION ON THE USE OF THE NAME "EMMENTHAL" IS AGAINST COMMUNITY LAW

> **The Frech legislation does violate the Article 3 of the Treaty of Rome (free movement of goods) because it is not possible restrict the entry of imported cheese with the name “Emmenthal” without rind.**

e) 29 November 2001. LEVY OF A MUNICIPAL TAX APPLYING ONLY TO SATELLITE DISHES IS DECLARED CONTRARY TO THE FREEDOM TO PROVIDE SERVICES

The Belgium council does not violate the Article 3 of the Treaty of Rome (free provision of services) because the location of satellite dishes in certain urban areas causes serious environmental damages.

f) 13 May 2003. THE COURT FINDS AGAINST THE SPANISH AND UNITED KINGDOM RULES REGULATING SPECIAL SHARES ("GOLDEN SHARES")

The Spanish and United Kingdom rules violate the Article 3 of Treaty of Rome (free movement of capital between State Members) and they are not justified because they do not respect the principle of proportionality.

g) 22 May 2003. IN THE OPINION OF THE ADVOCATE GENERAL A REFUSAL TO REGISTER A CHILD OF DUAL NATIONALITY WITH THE SURNAME OF BOTH PARENTS FOLLOWING THE SPANISH TRADITION CONSTITUTES DISCRIMINATION ON GROUNDS OF NATIONALITY PROHIBITED BY COMMUNITY LAW.

The Belgium rules put first the public interest above the individual rights without enough justification.

h) 23 September 2003. A NATIONAL OF A NON-EU STATE WHO IS MARRIED TO A EU CITIZEN MAY RESIDE IN THE CITIZEN'S STATE OF ORIGIN WHEN THAT CITIZEN, AFTER MAKING USE OF THEIR RIGHT TO FREEDOM OF MOVEMENT, RETURNS TO THEIR HOME COUNTRY WITH THEIR SPOUSE IN ORDER TO WORK, PROVIDED THAT THE SPOUSE HAS LAWFULLY RESIDED IN ANOTHER MEMBER STATE

The British legislation violates the concept of EU citizenship (freedom of movement within the Community) and the Article 8 of the Convention of Human Rights (right to respect the family life).

Press and Information Division

PRESS RELEASE No 36/2000

16 May 2000

Judgment of the Court of Justice in Case C-388/95

Belgium v Spain

THE ACTION BROUGHT BY BELGIUM AGAINST SPAIN CONCERNING RIOJA WINE IS DISMISSED

Maintenance of the quality and reputation of Rioja wine justifies requiring it to be bottled in the region of production

Spanish rules govern the bottling of wines bearing the designation of origin "Rioja". Belgium considered that those rules which, in particular, require the wine to be bottled in cellars in the region of production in order to qualify for the "controlled designation of origin" (*denominación de origen calificada*) were detrimental to the free movement of goods.

Belgium therefore brought Treaty-infringement proceedings [1] before the Court of Justice against Spain. Denmark, the Netherlands, Finland and the United Kingdom intervened in support of Belgium. Italy, Portugal and the Commission intervened in support of Spain.

Belgium considered that the incompatibility of the Spanish rules had already been established by the Court in its judgment of 9 June 1992 in the *Delhaize* case. In that judgment, the Court of Justice held, in response to a request for a ruling from a Belgian court, that national provisions applicable to wine of designated origin (Rioja wines in that case) which limited the quantity of wine that might be exported in bulk but otherwise permitted sales of wine in bulk *within the region* of production constituted measures having equivalent effect to a quantitative restriction on exports.

Spain contended that its rules conformed with Community law. It considered that the *Delhaize* judgment did not affect it specifically and that other wine-producing Member States had adopted similar provisions. Furthermore, its rules were justified on grounds relating to the protection of designations of origin and the quality of wines.

The Court examined the condition imposed by the Spanish rules to the effect that wine protected by a controlled designation of origin must be bottled only in authorized cellars in the region of production in order to be eligible to be described as "Rioja".

According to the Court, that condition enabled wine transported in bulk *within the region* to retain its eligibility for the controlled designation of origin when it was bottled in authorised cellars. The Court therefore considered that it was a measure giving rise to a difference of treatment between trade within a Member State and its export trade. Consequently, **it constituted an impediment to the free movement of goods.**

The Court went on to consider whether that condition was justified by an objective in the general interest. The Spanish Government drew attention to the specificity of the product and to the need to protect the Rioja controlled designation of origin by safeguarding the wine's particular characteristics, its quality and the guarantee of its origin. The condition as to bottling was, in its view, justified as being conducive to the protection of industrial and commercial property.

The Court observed that Community legislation displayed a general tendency to enhance the quality of products within the framework of the common agricultural policy, by recourse, *inter alia*, to designations of origin. Such designations often enjoyed a high reputation amongst consumers and constituted for producers an essential means of attracting custom.

The Court noted that quality wines were products of great specificity (a fact which, in the case of Rioja wine, was undisputed) and vigilance had to be exercised and efforts made in order for their quality and particular characteristics to be maintained.

By ensuring that wine growers in the region of La Rioja controlled bottling as well, the Spanish rules pursued the aim of better safeguarding the quality of the product and, consequently, the reputation of the designation, for which they now assumed full and collective responsibility.

Against that background, the Spanish rules were, in the Court's view, to be regarded as **compatible with Community law** despite their restrictive effects on trade, provided that they constituted a necessary and proportionate means of upholding the great reputation enjoyed by the Rioja controlled designation of origin.

In order to determine whether that was the case, the Court observed in particular that:

- the bottling of wine constituted an important operation which, if not carried out in accordance with strict requirements, could seriously harm the quality of the product:
- however, the best conditions were more certain to be assured if bottling operations were carried out by undertakings established in the region of those entitled to use the designation and operating under the latter's direct control, since they had specialised experience and, what is more, detailed knowledge of the specific characteristics of the wine in question;

- bulk transport of wine could also seriously impair its quality if it was not carried out under optimum conditions;
- controls undertaken outside the region of production in accordance with the Community rules were not systematic and consequently were less able to guarantee the quality and authenticity of the wine than those carried out in the region (the Spanish rules provided for every consignment to be carefully examined).

The Court inferred from those considerations that the risk to which the quality of the product finally offered to consumers was exposed was greater where it had been carried and bottled outside the region of production than when those operations had taken place within the region.

Accordingly, the Court concluded that the Spanish rules, whose aim was to preserve the great reputation enjoyed by Rioja wine, were justified as a measure protecting the controlled designation of origin which could be used by all the producers concerned and was of decisive importance to them.

Press and Information Division

PRESS RELEASE NO 65/00

26 September 2000

Judgment of the Court of Justice in Case C-23/99

Commission of the European Communities v French Republic

SPARE PARTS FOR MOTOR VEHICLES WHICH ARE LAWFULLY PRODUCED AND MARKETED IN MEMBER STATES MUST BE ABLE TO CIRCULATE FREELY WITHIN THE COMMUNITY

The French Code de la Propriété Intellectuelle (Intellectual Property Code), in so far as it provides for a procedure of detention under customs control at the request of the manufacturers entitled to the protection of their trade mark, is not consistent with Community law

The European Automobile Panel Association lodged a complaint with the Commission about the conduct of the French customs authorities who detain, at the frontier with Spain, spare parts for French makes of motor vehicles which are manufactured in Spain and which are intended, in particular, to be marketed in Italy.

French legislation (the Code de la Propriété Intellectuelle) provides for a procedure for detention by the customs authorities of goods presumed to be counterfeit, on a written application from the proprietor of the protected right. The French Cour de Cassation (Court of Cassation) has thus held on several occasions that spare parts for motor vehicles which are manufactured by a third person and which are merely circulating in French territory infringe the right of the proprietor of a trade mark or design, even if that product was lawfully manufactured in a Member State (for example, Spain) with a view to being lawfully marketed in another Member State (for example, Italy).

The Commission brought an action before the Court of Justice for a declaration that France had failed to comply with Community legislation on the free movement of goods.

The Court has held, firstly, that such a practice does indeed constitute **a restriction on the free movement of goods**: the detention of spare parts for a period of up to 10 days may delay the movement of those goods or even block their movement completely (where confiscation is ordered by the French court to which the matter may have been referred).

The Court has examined whether the restriction on the free movement of goods is justified.

The Court has found that the Community legislation in force does not permit such a procedure. Although the Member States may maintain their existing legal provisions on the

protection of designs, those measures must none the less be compatible with the Treaty and, in particular, the free movement of goods within the Community.

The Treaty permits measures derogating from the principle of free movement where they are justified by the protection of rights which constitute the specific subject-matter of the industrial and commercial property.

The Court has distinguished, however, between the **putting into circulation of a product**, which forms part of that specific subject-matter, and its mere **physical transportation**, which does not. The Court has examined whether the proprietor of a protected design of spare parts has the right to prevent third parties from putting those products in transit without his consent. Since intra-Community transit consists in the transportation of goods from one Member State to another across the territory of one or more Member States, it does not, unlike manufacture, sale and importation, involve any use of the appearance of the protected design. **The mere physical transportation of goods may not, therefore, be treated in the same way as the putting into circulation or the marketing of the goods concerned.**

The Court considers that 10 days of detention is disproportionate in relation to the purpose of investigation of the origin and destination of the spare parts.

Accordingly, the French legislation has been held not to be consistent with Community law.

Press and Information Division

PRESS RELEASE No 81/2000

7 November 2000

Judgment of the Court of Justice in Case C-168/98

GRAND DUCHY of LUXEMBOURG v EUROPEAN PARLIAMENT and COUNCIL of the EUROPEAN UNION

THE COURT REJECTS THE ACTION BROUGHT BY THE GRAND DUCHY OF LUXEMBOURG AND CONFIRMS THE VALIDITY OF THE DIRECTIVE TO FACILITATE PRACTICE OF THE PROFESSION OF LAWYER ON A PERMANENT BASIS IN A MEMBER STATE OTHER THAN THAT IN WHICH THE QUALIFICATION WAS OBTAINED

The Court considers that the directive does not entail discrimination against national lawyers but ensures consumer protection and the proper administration of justice; since it concerns the mutual recognition of professional titles, it was permissible for the directive to be adopted by a qualified majority

A directive of the European Parliament and the Council of the European Union of 16 February 1998, adopted by a qualified majority, provides that any lawyer is to be entitled to pursue his activities on a permanent basis in another Member State, under his home-country professional title. He may, *inter alia*, give advice on the law of his home Member State, on Community law, on international law and on the law of the host Member State.

The exercise of that right is not subject to an adaptation period or aptitude test. Joint practice of the profession of lawyer in the host Member State is also authorised on certain conditions.

The Grand Duchy of Luxembourg has requested the Court of Justice of the European Communities to annul that directive. In its view, that measure introduces a difference in treatment as between national and migrant lawyers and does not guarantee adequate consumer protection or the proper administration of justice.

Furthermore, according to the Grand Duchy, the directive ought to have been adopted, not by a qualified majority, but unanimously, because of the amendments to the conditions governing training and access to the profession that it imposes at national level.

The Court recalls that the fundamental principle of equal treatment requires that comparable situations should not be treated in a different manner. It considers that that principle is not infringed by the directive, since a migrant lawyer practising under his home-country professional title is, objectively, in **a situation different** from that of a

national lawyer. Migrant lawyers are forbidden to carry out certain activities and, with regard to the representation and defence of clients in legal proceedings, are subject to certain obligations.

According to the Court, the directive which the Grand Duchy seeks to have annulled contains rules intended to protect consumers and to ensure the proper administration of justice. Thus, the migrant lawyer's professional title **informs** consumers about his initial training. In addition, the directive provides that migrant lawyers' activities are subject to certain **restrictions** and, moreover, that such lawyers must observe the same rules of professional conduct as those imposed on lawyers practising under the professional title of the host Member State. Finally, like the latter, migrant lawyers must be covered by professional insurance and be subject to disciplinary rules.

The Court therefore considers that, by releasing migrant lawyers from the obligation to prove in advance knowledge of the national law applicable in the host Member State, the directive has not abolished the requirement of knowledge of that law, but merely allowed it to be gradually assimilated through practice.

Furthermore, the Court considers that the directive establishes **a mechanism for the mutual recognition of professional titles supplementing the Community system which is intended to authorise the unrestricted practice of the profession of lawyer under the professional title of the host Member State**, and that it was therefore permissible for it to be adopted by a qualified majority.

Last, the Court finds that the Council and the Parliament have satisfied the obligation to provide reasons imposed in respect of measures of general application.
In those circumstances, the Court rejects the application for annulment.

Press and Information Division

PRESS RELEASE No 86/00

5 December 2000

Judgment of the Court of Justice in Case C-448/98

Criminal proceedings against Jean-Pierre Guimont

THE COURT FINDS THAT FRENCH LEGISLATION ON THE USE OF THE NAME "EMMENTHAL" IS AGAINST COMMUNITY LAW

The lack of rind cannot be regarded as a characteristic justifying a refusal to allow the name "Emmenthal" to be used for cheeses from other Member States where they have been lawfully manufactured and marketed under that name.

Mr Guimont, the technical director of the "Laiterie d'Argis" company, was ordered on 6 January 1998 by the Directorate for Competition, Consumer Affairs and Prevention of Fraud of the Department of Vaucluse to pay 260 fines of FRF 20 each for holding for sale, selling or offering for sale Emmenthal without rind.

French legislation (a 1988 decree) lays down very precise conditions, in particular the presence of rind, for a cheese to be allowed to be called "Emmenthal".

The Tribunal de Police (Local Criminal Court), Belley, before which Mr Guimont made a formal objection to payment of those fines, asked the Court of Justice of the European Communities whether the French legislation was compatible with the free movement of goods.

The Court found, first, that the question did indeed need to be answered, since that legislation was capable of applying to imported products and, in certain cases, of constituting a quantitative restriction on intra-Community trade or a measure having equivalent effect.

The Court therefore went on to analyse whether the legislation in question was necessary in order to satisfy overriding requirements relating, in particular, to fair trading and consumer protection. It also examined whether the rules imposed were proportionate to those objectives and whether they might not be achieved by measures less restrictive of trade.

A Community directive on the labelling and presentation of foodstuffs authorises Member States to adopt such provisions only under those conditions.

It appears, according to international rules in force (*Codex alimentarius* of the United Nations) and the practice of several Member States, that a cheese without rind may be

given the name "Emmenthal" where it is made from ingredients and in accordance with a method of manufacture identical to those used for Emmenthal with rind, save for a difference in treatment at the maturing stage, which it is sufficient to indicate in an appropriate manner for ensuring that consumers are informed.

In those circumstances, the Court considers that Community law precludes the French legislation in question.

The Court adds that the national court hearing the case will have to consider whether national goods must be given the same treatment as that to be given to imported goods.

Press and Information Division

PRESS RELEASE No 61/01

29 November 2001

Judgment of the Court of Justice in Case C-17/00

François De Coster v Collège des bourgmestre et échevins de Watermael

LEVY OF A MUNICIPAL TAX APPLYING ONLY TO SATELLITE DISHES IS DECLARED CONTRARY TO THE FREEDOM TO PROVIDE SERVICES

The tax regulation adopted by a Belgian municipality penalises programmes transmitted from other Member States and that barrier to trade cannot be justified by concern for the protection of the environment as argued by the municipality

A regulation adopted by the municipal council of Watermael-Boisfort provided for an annual municipal tax of BEF 5000 on satellite dishes for the years 1997 to 2001 inclusive, payable by the owner.

The "tax regulation" was abolished with effect from 1 January 1999 after the European Commission had questioned its compliance with Community law.

Mr De Coster disputed the levy of that tax for 1998 before the competent Belgian authority (the Collège juridictionnel de la Région de Bruxelles-Capitale), which asked the Court of Justice for a preliminary ruling on the compatibility of the tax with Community law.

The municipality relied on grounds linked to **the protection of the urban environment**, namely the need to restrict the proliferation of dishes in its area. Mr De Coster complained that the tax was an obstacle to **the free reception of television programmes** from other Member Sates and created disparity between cable broadcasting companies and those that broadcast via satellite.

The Court held that although direct taxation does not fall within the scope of the Community, the Member States must nevertheless exercise their powers in a manner consistent with Community law and especially with the freedom to provide services.

The broadcast and transmission of television signals comes within **the rules relating to the provision of services**. However, the freedom to provide services implies that any national rules which have the effect of impeding further the activities of operators established in another Member State or making the provision of services between Member States more difficult than the provision of services purely within one Member State must be abolished.

The Court found that the introduction of such a tax actually imposes a levy on the reception of television programmes transmitted by satellite which does not apply to the reception of

programmes transmitted by cable. Furthermore, as it appears that unlike the Belgian channels (which enjoy unlimited access to cable), the number of channels televised from other Member States that can be transmitted via cable is limited, the Court stated that the tax in question therefore had the effect of dissuading the residents of that municipality from picking up programmes broadcast by satellite from other Member States. In the same way, satellite operators established in other Member States are at a disadvantage compared to cable distributors operating in Belgium.

As to the need to protect the environment, relied on by the Belgian municipal authorities, the Court stated that it could be achieved by other methods less restrictive of the freedom to provide services, such as requirements concerning the size or position of the dishes.

PRESS RELEASE No 37/03

13 May 2003

Judgments of the Court of Justice in Cases C-463/00 and C-98/01

Commission* v *Spain* and *Commission* v *United Kingdom

THE COURT FINDS AGAINST THE SPANISH AND UNITED KINGDOM RULES REGULATING SPECIAL SHARES ("GOLDEN SHARES")

The arrangements applicable to the undertakings Repsol, Telefónica, Argentaria, Tabacalera, Endesa and BAA are precluded by the principle of free movement of capital

The Commission brought actions against Spain and the United Kingdom for infringement of the principle of free movement of capital.

Spanish Law 5/1995 on "the legal arrangements for disposal of public shareholdings in certain undertakings" governs the conditions on which several Spanish public-sector undertakings were privatised. Law 5/1995 and the Royal Decrees implementing it apply to undertakings such as Repsol (petroleum and energy), Telefónica (telecommunications), Argentaria (banking), Tabacalera (tobacco) and Endesa (electricity). The system of prior administrative approval introduced by the Spanish legislation extends to major decisions relating to the winding-up, demerger, merger or change of corporate object of certain undertakings or to the disposal of certain assets of, or shareholdings in, those undertakings.

The Articles of Association of BAA plc (BAA), a privatised undertaking which owns certain international airports in the United Kingdom, create a special share held by the United Kingdom Government which empowers it to give consent to certain of the company's operations (winding-up, disposal of an airport). BAA's Articles of Association also prevent the acquisition of more than 15% of the voting shares in the company.

The Court of Justice points out, first, that the EC Treaty prohibits all restrictions on the movement of capital between Member States and between Member States and third countries. Investments in the form of participation constitute movements of capital under the Community legislation. The Court thus draws attention to the fact that both **the Spanish and United Kingdom rules entail restrictions** on the movement of capital between Member States.

However, it observes that there is justification for Member States having a degree of influence within undertakings that were initially public and subsequently privatised, where

those undertakings are active in fields involving the provision of services in the public interest or strategic services. **Such restrictions, when they apply without distinction to nationals of the Member State concerned and to other Community nationals, may be justified by overriding requirements of the general interest**. To be justified in that way, the restrictions must accord with the **principle of proportionality**, i.e. they may not go beyond what is necessary in order to attain the objective which they pursue.

As the Court has previously held, a system of prior administrative approval is consonant with the principle of proportionality if:

-it is based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned; and

-all persons affected by a restrictive measure of that type have a legal remedy available to them.

The Spanish rules

The Court does not accept that, in the case of **Tabacalera** (tobacco) and **Argentaria** (commercial banking group operating in the traditional banking sector), the legislation may be justified by general-interest reasons linked to strategic requirements and the need to ensure continuity in public services. Those undertakings **are not undertakings whose objective is to provide public services**.

As regards **Repsol (petroleum)**, **Endesa (electricity)** and **Telefónica (telecommunications)**, the Court acknowledges that obstacles to the free movement of capital may be **justified** by a public-security reason. The Court endorses the objective of **safeguarding supplies of such products or the provision of such services** in the event of a crisis where there is a genuine and sufficiently serious threat to a fundamental interest of society.

However, there has been a **failure to observe the principle of proportionality** because:

- -the administration has a very broad discretion, exercise of which is not subject to any condition;
- -investors are not apprised of the specific, objective circumstances in which prior approval will be granted or withheld;
- -the system incorporates a requirement of prior approval;
- -the operations contemplated are decisions fundamental to the life of an undertaking; and
- -although it appears possible to bring legal proceedings, the Spanish legislation does not provide the national courts with sufficiently precise criteria to review the way in which the administrative authority exercises its discretion.

Likewise, the Court points out that the fact that the regime was to last for a limited period of time (10 years) does not mean that it ceases to constitute an infringement.

The United Kingdom rules

The **United Kingdom Government** argued that its case does **not** entail a **restriction** on the free movement of capital, since **access to the market is not affected** and **BAA's Articles of Association are governed by private company law** and not by public law. It thus specifically stated that it did not wish to rely on any overriding requirements of the general interest to justify its rules. **The Court rejects the United Kingdom Government's arguments** and does not examine the issue of justification.

In those circumstances, **the Court declares that the Spanish and United Kingdom rules are contrary to the free movement of capital**.

Press and Information Division

PRESS RELEASE No 43/03

22 May 2003

Opinion of Advocate General Francis Jacobs in Case C-148/02

Carlos Garcia Avello v Belgium

IN THE OPINION OF THE ADVOCATE GENERAL A REFUSAL TO REGISTER A CHILD OF DUAL NATIONALITY WITH THE SURNAME OF BOTH PARENTS FOLLOWING THE SPANISH TRADITION CONSTITUTES DISCRIMINATION ON GROUNDS OF NATIONALITY PROHIBITED BY COMMUNITY LAW.

He considers that such a refusal cannot be justified by reference to an overriding public interest that each person in the same State derives their surname in the same manner.

Carlos Garcia Avello, a Spanish national, and his Belgian wife, Isabelle Weber, reside in Belgium and have two children. The children have dual nationality. Belgian law requires children to take the surname of their father. On their birth certificates, therefore, the children were registered with the name Garcia Avello. Spanish custom is for children to take the first surname of each of their parents placing their father's first and their mother's second. In line with this custom the parents requested the Belgian authorities to change the surname of their children from Garcia Avello to Garcia Weber. They argued that the current name of the children could lead Spanish people to believe that the children are in fact his siblings and there is no connection with the mother of the children. Moreover, practical difficulties could arise from the children effectively having differing surnames in Belgium and in Spain.

This application was refused as contrary to Belgian practice. Mr Garcia Avello challenged that refusal before the Belgian Conseil d'Etat; that court subsequently referred a question to the Court of Justice of the EC as to whether the refusal was contrary to Community law, in particular the principles relating to citizenship of the European Union and the freedom of movement for citizens.

Advocate General Jacobs delivers his Opinion in this case today.

The view of the Advocate General is not binding on the Court of Justice. The task of an Advocate General is to propose to the Court, in complete independence, a legal solution to a case.

Firstly, the Advocate General notes that every Member State has its own rules relating to the transmission of surnames from one generation to the next.

Advocate General Jacobs considers that **the situation falls within the scope of Community law**. Whilst it is true that Community law on citizenship and freedom of movement does not apply to cases between a State and its own nationals, the Advocate General believes that the case, concerns not only the children, who are Belgian nationals, but also Mr Garcia Avello, a Spanish national who has exercised his Community right to move to and work in another Member State. The refusal concerns Mr Garcia Avello, as the person who instituted legal proceedings, and the issue, being the transmission of surnames from one generation to the next, is of importance to both generations. Moreover the Advocate General notes that, whilst the children are Belgian nationals, they also have Spanish nationality, a fact which is inseparable from their father's exercise of his right to free movement.

Advocate General Jacobs considers that following the introduction of Community citizenship, **discrimination on grounds of nationality is clearly prohibited in all situations where Community law is applicable** and that there is no need to establish a specific interference with a specific economic freedom. The Advocate General notes that it must then be established whether the refusal by the Belgian authorities discriminates on grounds of nationality and whether this discrimination can be justified.

The Advocate General states that **the refusal amounts to discrimination on grounds of nationality**, prohibited by Community law, as it treats **objectively different situations in the same way**. In the opinion of Advocate General Jacobs, as a change of surname is allowed under Belgian law when serious grounds are given for the application, a systematic refusal to grant a change when the grounds given are linked to or inseparable from the possession of another nationality, must be regarded as discriminating on grounds of nationality. This practice accords the same treatment both to those who, as a result of possessing a nationality other than Belgian, bear a surname or who have a parent whose surname was not formed in accordance with Belgian rules and to those who possess only Belgian nationality and bear a surname formed according to those rules, despite the fact that their situations are objectively different.

Advocate General Jacobs considers that **this discrimination cannot be justified** as there is no overriding public interest that one particular pattern of surname transmission should always prevail for the citizens of a Member State within its territory. He notes that whilst the aim of preventing confusion over identity by limiting the right to change surnames is a legitimate one, the dangers should not be exaggerated and that official registration of a change of name will reduce the chance of confusion. Finally Advocate General Jacobs states that the concept of free movement is not based on the notion of a single move to one Member State followed by integration into that State, but rather on the possibility to move repeatedly, or even continually within the Union. As such it cannot be argued that the principle of non-discrimination seeks to ensure the integration of migrant citizens in their host State.

Press and Information Division

PRESS RELEASE No 76/03

23 September 2003

Judgment of the Court of Justice in Case C-109/01

Secretary of State for the Home Department / Hacene Akrich

A NATIONAL OF A NON-EU STATE WHO IS MARRIED TO A EU CITIZEN MAY RESIDE IN THE CITIZEN'S STATE OF ORIGIN WHEN THAT CITIZEN, AFTER MAKING USE OF THEIR RIGHT TO FREEDOM OF MOVEMENT, RETURNS TO THEIR HOME COUNTRY WITH THEIR SPOUSE IN ORDER TO WORK, PROVIDED THAT THE SPOUSE HAS LAWFULLY RESIDED IN ANOTHER MEMBER STATE

The motives which prompt a couple to move to another Member State are irrelevant, even if their purpose in doing so is – with a view to returning to the first Member State where the spouse did not have the right to remain at the time when the couple settled in another Member State – to establish a right to remain under Community law

Since 1989, Hacene Akrich, a Moroccan citizen, has attempted on a number of occasions to enter and reside in the United Kingdom. His applications for leave to remain have always been refused. In 1992, less than a month after having been deported for the second time, Mr Akrich illegally returned to the United Kingdom. In 1996, whilst residing there unlawfully, he married a British citizen and applied for leave to remain in his capacity as her spouse. In August 1997, he was deported to Dublin, where his spouse had been established since June 1997 and worked from August 1997 until June 1998. She was offered a post in the United Kingdom commencing in August 1998.

At the beginning of 1998, Mr Akrich applied to the United Kingdom authorities for leave to enter as the spouse of a person settled in the United Kingdom. He relied on the judgment of the Court of Justice of the EC in *Singh.* The Court held in that case that a national of a Member State who has worked as an employed person within the meaning of Community law in another Member State may, when he returns to his own country, be accompanied by his spouse, of whatever nationality. Under Community legislation, the spouse has the right to enter and to remain which he may invoke directly against the Member State of which the worker is a national.

Upon making their application, Mr and Mrs Akrich were questioned by the United Kingdom Embassy in Dublin. It emerged that they intended to return to the United Kingdom "because [they] had heard about EU rights, staying six months and then going back to the UK".

The application was refused by the Secretary of State for the Home Department. The Secretary of State considered that the move to Ireland was no more than a temporary

absence deliberately designed to manufacture a right of residence for Mr Akrich and to evade the provisions of the United Kingdom legislation. Mr Akrich appealed against this refusal.

The case eventually came before the Immigration Appeal Tribunal, which requested the Court of Justice of the EC whether, in such circumstances, the Member State of origin may refuse the spouse who is a national of a non-member country the right to enter and may take into account the fact that the couple's motive was to claim the benefit of Community rights on returning to the Member State of origin.

The Court refers to its judgment in *Singh*, where it held that under Community law a Member State is obliged to grant leave to enter and remain on its territory to the spouse of a national of that State who has gone, with his or her spouse, to another Member State in order to work there as an employed person and who returns to settle in the territory of the State of which he or she is a national. None the less, the Court observes that Community law, specifically Regulation 1612/68 on freedom of movement for workers, refers only to freedom of movement within the Community and is silent as to the rights of **a national of a non-member country, who is the spouse of a citizen of the Union**, in regard to **access to the territory of the Community**.

In order to benefit from the right to install himself with the citizen of the Union, **this spouse must**, according to the Court, **be lawfully resident in a Member State** when he moves to another Member State to which the citizen of the Union migrates.

The Court observes that the same applies where the citizen of the Union married to a national of another Member State returns to the Member State of which he is a national in order to work there as an employed person.

As regards the question of **abuse**, the Court states that the **motives** of the citizen intending to seek work in a Member State **are irrelevant** in assessing the legal situation of the couple at the time of their return to the Member State of origin. Such conduct cannot constitute an abuse even if the spouse did not have a right to remain in the Member State of origin at the time when the couple installed themselves in another Member State. The Court considers that **there would be an abuse** if the Community rights had been invoked in the context of **marriages of convenience** entered into in order to circumvent the national immigration provisions.

The Court then states on the basis of these considerations that where a marriage is genuine and where a national of a Member State married to a national of a non-member country returns to his State of origin, where the spouse does not enjoy Community rights, not having resided lawfully on the territory of another Member State, the authorities of the State of origin must none the less take account of the **right to respect for family life** under Article 8 of the Convention on Human Rights.