

Colophon

Editor: Mr P.Q. van der Burg
Head, Communications and External Relations Division
Email: pq.vd.burg@raadvanstate.nl
Council of State
Postbus 20019
2500 EA Den Haag

Secretariat: Ms Joyce Leeuwerke
Secretary
Email: j.leeuwerke@raadvanstate.nl
Council of State
Postbus 20019
2500 EA Den Haag

The Newsletter will appear every two months.

Contact persons

Country		Email address
Austria	Ms Annemarie Sellner	annemarie.sellner@vwgh.at
Belgium	Mr Paul Lewalle	paul.lewalle@raadvst-consetat.be
Germany	Mr Michael Groepper	groepper@bverwg.bund.de
Spain	Mr Manuel Campos Sanchez Bordona	m.campos@ts.mju.es
Finland	Ms Hannele Klemettinen	hannele.klemettinen@om.fi
Great Britain	Sir Konrad Schiemann	kschiemann@lix.compulink.co.uk
Greece	Ms Evi Skoura	evi.skoura.ste@internet.gr
Ireland	Mr John Murray	ElishaD'Arcy@Courts.ie
Sweden	M. Mats Melin	Hans.Ragnemalm@reg.dom.se
France	Mr Laurent Olléon	laurent.olleon@conseil-etat.fr
Portugal	Mr Rosendo Dias José	correio@lisboa.st.mj.pt
Luxembourg	Mr Marc Besch	conseil@ce.etat.lu
	Mr Georges Kill	Administrative court
Denmark	Mr Torben Melchior	Supreme court
Italy	Mr Giuseppe Barbagallo	Council of State
The Netherlands	Mr Molle Eisma	m.eisma@raadvanstate.nl

1. From the presidents desk	5
2. Information from the Association	7
2.a Activities of the Association	
• Meeting of the board of the Association with mr Antonio Vitorino, Commissioner for Justice and internal affairs of the European commission	
• Meeting of the board of the Association on the 22nd of November 2002	
• Meeting of the departments of research and documentation of the Association	
2.b Minutes of the General Assembly of the Association held in Helsinki, the 21st of May 2002	
2.c. Information from the Association to the members	
• Copy of the letter sent on the 1st of October 2002 by the President of the Association to the members about contacts with new members	
3. Information from the members	12
• New address of the Bundesverwaltungsgericht in Germany	
• Correction of address of the Court of Justice of the European Communities	
• Name of the new President of the Supreme Court of Denmark	
4. Advisory opinions regarding Community Law	13
The Netherlands	
• Advisory opinion of the Council of State of the Netherlands of 16 August 2002	
Transposition of Directive 2000/43/EC (Non-discrimination) and 2000/78/EC (Framework Directive) into Dutch legislation.	
• Advisory opinion of the Council of State of the Netherlands of 27 May 2002	
Implementation of Directive 2001/44/EC of the Council of the European Union of 15 June 2001 amending Council Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ EC L 175).	
• Advisory opinion of the Council of State of the Netherlands of the 30th of August 2002	
Advisory opinion of the Council of State on a draft decree, with explanatory memorandum, to amend the Vehicle Regulations, introducing an obligation to fit devices to improve the field of vision of commercial vehicles	

5. Jurisprudence

5.a Austria

Decisions of the Verwaltungsgerichtshof of Austria

- **Decision of the Verwaltungsgerichtshof of 20 February 2002, no. 2002/08/0077,** regarding treaty CE art. 234; treaty CE 48 regulation number 1408/71, Arts. 6 and 7)
- **Decision of the Verwaltungsgerichtshof of 22 January 2002, no. 2001/10/0083,** regarding directive 65/65/CEE from the Council of the 26th of January 1965 and Directive 87/21/CEE of 22nd of December 1986
- **Decision of the Verwaltungsgerichtshof of 24 January 2002, no. 2001/16/0357,** regarding directive 69/335/CEE of the 17th July 1969
- **Decision of the Verwaltungsgerichtshof of 23 January 2002, no. 2001/04/0041,** regarding 89/665/CEE of the 21st of December 1989
- **Decision of the Verwaltungsgerichtshof of 28 February 2002, no. 2000/16/0317,** regarding regulation (CEE) number 2913/92 of the 12th of October 1992
- **Decision of the Verwaltungsgerichtshof of 26 June 2002, no. 98/21/0299,** regarding article 6 of Decision no. 1/80 of the EEC-Turkey Council of Association
- **Decision of the Verwaltungsgerichtshof of 27 June 2002, no. 99/10/0209,** regarding EEC Council Directive 92/28 of 31 March 1992
- **Decision of the Verwaltungsgerichtshof of 27 June 2002, no. 99/10/0159,** regarding EEC Council Directive no. 79/409/EEC of 2 April 1979

5.b The Netherlands

- Decision of the Administrative Jurisdiction Division of the Council of State of 13 March 2002. Judgment given after receipt of the answers to the questions referred to the ECJ for preliminary ruling.
- Decision from the President of Administrative Jurisdiction Division of the Council of State of the 19th of July 2002.

5.c Sweden

Decisions of the Regeringsrätten

- **Decision of the Regeringsrätten, of 5 april 2000, case no 7909 - 1998**
Interpretation of article 73 of Regulation 1408/71 (family benefits), regarding art. EC Treaty 48 and 51 (now 39 and 42)
- **Decision of the Regeringsrätten of 25 June 2001, case no 4174-2000**
Interpretation of the concept of filing system in the Directive on the protection of personal data, regarding EC Council Directives 65/66 and 87/21
- **Decision of the Regeringsrätten of 5 juli 2001, case no 7888-1998**
The serving of breakfast in hotels is a distinct supply of services for VAT purposes regarding Council Directive 69/335/EC
- **Decision of the Regeringsrätten of 5 november 2001, case no 1975-2001**
Interpretation of Article 13 A of the Sixth VAT Directive - a reference for a preliminary ruling not called for regarding Council Directive 89/665/EC
- **Decision of the Regeringsrätten of 13 November 2001, Case no 7461-1999**
Equal treatment with regard to nationality within the EEA-area, regarding Council Regulation (EEC) 2913/92

- 1 The contents of the letter are included in part 2 of this newsletter.
- 2 The Dutch terms onderscheid ('distinction'; used in the Dutch legislation) and discriminatie ('discrimination'; used in the Dutch version of the Directives) are left untranslated here since many of the points made by the Council of State hinge on the choice of term [transl.].
- 3 Section 3, subsection 1 (e) and (f). The prohibition of discrimination in health care is implemented in the existing section 7, subsection 1, of the Equal Treatment Act.
- 4 Section 5, subsection 2 (a), (b) and (c), and section 7, subsection (2).
- 5 Parliamentary Papers House of Representatives 2001/02, 28 187, no. 1, p. 14.
- 6 Article 2 (3) in both Directives.
- 7 Parliamentary Papers House of Representatives 2001/02, 28 169, nos.1-2, as amended in section II B, of the present Bill; Parliamentary Papers House of Representatives 2001/02, 28 170, nos.1-2.
- 8 Parliamentary Papers House of Representatives 2001/02, 28 006, no. 11, p. 5.
- 9 Parliamentary Papers House of Representatives 1998/99, 26 727, A, point 61.
- 10 In this connection, see also the judgment of the Court of Justice of the European Communities in case C-382/92. Mund & Fester. Case Law 1994, p. 1-467 and in the case of the Commission v. Italy, judgment of 19 March 2002 (not yet published).
- 11 See inter alia the Government Gazette of 2 February 2000, no. 23, p. 17, explanatory memorandum to the Commercial Vehicle (Systems for Improvement of the Field of Vision) Subsidy Scheme.
- 12 Directive 71/127/EEC of the Council of the European Communities of 1 March 1971 on the approximation of the laws of the Member States relating to the rear-view mirrors of motor vehicles (OJ EC L 68), as last amended by Directive 88/321/EEC of the Commission of 16 May 1988 (OJ EC L 147).
- 13 laying down rules regarding the determination of the date on which an imported vehicle was first authorised for use on the public highway or the registration certificate of a vehicle is determined (Government Gazette 1994, 241).

1. From the president's desk

Enlargement and reform of the Union and the Association

Ireland's "yes" to the Treaty of Nice has opened the way to an enlargement of the European Union that some have called historic: ten new member states, including a few that belonged to what we so recently called the Eastern Bloc. This round of enlargement is truly unprecedented and will forever close the gap that has divided Europe since the end of the Second World War. Churchill's iron curtain will be consigned to the history books.

Is the Union ready to take up this historic challenge? Not only to forge a new whole but also to bring it within a single democratic legal order? That will require a second historic step: reform of the European Union's structures. This is one of the projects now under way at the Convention. The touchstones are respect for human rights, legal certainty and equality before the law, democratic legitimacy and political accountability, effectiveness and efficiency.

These two threads, enlargement and reform, are joined and interwoven; we cannot have one without the other. For the Union as a whole as well as its present and future members, they are the greatest challenges we currently face.

Enlargement and reform also have a place in the work of our Association.

Our Statutes allow Councils of State, supreme independent advisory bodies on legislative matters and supreme administrative jurisdictions to become members as soon as their countries accede to the European Union if they wish. In Helsinki we had the chance to meet many of our future members and they expressed their interest in membership. As advisory bodies on legislative matters and as administrative tribunals, we have built up a vast and rich storehouse of experience on both the transposition of Community legislation into national law and the application of Community law within the national legal systems. It is therefore of the utmost importance that the new member states, which have not yet experienced Community law in practice, have the opportunity to benefit from our expertise. It will be good for the Union and good for the common European legal order. Our association must find the ways and means of making this happen.

In preparation for the Board's deliberations on our future policy, I sent a letter to the membership on 1 October 2002, requesting information on any relations developed to date with East and Central European countries in particular and their experience of such cooperation.¹

A number of responses have already come in.

They demonstrate how very involved many of our members are in this process and the kind of activities they have undertaken. The respondents also show a desire to be involved in our Association's future activities in this area. We will discuss the responses at the next Board meeting, on 22 November 2002, and discuss what approach we should take.

The topic chosen for the 2004 Colloquium in The Hague is intimately related to the reform of the EU: "The quality of Community law and its implementation and application in the national legal order". The intention is not to perform a static or dry scholarly assessment of the quality of Community legislation, but to focus on the ideas and proposals being developed in the Convention and perhaps, within that context, to come up with ideas for bringing about a more effective and unified system for the creation, implementation and application of Community law. After all, the quality of legislation can rightly be called the Archimedean point of a democratic legal order.

The preparations for the colloquium will be a growth process differing in many ways from what we have previously experienced. We can look forward to interaction between the general rapporteur, Ernst Hirsch Ballin of the Council of State of the Netherlands, and the national rapporteurs.

The Board's aim is renewal, not only of the Union, but also of the ties between the members of our Association. We need to make the leap from a loosely structured forum where the presidents of various organisations meet once every two years to a true Association characterised by regular contact and exchange of ideas, and by cooperation on all levels.

Another example of cooperation is the symposium for representatives of our member organisations' research units, to be held on 14 and 15 November in Trier. It will be chaired by Laurent Olléon, Maître des Requêtes et

¹ The contents of the letter are included in part 2 of this newsletter.

Responsable du Centre de Documentation of the French Conseil d'État. This newsletter too is a way of regularly informing all the members not just about the Board's activities, but also (and in particular) about the developments within member organisations, with an emphasis on their advisory tasks and case law in relation to Community law.

Just as the enlargement and reform of the Union will require the participation of every member state, the enlargement and reform of this Association will be impossible unless every one of you joins in.

Can I count on you?

Herman Tjeenk Willink



2. Information from the Association

2.a. Activities of the Association

- **Talks with JHA Commissioner Antonio Vitorino**

The Association's entire Board will be received on 21 November 2002 by Antonio Vitorino, European Commissioner for Justice and Home Affairs. The general rapporteur of the 2004 Colloquium, Ernst Hirsch Ballin, a member of the Dutch Council of State, will also attend. The Board will give a presentation on the Association's aims and the progress of its various activities. It will also discuss the results of the Colloquium 2002 and the preparations for the 2004 Colloquium.

- **Board meeting**

On 22 November 2002, there will be a Board meeting in The Hague to approve the budget and programme for the coming year and to discuss the progress of the Association's activities.

- **Symposium for research units**

On 14 and 15 November 2002, a symposium will be held in Trier for delegates of the research and documentation units of the Councils of State and the supreme administrative jurisdictions of the EU. In the chair will be Laurent Olléon, Maître des Requêtes et Responsable du Centre de Documentation of the French Conseil d'État. On the first day of the symposium, the delegates will mainly be presenting their organisations and units. The second day is reserved for discussions on the scope for exchanges of information and cooperation between units.

2.b. Minutes of the General Assembly of the Association held in Helsinki, the 21st of May 2002

Present:

- *Courts of Justice of the European Communities of Germany*

Mr E. Hien, Vice-President
Mr M. Groepper, Judge
Mr S. Paetow, Judge

- Administrative Court of Austria:

Mr C. Jabloner, President
Mr M. Köhler, Judge
Mr G. Mizner, Judge

- *Royal Courts of Justice of Great Britain:*
Lord H. Woolf, Chief Justice
Lord K. Schiemann
Lord Eassie

- *Supreme Court of Denmark:*
Mrs M.-L. Andreassen, Judge
Mr T. Melchior, Judge

- *Supreme Administrative Court of Finland:*
Mr P. Hallberg, President
Mr P. Vihervuori, Justice
Mr A. Rihto, Justice
Mr H. Kanninen, Justice

- *Supreme Court of Ireland:*
Mr. R. Keane, Chief Justice

- *Council of State of Luxembourg:*
Mr M. Sauber, President

- *the Administrative Court of Luxembourg:*
Mr G. Kill, President
Mr J.M. Goerens, First Councillor

- *Supreme Administrative Court of Portugal:*
Mr M. Santos Serra, President
Mr F. Azevedo Moreira, Vice-President
Mr J. Baeta Queiróz, Judge

- *Secretary general*
Mr Y. Kreins, Secretary general assisted by
Mr T. De Waele and Mr Ph. Vermeulen.

- *Court of Justice of the European Communities:*
Mr J.-P. Puissechet, President of chamber
Mr A. Rosas, Judge

- *Council of State of Belgium:*
Mr W. Deroover, First President
Mr R. Andersen, President
Mr M. Roelandt, General Auditor
Mr P. Gilliaux, First Auditor

- *Supreme Court of Spain:*
Mr A. Rodriguez Garcia, President of the Administrative Chamber
Mr M. Campos, Judge
Mr D. Cordoba Castroverde,
Magistrado-Jefe del Gabinete Technico

- *Council of State of France:*
Mr R. Denoix de Saint Marc, Vice-President
Mr D. Labetoulle, President of the Administrative Chamber
Mr P. Frydman, Secretary general
Mr M. Gullomar, Maître des requêtes

- *Council of State of Greece:*
Mr C. Yeraris, President
Mr A. Rantos, Councillor of State
Mrs O. Papadopoulou, Maître des requêtes

- *Council of State of Italy:*
Mr A. de Roberto, President
Mr G. Paleologo, President of the Administrative Chamber
Mr G. Barbagallo, Councillor of State
Mr M. Borioni, Councillor of State

- *Council of State of the Netherlands:*
Mr H.D. Tjeenk Willink, Vice-President
Mr P. van Dijk, Councillor of State
Mr R. Lauwaars, Councillor of State
Mr M. Oosting, Councillor of State

- *Supreme Administrative Court of Sweden:*
Mr H. Ragnemalm, President
Mr L. Lindstam, Vice-President
Mr N. Dexe, Judge
Mr M. Melin, Judge

Guests:

- *Supreme Court of Cyprus:*
Mr Y. Constantinides, Judge
Mr Ch. Eliades, Judge
- *High Court in Prague:*
Mr M. Solin, Judge
- *High Court in Olomouc:*
Mr V. Novotny, Judge
- *Regional Court in Krajsk Soud:*
Mrs V. Balejová, Judge
- *the Supreme Administrative Court of Poland:*
Mr S. Biernat, Judge
Mrs I. Wiszniewska-Bialecka, Judge
- *Supreme Court of Estonia:*
Mr. U. Lõhmus, Chief Justice
Mr J. Põld, Justice

- *the Supreme Court of Hungary:*
Mrs Mr Karpáti, Judge
- *the Supreme Court of Slovenia :*
Mr J. Breznik, President
Mrs M. Lepsa Dolnicar,

The meeting took place on Tuesday 21st May 2002 from 11 a.m. to 13 p.m. and was presided over by Mr P. Hallberg, President of the Association.

1. Introduction

The President and the Secretary General pay tribute to Mr Paleologo from the Italian Council of State and thank him for his contribution to the Association and the interest he has shown in it, since he took part among others to all the colloquiums that have been organised, the first one having been held in Rome in 1968.

2. Approval of the minutes of the General Assembly of 28th May 2001

The minutes of the General Assembly of 28th May 2001 are approved.

3. Internet site of the Association

The Internet site that is temporarily located on the site of the Belgian Council of State, is shown on a big screen to the members of the General Assembly.

3.1. Scanning of the reports of the colloquiums

The scanning of the reports of the previous colloquiums is in progress. The texts of the 17th and 18th colloquiums (Stockholm 1998 and Vienna 2000) have already been scanned and are available on the site of the Association.

The Supreme Administrative Court of Finland is going to issue the texts of the 2002 colloquium on a cd digital support. In this way, it will be possible to transfer them rapidly on the website.

3.2. Data bank

The Court of Justice of the European Communities has provided the Association with data concerning about 16,000 national decisions. The General Secretariat is setting up a data bank in which these decisions can easily be found. This data bank will be available via the internet site. To this end, the General Secretariat has contacted some specialized firms which will help the computing department of the Belgian Council of State to decode the data transmitted by the Court of Justice of the European Communities in order to make them easier to consult. This work is in progress.

3.3. Booklet "Reflets"

This booklet is edited by the Court of Justice of the European Communities. It gives a general survey of new developments in Community law. A link to this booklet has been set up on the site of the Association.

Moreover, the Association is going to have the booklet translated in English.

3.4. Links to the members' websites

The item "members" of the site provides links to the websites of the member institutions.

4. Review of the jurisprudence

Most of the member institutions have sent to the General Secretariat the significant decisions and advices of 2000 and 2001. These documents will be selected by an editorial staff whose members will be entrusted with the comments. The staff is composed of internationally renowned jurists from several Member States and is presided over by Lord Schiemann.

Considering the selection, translation, annotation, comments and publication of the review could take quite some time, the General Assembly decides that proceedings will occur in two steps :

- in 2002 the editorial staff will meet in order to select the texts which will be taken into account and which will be translated in English and in French;
- in 2003 the selected texts will be commented and published.

As far as the not selected texts are concerned, it is agreed that a summary in French and in English shall be issued on the internet site. They will also be transmitted to the documentation department of the Court of Justice of the European Communities, so that the work that has been done would not be wasted.

5. Newsletter

The next Dutch presidency puts forward the idea of a newsletter. This new initiative will come in the form of a bimonthly letter and/or e-mail and aims at strengthening the contacts between the member institutions. The Dutch presidency is willing to set up this new publication.

The General Assembly agrees with this.

6. Academy of European Law in Trier (ERA)

ERA is specialized in continuing education for jurists, and particularly for magistrates. It organizes seminars

and has the required infrastructure at its disposal as well as an international network of specialists in the most various legal fields.

The General Assembly agrees with the principle of a collaboration of the Association with ERA in order to organize meetings with a limited number of participants on a more specific topic : e.g. the implementation of a treaty or a directive. There could also be a meeting of the members of the Association that have an advisory function in the drawing up of laws and regulations on a topic that is less interesting for the members which have only a judicial function.

The General Assembly agrees with the organization of a first meeting in the fall for the persons in charge of the documentation and research departments in the member institutions. At a later date, there could be a meeting of the general rapporteur and the national rapporteurs at the following colloquium (planned in The Hague in 2004).

7. 2004 colloquium in The Hague

The General Assembly decides to organize the colloquium in the spring of 2004 and to deal with "The legal quality of Community law and its implementation and application in the national legal order".

The purpose is to invite the member institutions to express themselves about the quality of Community law as far as legislative drafting is concerned and about the way in which these provisions are incorporated into national law. The topic will be described more precisely by the general rapporteur Mr Hirsch Ballin, from the Council of State of the Netherlands.

It could require collaboration with the Commission, the Parliament and the Council of Ministers of the European Union, as well as with the European Convention.

8. 2006 Colloquium

In agreement with Vice-President HIEN, the General Assembly appoints the Federal Administrative Court of Germany organizer of the 2006 colloquium.

9. Observers

In accordance with Article 4 of the statutes of the Association, the institutions of the countries which have been invited to the 2002 colloquium (Cyprus, Estonia, the Czech Republic, Hungary, Poland and Slovenia) can ask in writing to be admitted as Observer of the Association. If they do, the next General Assembly will rule on their request.

Once the institution is an Observer, it will become automatically an active Member of the Association as soon

as the State to which it belongs has joined the European Union.

The General Assembly decides not to impose annual subscriptions on Observers.

10. Schedule

The next meeting of the Board will take place in The Hague in November 2002.

The General Assembly will also meet in The Hague in 2003. The national rapporteurs at the 2004 colloquium will be invited to attend.

11. Amendments of the statutes

The General Assembly approves unanimously two minor amendments of the statutes. These amendments should improve the functioning of the Association.

11.1

In Article 10, the following paragraph is to be added :

“In emergencies or when the minor importance of the point under consideration does not justify calling a meeting of the Board, the President or the Secretary General are authorized to ask for the written agreement of the Members of the Board.”

11.2

A new paragraph is inserted between the first and the second paragraph of Article 17 as follows :

“The Board approves the budget of the following financial year and, if need be, carries out adjustments of the budget of the current financial year.”

12. Finances

After the report of the Treasurer, Mr M. Oosting, and on the proposal of the Auditor, Mr Azevedo Moreira, the General Assembly approves the accounts for 2001 and the adjusted budget for 2002. The corresponding documents are distributed during the meeting.

13. Composition of the new Board

In accordance with Article 9, paragraph 2, of the statutes, Mr H. Tjeenk Willink (Vice-President of the Council of State of the Netherlands) becomes President of the Association and Messrs P. Hallberg (President of the Supreme Administrative Court of Finland) and E. Franssen (President of the Federal Administrative Court of Germany) become Vice-Presidents.

The General Assembly renews unanimously the appointment of Messrs Y. Kreins, M. Oosting and F. Azevedo Moreira to their respective functions of Secretary General, Treasurer and Auditor.

14. Speech of the new president

Mr H. Tjeenk Willink puts forward the challenges the Association has to take up. The first one is to maintain and develop the activities of the Association. To that end, it has been planned to publish a newsletter, to organize seminars at the ERA and to set up a coordination and information centre in Brussels.

The second challenge is to develop relations between the Association and the various institutions of the European Union. The third challenge results from the enlargement of the Union, since the number of members of the Association will consequently increase by 50%. The fourth challenge will be to have all the members actively involved in the activities of the Association, particularly by sending advices and decisions for the data bank and the review of the jurisprudence, by making their contribution to the newsletter, and so on.

15. Closing of the General Assembly

Before closing the General Assembly, Mr Paleologo thanks the Association and the Supreme Administrative Court of Finland for the good collaboration in general and for organizing the colloquium in Helsinki in particular.

Y. KREINS

Secretary General

P. HALLBERG

President

2.c. Information from the Association to the members

Copy of the letter sent on the 1st of October 2002 by the President of the Association to the members about contacts with new members:

At the last General Assembly of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union in Helsinki, I asked you to consider ways in which the Association and its members could contribute to the integration within the European Union of our sister institutions in the new member states. This cooperation would be geared especially towards sharing expertise with the new members in the areas of administrative and Community law.

To ensure the effectiveness of policy in this area, the board of the Association thinks it advisable to start by charting the cooperation that already exists, where applicable, between Association members and sister institutions in the countries that will probably accede to the EU in the forthcoming round of enlargement and to take stock of the experience gained in this context. I am referring to institutions in Poland, Hungary, the Czech Republic, Slovakia, Estonia, Latvia, Lithuania, Slovenia,

Malta and Cyprus. We must prevent any duplication of tasks.

I would invite you to answer the following questions.

Does your institution, or do members of your institution, already have relations with counterpart institutions or other judicial bodies in the new member states?

If so, please name the bodies concerned and indicate the context (i.e. are these relations bilateral or embedded in a wider framework?).

Please describe the nature and extent of this cooperation.

Herman D. Tjeenk Willink



3. Information from the members

- **Change of address Bundesverwaltungsgericht:**

The Bundesverwaltungsgericht has moved from Berlin to Leipzig (see Newsletter 1).

Its new address is:

*Bundesverwaltungsgericht
Simsonplatz 1
04107 Leipzig
Germany
Tel: +49 34120070
Fax: +49 34120071*

- **Address of the Court of Justice of the European Communities:**

Regrettably, the address given in the Association's vademecum for the Court of Justice of the European Communities was incorrect. The correct address is as follows:

*Court of Justice of the European Communities
Boulevard Konrad Adenauer
2925 Luxemburg
Tel: +352 43032200
Fax: +352 43032777*

- **New President of the Danish Supreme Court**

The Supreme Court of Denmark has notified us of the appointment of its new President, Jacques Hermann, who succeeds Niels Pontoppidan.

4. Advisory opinions regarding community law

The Netherlands Advisory opinion of the Council of State of the Netherlands of 16 August 2002

Transposition of Non-Discrimination Directive 2000/43/EC and 2000/78/EC (Framework Directive) into Dutch legislation.

The Dutch Government has decided to include the directives in the system of non-discrimination legislation and to maintain the existing structure and text of that legislation as far as possible. In its advisory opinion the Council of State discusses the dangers generally associated with this manner of transposition. It also deals with the scope of the directives, the terminology, the exception to the prohibition of discrimination on religious grounds and the concept of 'harassment' that is introduced in the directives.

The Council of State has issued warnings in the past about the risks of implementing directives in existing legislation: it may create uncertainty about the interpretation and application of national legislation, thereby detracting from the clarity of implementation. In its advisory opinion on the implementation memorandum, the Council of State emphasised that it was of paramount importance to use the same terminology in implementation: given the interpretive role of the Court of Justice of the European Communities (ECJ), any deviation from the terminology entails a risk.

The Council of State also notes a discrepancy between the EC directives and the Dutch legislation, which is perpetuated and even enhanced by the present bill. The longer the Dutch legislation, including the use of the neutral term *onderscheid* (distinction) rather than *discriminatie* (discrimination),² continues to follow its own, individual course, the more difficult it will be to achieve congruence between the Dutch legislation and the EC directives.

The Council of State considers that an integrated approach to implementation is urgently required. It therefore recommends that the implementation problem be considered afresh and that the Equal Treatment Act (AWGB) be amended so as to reflect as closely as possible the system and terminology of the directives. It would therefore be advisable to carry out the studies announced in point 1 above in such a way that their results can be taken into account as far as possible in the further consideration of the present bill.

Scope of operation

This point deals with how the areas of society to which the directives apply are implemented in the bill.

The new section 7A of the Equal Treatment Act prohibits *onderscheid* in relation to 'social protection, including the implementation of arrangements in the field of social security and social benefits'. The provision is intended to implement the provisions of the Race Directive.³ The terms social protection, social security and social advantages are derived literally from the directive. The bill does not explain these terms, but does provide that they can be defined by order in council.

The Government put two questions on this point to the Council of State:

- What scope is there for the Dutch legislature to define these terms?
- Should they be defined in the Equal Treatment Act or can this be done by order in council?

As regards the first question, the Council of State refers to the ECJ's established case law to the effect that in implementing a directive, the important thing is to ensure that the directive will have full effect within the national legal order. The implementation must also fulfil the requirement of legal certainty and should therefore be contained in internal provisions of a peremptory nature. This creates not just the freedom to elaborate the terms of a directive that is to be implemented, but a positive obligation to do so, where this is necessary to ensure the full effect of the directive in national law. The Council considers that this applies to the terms 'social protection', 'social security schemes' and 'social advantages'. In defining these terms, the legislature should always take strict account of the object and scope of the directive and the relevant case law of the ECJ.

The answer to the second question is that Community law does not prescribe the level at which rules are to be

² The Dutch terms *onderscheid* ('distinction'; used in the Dutch legislation) and *discriminatie* ('discrimination'; used in the Dutch version of the Directives) are left untranslated here since many of the points made by the Council of State hinge on the choice of term [transl.].

³ Section 3, subsection 1 (e) and (f). The prohibition of discrimination in health care is implemented in the existing section 7, subsection 1, of the Equal Treatment Act.

adopted, provided that the full effect of the directive is assured. However, the status and legal effect of an act of parliament is greater than that of an order in council, particularly in relation to existing or future legislation. It is precisely because the present case involves directives intended to grant rights to private individuals that it is important that the implementation should, if at all possible, take the form of an act of parliament. According to the Council of State, it follows that the terms should primarily be defined in the Equal Treatment Act itself; in view of the general nature of this act, the detailed elaboration (the application of the definitions in the act to different practical situations) could in this case also be regulated by order in council.

Exceptions to the prohibition of discrimination

In various places the Equal Treatment Act regulates the delimitation between the freedom of institutions founded on religious or ideological principles to impose requirements and the prohibition of *onderscheid* on certain discriminatory grounds. The construction is such as to permit *onderscheid* provided that it does not result in *onderscheid* on the sole grounds of political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status (the list of grounds is not the same in all cases).⁴ The bill also uses this 'sole grounds' formulation in the new section 6a (prohibition of *onderscheid* in the case of membership of organisations of employers, employees, or practitioners of an occupation).

It is argued in the memorandum on implementation that the 'sole grounds' formulation is covered by Article 4 (2) of the Framework Directive, i.e. the provision in which the exception for genuine occupational requirements (d) is elaborated for churches and other organisations the foundations of which derive from religion or belief. The memorandum refers to the 24th recital in the preamble to the Framework Directive, which refers in turn to Declaration no. 11 annexed to the Final Act of the Amsterdam Treaty. Declaration 11 reads as follows: 'The European Union respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States and equally respects the status of philosophical and non-confessional organisations'.⁵

The Council of State gives two reasons why it cannot endorse the conclusion that the 'sole grounds' formulation in the Equal Treatment Act need not be amended. First of all, it would observe that the 'sole grounds' formulation used in the Netherlands is so specific that it is impossible to say whether all cases in which someone could successfully invoke this provision would also be in accordance with the directive. Although the adoption of

a specific national system is not necessarily in breach of the directive, it does make the national system vulnerable, as indicated in point 2 of the advisory report. The 'sole grounds' formulation is in any event vulnerable since the delimitation between fundamental rights occurs at a high and abstract level. The consequences this may have in a specific case are not entirely foreseeable.

The 24th recital in the preamble of the Framework Directive and Declaration 11 are not without significance, but their significance is limited to the interpretation of provisions from the body of the directive. The interpretation cannot go so far as to render provisions of the directive without significance for the member states. In addition, the 23rd recital in the preamble of the Framework Directive emphasises that a difference of treatment may be justified in very limited circumstances where a given characteristic constitutes a genuine and determining occupational requirement. This stresses the general principle that exceptions to a basic rule should be interpreted restrictively.

Second, the Council of State points out that the 'sole grounds' formulation also always relates to *onderscheid* based on race. It has already been observed above that there is no provision in the Race Directive comparable to article 4 (2) of the Framework Directive. It should be added in this connection that the recitals to the Race Directive do not invoke Declaration 11 to the Final Act of the Treaty of Amsterdam. In view of the above, the Council of State recommends that the use of the 'sole grounds' formulation should be reconsidered. Thought should in any event be given to the possibility of dropping the prohibition of *onderscheid* on the grounds of race.

Harassment

The directives extend the concept of 'discrimination' to include the new term 'harassment'. Harassment is defined in the directives as 'unwanted conduct related to any of the grounds for discrimination referred to in Article 1 that takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'.⁶

⁴ Section 5, subsection 2 (a), (b) and (c), and section 7, subsection (2).

⁵ Parliamentary Papers House of Representatives 2001/02, 28 187, no. 1, p. 14

⁶ Article 2 (3) in both Directives

In the bill the harassment prohibition is incorporated into the prohibition of onderscheid: as a result, the provisions governing exceptions to the prohibition of onderscheid in the Equal Treatment Act also become applicable to the prohibition of harassment. Given the system of the Equal Treatment Act, it follows that institutions founded on religious, ideological or philosophical principles have the freedom to impose requirements that are necessary - in view of the institution's purpose - for the performance of certain duties, even if these requirements amount to harassment.

In its accompanying letter, the Government asked the Council of State to consider the impact of this new term in the bill.

a The first question that the government submitted to the Council of State was whether the provisions in the directives defining harassment provided an adequate legal basis for the inclusion of this term in the Equal Treatment Act as described above and for decisions weighing up differing interests that may have to be taken as a result.

The answer to this question is that directives never provide a legal basis of this kind: they merely entail an obligation to implement, and the national implementing legislation must then be based on the national legal system. The purpose of this question was probably to ascertain what scope is left to the Dutch legislature by the provisions of the directive cited in the accompanying letter. This question may therefore be dealt with in relation to the second question that the government put to the Council of State.

b The Government's second question was whether it was appropriate, given the nature of harassment, for the provisions regulating general and specific exceptions to the prohibition of onderscheid in the Equal Treatment Act to apply to the prohibition of harassment as well. In the view of the Council of State, the question at issue here is the nature of the concept of harassment as defined in the directives: could conduct that must be defined as harassment conceivably ever be justifiable, or is harassment by definition something that could never be justified?

The Council of State takes the latter position, for the following reasons:

- harassment is defined in the directives as unwanted conduct and it is, by definition, hard to imagine circumstances in which unwanted conduct could ever be justified; the Council notes, incidentally, that the word *ongewenst* (unwanted) does not appear in the bill.
- the criterion in the directives is not that a person feels

that his or her dignity has been violated (subjective) but that the dignity of a person has been violated (objective);

- [this reason relates to the Dutch term *intimidatie* used in the Dutch version of the directive and in the Dutch legislation-transl.] the English and French terms (harassment and *harcèlement*) can be literally translated as *teisteringen*, *kwellingen* and *pesterij* - terms that can hardly be reconciled with legitimate objectives, whatever the belief on which they are based. The answer to the government's question is therefore that the provisions regulating general and specific exceptions to the prohibition of onderscheid in the Equal Treatment Act cannot, in the view of the Council of State, serve as justification for harassment within the meaning of the directives. Harassment within the meaning of the directives is an aggravated form of discrimination, which can never be justified.

The Council of State would observe that the decision hitherto made by the Dutch legislature, namely to use the term *onderscheid* rather than *discriminatie*, has become an even greater problem with the incorporation of harassment into the prohibition of *onderscheid*. After all, the term *onderscheid*, unlike *discriminatie*, is a neutral term; by contrast, harassment, a special form of discrimination, is far from neutral.

The Council recommends that the bill should be modified - particularly if it is decided to continue using the term *onderscheid* - in such a way that exceptions to the prohibition of *onderscheid* do not apply to the prohibition of harassment. This could be achieved by formulating the prohibition of harassment as a separate prohibition and not as an extension of the prohibition of *onderscheid*. The Council of State further recommends the inclusion of the element of 'unwanted conduct' in the definition of harassment in order to establish a direct connection with the directive.

The government requested the Council of State to consider how the provisions governing harassment should be implemented in the Equal Treatment (Disability or Chronic Illness) Bill (as amended in the present bill) and in the Equal Treatment in Employment (Age Discrimination) Bill.⁷ These two bills regulate the prohibition of harassment in the same way as discussed above in relation to the Equal Treatment Act. The recommendations

⁷ Parliamentary Papers House of Representatives 2001/02, 28 169, nos.1-2, as amended in section II B, of the present Bill; Parliamentary Papers House of Representatives 2001/02, 28 170, nos.1-2.

made above at (b) therefore also apply to the other two bills.

On 2 July 2002 the Government announced a study, from a constitutional perspective, of the areas of tension between freedom of religion, freedom of speech, and the principle of non-discrimination, and of the manner in which, above all, the legislature and the executive deal or should deal with these issues.⁸ The Council of State recommends that the term harassment, as used in the two directives, should be included in the study.

Advisory opinion of the Council of State of the Netherlands of 27 May 2002

Implementation of Directive 2001/44/EC of the Council of the European Union of 15 June 2001 amending Council Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ EC L 175).

The Directive creates a coherent European network for mutual assistance in the recovery of claims in the field of direct taxation. Provisions in Dutch legislation that are intended to arrange collection by different means should therefore be reconsidered in the light of the directive. This relates in particular to the requirement that security be provided when pension or annuity obligations are transferred to a foreign pension fund or a foreign insurer and also to the requirement that security be provided in cases where the tax authorities have a claim in respect of a substantial interest [i.e. a holding of 5% or more of the issued shares in a company-transl.] upon a taxpayer's emigration.

The Council of State submitted in its advisory opinion on the 2001 Tax Review Bill that the imposition of assessments designed to maintain the status quo should in principle be regarded as a discriminatory measure under European law. 'Justification of this obstacle to the free movement of persons and services can be found in the need to maintain fiscal coherence, but in order to invoke this exception it must also be established that the national measures are necessary and proportionate. [...]' As regards proportionality, the Council of State would point out that in the light of the proposed amendment to Directive 76/308/EEC (OJ 28 August 1998 no. C 269), express reasons must be given for imposing a requirement that security must be provided as part of the measure'.⁹

The government noted in its reply to this advisory opinion that the creation of international schemes of this kind is often a long drawn-out affair and that owing to the present state of international law and the far-reaching developments in the internal market in the sphere of pensions, national measures to ensure the coherent levying of tax remain necessary for the time being.

In the light of this observation, the Council of State recommends that the requirement that security be provided for assessments imposed to maintain the status quo should be reviewed. If assistance in the recovery of claims is assured, this puts a different complexion on the justification for imposing requirements such as the provision of security - and hence on the proportionality of the measure.¹⁰

Advisory opinion of the Council of State on a draft decree, with explanatory memorandum, to amend the Vehicle Regulations, introducing an obligation to fit devices to improve the field of vision of commercial vehicles

Advisory opinion on a proposal that is contrary to European legislation, but which is necessary to reduce the number of fatalities among cyclists in the Netherlands

The aim of the draft decree is to permit or, as the case may be, order the fitting of devices to commercial vehicles to improve the field of vision and thereby reduce the blind spot.

Each year accidents caused by the blind spot result in 30 fatalities and 90 serious injuries among road users (often cyclists and moped riders), who are not noticed - or are seen too late - by truck drivers making a right turn.¹¹ This problem has been the subject of consultations between the Minister of Transport, Public Works and

⁸ Parliamentary Papers House of Representatives 2001/02, 28 006, no. 11, p. 5.

⁹ Parliamentary Papers House of Representatives 1998/99, 26 727, A, point 61.

¹⁰ In this connection, see also the judgment of the Court of Justice of the European Communities in case C-382/92. *Mund & Fester*. Case Law 1994, p. 1-467 and in the case of the *Commission v. Italy*, judgment of 19 March 2002 (not yet published).

¹¹ See inter alia the Government Gazette of 2 February 2000, no. 23, p. 17, explanatory memorandum to the Commercial Vehicle (Systems for Improvement of the Field of Vision) Subsidy Scheme.

Water Management and the trade associations for many years. Despite many attempts to induce vehicle operators to fit devices to improve the field of vision, including a subsidy scheme that came into force in 1990, they have been very slow to act. The Minister therefore considers that it is no longer appropriate to wait until operators are willing to fit the devices concerned voluntarily.

The Council of State feels obliged to point out that the draft decree is contrary to European legislation.¹² However, since it is now clear both that the other Member States of the European Union and the European Commission have realised that it is highly desirable to amend the relevant directive without delay and appreciate the need for action to anticipate this amendment, the Council of State can very well imagine that the government is willing to take responsibility for the present draft decree.

¹² Directive 71/127/EEC of the Council of the European Communities of 1 March 1971 on the approximation of the laws of the Member States relating to the rear-view mirrors of motor vehicles (OJ EC L 68), as last amended by Directive 88/321/EEC of the Commission of 16 May 1988 (OJ EC L 147).

5. Jurisprudence

5.a. Austria

Decision of the Verwaltungsgerichtshof of 20 February 2002, no. 2002/08/0077

1. *Preliminary questions - Jurisdiction of the Court - Limits - Questions manifestly without relevance and hypothetical questions put in a context precluding a meaningful response - Questions with no bearing on the subject-matter of the principal dispute (Art. 234 EC)*
2. *Social security of migrant workers - Community regulations - Substitution for social security agreements entered into between member States - Limit - Upholding, for the benefit of a worker who had exercised the right of free movement prior to the entry into force of Regulation no. 1408/71 and to the applicability of the Treaty in his state of origin, of the provisions of a bilateral agreement on the subject of unemployment insurance - Modalities (EC Treaty, Art. 48, #2, and 51 (which became, after amendment, Art. 39, #2 and 42 EC); Council regulation no. 1408/71, Arts. 6 and 7).*
3. *Free movement of persons - Workers - Equality of treatment - Regulations of a member state favouring, as regards conditions for entitlement to unemployment benefit, workers having remained for a certain period in the territory of that State - Incompatibility (EC Treaty, Art. 48 (which became, after amendment, Art. 39 EC))*

By Order of 29 June 1999, the Verwaltungsgerichtshof, in application of Article 234 EC, put four preliminary questions concerning, on the one hand, the possibility of applying an agreement on unemployment insurance concluded between the Federal Republic of Germany and the Republic of Austria (hereinafter the 'Austro-German Agreement') rather than Articles 3, 6, 67 and 71 of EEC Council Regulation no. 1408/71 of 14 June 1971, relating to the application of social security regimes to salaried workers and their families who move within the Community (OJ L 149, p. 2), by a transposition to unemployment insurance provisions of the principles deriving from the Ronfeldt judgment of 7 February 1991 (C – 227/89, Rep. p. 1-323), and bearing, on the other hand, on the interpretation of Articles 48 and 51 of the EC Treaty (which became, after amendment, articles 39 and 42 EC).

These questions were raised in the context of an appeal formulated by Mme. Kaske against a decision of 28 November 1996 whereby the Landesgeschäftsstelle des

Arbeitsmarktservice Wien (the regional branch of the Vienna labour and employment office), in conformity with a resolution of the Ausschuss für Leistungsangelegenheiten (benefits commission), rejected her request for the payment of unemployment benefit on the basis of Article 14, paragraph 5, of the Arbeitslosenversicherungsgesetz (law on unemployment insurance, hereinafter 'AIVG').

Considering that Mme. Kaske would have the right to unemployment benefit if her periods of employment in Germany were taken into account for the purposes of opening up the right to such benefits, and that she would be able to benefit from the said periods if the provisions of the Austro-German Agreement were applied to her, it was decided to put the following preliminary questions to the Court:

- 1 Is the Ronfeldt decision of the Court of Justice equally applicable in the case where a migrant worker has exercised the right of free movement (or, more precisely, had previously exercised it) before the entry into force of EEC Regulation no. 1408/71, but also before the EC Treaty took effect in his State of origin, in other words at a time when he could not yet invoke Articles 39 et seq. of the EC Treaty (formerly Articles 48 et seq.) in the State of employment?
- 2 If the answer to the first question is affirmative: Does the application of the Ronfeldt decision to cases where there exists unemployment insurance mean that a migrant worker can invoke the rule - more advantageous than the one in Regulation no. 1408/71 - resulting from a bilateral agreement concluded between two member States of the European Union (in this case, the Austro-German Agreement on unemployment insurance) for the entire period during which the right of free movement was being exercised within the meaning of Articles 39 et seq. of the EC Treaty (formerly Articles 48 et seq.), in particular if the rights in question are asserted by the interested party after his return from the employing State to the State of origin?
- 3 If the answer to the second question is affirmative: Must such rights be evaluated according to the more favourable agreement only to the extent that they are based on periods of compulsory unemployment insurance completed in the employing State before the entry into force of Regulation 1408/71 (in the present case, before 1 January 1994)?
- 4 If the answer to one of the first two questions is negative, or the answer to the third question is

affirmative:

Is it admissible, from the standpoint of the prohibition on all forms of discrimination set forth in Article 39 EC (formerly Article 48 of the EC Treaty), read together with Article 3, paragraph 1, of Regulation no. 1408/71, for a member State to provide in its legal system for a rule which is more favourable than the one in Regulation 1408/71 (namely, the renunciation of the condition that the interested party finally complete the period of insurance in the meaning of Article 67, paragraph 3, of Regulation no. 1408/71) in order for the periods of insurance completed in another member State to be taken into account, the application of this rule however being subject - except in the case of family regrouping - to a condition of fifteen years' residence in the national territory prior to the acquisition of the periods of insurance in the other member State?

The Court responded to these questions in its judgment of 5 February 2002, C-277/99.

The Verwaltungsgerichtshof held that principles could be derived from the Ronfeldt and Thevenon decisions according to which it depends whether the claimant had exercised the right to free movement before or after the entry into force of Regulation no. 1408/71 and whether he had thus, in the first case, obtained social benefits resulting from a bilateral agreement concluded between two member States of the European Union which went beyond the rights guaranteed by Regulation 1408/71. The right was not defeated if such a social benefit derived from an insurance period spent in another member State and if that period had predated that State's accession to the European Community, nor if that right was exercised immediately after the period spent abroad which had already begun before the entry into force of Regulation no. 1408/71 but only after the date from which it could be based solely on insurance periods acquired after 1 January 1994.

The claimant had already acquired periods of insurance in Austria from 1973 to 1982 and - unlike the claimant in the Thevenon case - exercised her right to free movement before the entry into force of Regulation 1408/71. As an Austrian citizen she had acquired the right to the benefits by virtue of the provisions of the Austro-German Agreement, in accordance with Article 7, paragraph 1. The claimant could therefore rely on that Agreement, without however being able to claim rights which went beyond those granted by it.

§14 para. 5 AIVG did not prevent the said Agreement from applying, as the conditions it prescribed only became relevant if the bilateral agreements provided for

minimum periods of insurance or employment, which was not so in the present case.

The Verwaltungsgerichtshof consequently overturned the decision of the administrative authority for having misinterpreted the legal position.

Decision of the Verwaltungsgerichtshof of 22 January 2002, no. 2001/10/0083

EEC Council Directive 65/65 of 26 January 1965 concerning the harmonisation of legislative, regulatory and administrative provisions relating to pharmaceutical specialities

EEC Council Directive 87/21 of 22 December 1986 modifying EEC 65/65 concerning the harmonisation of legislative, regulatory and administrative provisions relating to pharmaceutical specialities

In the present case the claimant party wished to purchase a pharmaceutical speciality in Spain, to have it packaged by another enterprise and put it on the market in Austria. The State authorities however refused to grant the necessary authorisation and considered that in the particular case it was not a parallel import, because as a result of the use of different conservation products there were therapeutic differences between the pharmaceutical speciality already authorised and the speciality for which the authorisation was being requested.

The Verwaltungsgerichtshof found that in the case of authorisation of parallel imports, the competent authorities had only to verify certain criteria. The applicable national provisions did not yet contain rules relating to parallel imports. The case-law of the Court and the existing provisions nevertheless allowed the identification of a principle whereby an authorisation was necessary in order to bring a pharmaceutical speciality onto the market. Amongst other things, the Austrian legal system obliged the authorities to grant an authorisation in accordance with # 11 of the national law on pharmaceutical specialities (Arzneimittelgesetz) even where the conditions for parallel import were fulfilled. According to the case-law of the court, (Judgments of 16 December 1999, C-94/98, and of 12 November 1996, C-201/94), the competent state authorities were only bound to grant an authorisation under the procedure for parallel imports if they were satisfied that the pharmaceutical speciality concerned, in spite of the presence of differences, did not present any danger to human health. However, in a case where the competent authority had reached the conclusion that the pharmaceutical speciality to be imported did not satisfy these criteria, a new authorisation was needed to bring it onto the market.

This latter could only be granted if there was compliance with the conditions set forth in Articles 3 and 4 of Directive 65/65, concerning the harmonisation of legislative, regulatory and administrative provisions relating to pharmaceutical specialities, as modified in particular by Directive 87/21. As a consequence the Verwaltungsgerichtshof rejected the appeal, taking the view that, in respecting their procedural obligations, the national authorities had reached the conclusion that doubts remained as to the safety of the pharmaceutical speciality in question, and that the case-law of the court relating to parallel imports was therefore not applicable to the case in hand.

Decision of the Verwaltungsgerichtshof of 24 January 2002, no. 2001/16/0357

Council Directive 69/335/EEC of 17 July 1969, concerning indirect taxes affecting accumulations of capital

The Verwaltungsgerichtshof was seized by appeals lodged by an Italian limited company which considered that its right to the free circulation of capital had been infringed, because it had been assessed as liable to taxes upon transfer of shares at the rate of 2.5% of the value of the amount of the transfer.

According to the claimant company, Article 7 para. 1(a) of Directive 69/335/EEC provided that the rate that could be levied must be neither greater than 2% nor lower than 1%.

The Verwaltungsgerichtshof however found that the submissions of the claimant company could not be based on the provision cited, as it applied only to those taxes defined in Articles 4 and 5 of the Directive, and not to the taxes mentioned in Article 12. Article 12 contained no limit on the level of tax. For that reason, the taxes which had been assessed on the claimant company had not been contrary to Community law. Furthermore, the Verwaltungsgerichtshof noted that the correct application of Community law was so obvious that it did not leave room for any reasonable doubt.

Decision of the Verwaltungsgerichtshof of 23 January 2002, no. 2001/04/0041

Council Directive 89/665/EEC of 21 December 1989 coordinating legislative, regulatory and administrative provisions relating to the application of appeal procedures on the subject of access to public markets in supplies and works

The claimant party seized the Verwaltungsgerichtshof

with a claim that the Unabhängiger Verwaltungssenat im Land Niederösterreich (the independent administrative organ responsible for controlling the legality of acts of the administration of the Niederösterreich Land) which had nonsuited its appeal against an administrative decision on the subject of access to public markets in supplies and works, did not conform to the criteria required for bodies hearing non-jurisdictional appeals in accordance with Article 2 para. 8 of Directive 89/665/EEC. Above all, the law governing the organisation of the said body did not provide that the president of that body must be qualified as a magistrate. The Verwaltungsgerichtshof rejected the appeal of the claimant party, invoking the court's case-law (judgment of 4 March 1999, C-258/97), according to which the independent administrative organ of another Austrian region possessed all the required characteristics for it to be accorded the right to decide cases in accordance with Article 2 para. 8 of the abovementioned Directive.

Decision of the Verwaltungsgerichtshof of 28 February 2002, no. 200/16/0317

Council Regulation (EEC) no. 2913/92 of 12 October 1992 establishing the Community customs code

In this case the Verwaltungsgerichtshof considered that the national case-law according to which a second instance authority is not competent to decide a case which has not already been the subject of a decision at first instance was not contrary to Community law.

Decision of the Verwaltungsgerichtshof of 26 June 2002, no. 98/21/0299

International agreements - Association Agreement between the EEC and Turkey - free movement of persons - workers - right to remain - condition - Article 6 para 1 of Decision no. 1/80 of the EEC-Turkey Council of Association - prohibition on remaining in country

The administrative authorities had forbidden the Claimant, a Turkish national, to remain on Austrian territory for a period of six years. The Claimant had invoked before the Council of State Article 6 of Decision no. 1/80 of the EEC/Turkey Council of Association, and had contended that he had worked regularly each year since 1990 from the month of April to the month of November for the same employer, that he had been laid off each year because of the cold weather which made it impossible for him to carry out his duties, and that he had always been rehired the following spring. The only periods of unemployment were those caused by bad weather which should qualify as periods of voluntary

unemployment within the meaning of Article 6 para 2 of the said Decision. As he had worked for seven years, thus for 3.5 'solid' years, for the same employer, the regime of Article 6, para 1, third subpart, (or, at the very least, that of the second subpart) of Decision no. 1/80, would apply in his case. The Council of State considered that, having lost his employment in 1994, the Claimant could not in any event rely on periods of regular employment completed prior to that date, because the provisions of the EEC-Turkey Association Agreement came into force in Austria only after the latter's adherence to the European Union on 1 January 1995. For that reason, the interruption of the Claimant's regular employment before 1 January 1995 would in any event have put an end to any 'expectation' of rights under Article 6 para 1 of Decision no. 1/80.

According to the case law of the Court of Justice, a Turkish worker would belong to the regular labour market if he fulfilled all the formal conditions that might be imposed by a Member State. Since, with regard to the periods before 1 January 1995, the Claimant had not fulfilled the criteria for belonging to the regular labour market for periods of three or four years respectively, the provisions of the second and third subparts of Article 6 para 1 were not applicable to his case. Nor would the conditions of the first subpart of Article 6 para 1 be fulfilled. Thus the Court of Justice held, in its Judgment of 29 May 1997, C-386/95, Suleyman Eker vs. Land Baden-Wurttemberg, that the first subpart of Article 6 para 1 of Decision no. 1/80 made the extension of the residence permit of a Turkish worker in a host Member State subject to the condition of one year of regular employment in the service of a single employer. The first subpart of Article 6 para 1 was founded on the premise that only a contractual relationship which lasted throughout a period of one year could evidence a sufficiently solid labour relationship to guarantee to the Turkish worker continuity of employment in the service of the same employer. But even if the periods during which the Claimant had been out of work because of bad weather had qualified as periods of involuntary unemployment within the meaning of Article 6 para 2, and if the periods of less than one year of regular employment which were only interrupted by periods falling within Article 6 para 2 had to be added together in order to establish the conditions laid down in subpart 1 of Article 6, para 1, the Claimant's case must be rejected because - even if they were added together - the periods of (proven) regular employment after 1 January 1995 would not amount to more than one year.

As a consequence, the Council of State rejected the Claimant's appeal.

Decision of the Verwaltungsgerichtshof of 27 June 2002, no. 99/10/0209

Field of Application

EEC Council Directive 79/112 of 18 December 1978 concerning the harmonisation of the legislation of Member States concerning the labelling and presentation of foodstuffs destined for final consumers, and the advertising related to them EEC Council Directive 92/28 of 31 March 1992, concerning the advertising of medication for human use

The Claimant had been found guilty of being responsible, as the manager, for the acts of a company which had made claims for an unauthorised medication which that company had sold by sending printed advertisements to private persons, and having thus violated the Austrian law on medications. The Council of State considered that the Claimant could not invoke EEC Council Directive no. 79/112/EEC because, since this was a case of advertising a medication destined for human use, it was not Directive no. 79/112/EEC which should be applied in the present case but Directive no. 92/28/EEC. Since it had not been established that the Austrian law regarding medication was contrary to Directive 92/28/EEC, the Claimant's appeal was dismissed by the Council of State.

Decision of the Verwaltungsgerichtshof of 27 June 2002, no. 99/10/0159

Environment - preservation of wild birds - choice and delimitation of zones of protection - EEC Council Directive no. 79/409/EEC of 2 April 1979, concerning the preservation of wild birds - 'Preliminary' protection of sites of potential Community importance - EEC Council Directive 92/43/EEC of 21 May 1992, concerning the preservation of natural habitats as well as of wild flora and fauna

In this case the administrative services of the 'circle' had rejected the request of a golf club to be authorised to expand a golf course, pursuant to the rules relating to the protection of nature. The regional government had allowed the club's appeal, subject to different obligations, and had given it authorisation for the project.

The institution charged with the protection of the environment requested the Council of State to overturn the decision at second administrative instance. This latter recalled the case-law of the Court of Justice whereby the interpretation of national law must be in line with the terms and the aim of the directive in order to achieve the objective thereof. In its judgment of 23 October

1995, no. 95/10/0108, the Council of State had deduced from the judgment of the Court of Justice of 10 April 1984, Rec. 1984 I - 1.891, that where there was a national provision whose meaning and terms were clear, no contrary meaning derived from an interpretation of that national provision in a manner in conformity with the directive could be given to it. The interpretation of national law in a way which conformed to the directive could not substantively change the normative content of a national provision. A new system of national norms could not be created by interpreting national law in conformity with Community law directives.

According to both case-law and doctrine, the obligation of Member States to transform the directive into national law by adapting the measures in their national laws concerning classification and protection, as well as the obligation to transform the directive into national law by delimiting protected zones across the area contemplated by the directive, was primordial. The case-law of the Court of Justice gave rise to a presumption that the authorities were obliged - provided the criteria existed - to research whether a piece of land affected by a project possessed de facto the characteristics of a protected zone, and, if required, even in the absence of its formal classification as a protected zone by the competent authorities of the Member State, to apply the provisions of Article 4 para 4 of Directive 79/409/EEC. In this respect, it would seem to be possible to forbid not only projects of 'public authorities' but also those of 'private' persons, if these could have negative effects on the protected areas.

According to the Council of State, the question whether the protection set forth in Article 6 paras 2 to 4 of Directive 79/409/EEC or the preliminary consequences of such protection could extend, in such a way as to oblige the administrative authorities to forbid the realisation of a project, to areas which, by virtue of their characteristics, could potentially be classified as sites of Community importance despite the absence of a list of sites of Community importance within the meaning of Article 4, para 5 of Directive 92/43/EEC, or despite the fact that the area in question had not been made the object of the procedures laid down in the said directive, and notwithstanding the fact that effective legal measures had not been taken under national law which would give these zones an adequately protected status, would be a question of interpretation of Community law, which appeared not yet to have been clarified beyond question by the case-law of the Court of Justice. As a result, the Council of State overturned the decision at second administrative instance because the latter had not sufficiently researched the facts which would be

necessary to decide whether the protective regime provided for in Directive 79/409/EEC, and possibly also the preliminary protection laid down in Article 6, paras 2 to 4 of Directive 92/43/EEC, would be applicable to the areas covered by the project in question.

Further information on the foregoing cases may be obtained from ms. Annemarie Sellner, Verwaltungsgerichtshof, Vienna: annemarie.sellner@vwgh.gv.at

5.b The Netherlands

Decision of the Administrative Jurisdiction Division of the Council of State of 13 March 2002

Decision given after receipt of the answers to the questions referred to the ECJ for preliminary ruling.

The case concerns:

- a technical regulation within the meaning of Directive 83/189/EEC.
- a measure having equivalent effect to a quantitative restriction on imports, within the meaning of Article 30 of the EC Treaty (now, after amendment, Article 28 EC).

Snellers Auto's B.V., established in Deurningen, v. the Chief Executive Officer of the Road Transport Department, established in Zoetermeer,

In a judgment of 10 August 1998, concerning case no. H01.97.0519, the Administrative Jurisdiction Division requested the Court of Justice of the European Communities (ECJ) to answer questions referred to it for a preliminary ruling. The ECJ gave its answers by judgment of 12 October 2000 in case no. C-314/98.

In its judgment given following the judgment of the ECJ, the Administrative Jurisdiction Division held *inter alia* as follows:

2.1 By the above-mentioned judgment of 12 October 2000, the ECJ ruled as follows:

- 1 For the purposes of determining whether national rules, such as Regulation 1995,¹³ constitute a technical regulation covered by the obligation to notify the Commission laid down in Council Directive

¹³ laying down rules regarding the determination of the date on which an imported vehicle was first authorised for use on the public highway or the registration certificate of a vehicle is determined (Government Gazette 1994, 241).

- 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Council Directive 88/182/EEC of 22 March 1988, the subsequent amendments introduced by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 materially amending for the second time Directive 83/189 should not be taken into consideration.
- 2 National rules such as Regulation 1995 do not fall within the scope of Directive 83/189, as amended by Directive 88/182.
 - 3 National rules that provide that the date on which an imported vehicle was first authorised for use on the public highway is to be determined as the date on which its registration certificate was issued only where the vehicle has not been registered for more than two days in another Member State constitute a measure having an effect equivalent to a quantitative restriction on imports for the purposes of Article 30 of the EC Treaty (now, after amendment, Article 28 EC).
 - 4 Such national rules may, in spite of their restrictive effects on the free movement of goods, be justified by imperative requirements such as road safety and/or protection of the environment if it can be shown that the resulting restriction is necessary to ensure road safety and/or protection of the environment and that the restriction is not disproportionate to those objectives, particularly in the sense that no other, less restrictive, measures are available.
- 2.2 It follows from points (1) and (2) of the ruling of the ECJ that notification was not required in the case of Regulation 1995. There is therefore no reason not to apply this regulation, in connection with the considerations in the ECJ's judgment in case C-194/94 (Securitel).
- 2.3 It follows from points (3) and (4) of the ECJ's ruling that it is necessary to determine whether the '2-day' provision contained in Article 4 (3) of Regulation 1995 constitutes a justified restriction on the free movement of goods within the meaning of Article 30 of the EC Treaty (now, after amendment, Article 28 EC). According to the established case law of the ECJ, to which reference is made in the above-mentioned judgment, restrictions on the free movement of goods may be justified by imperative requirements such as road safety and protection of the environment. According to the ECJ in the above-mentioned judgment (recital 55), the possibility cannot be ruled

out that national rules defining criteria for the determination of the date on which a vehicle was first authorised for use on the public highway, such as the regulation in question, may be justified. The Administrative Jurisdiction Division therefore holds in this connection that the rules adopted pursuant to the Road Traffic Act 1994 are intended, among other things, to promote road safety and to protect road users and passengers and that rules adopted under the Road Traffic Act can also serve to prevent or limit the nuisance or damage caused by traffic and the adverse effect on the environment. It is to protect these interests that the date on which vehicles are first authorised for use on the public highway, as laid down in Regulation 1995 implementing the Road Traffic Act, should be determined as precisely as possible. This date is of importance to the correct interpretation of various regulations based on the Road Traffic Act. These relate to the requirements to be fulfilled by vehicles for first authorisation for use, permanent requirements and the starting date of the general periodic roadworthiness test. It must therefore be held that the interests of protecting the environment and road safety may, as far as determination of the date of first authorisation is concerned, justify an obstacle to trade.

- 2.4 According to the established case law of the ECJ, to which reference is made in the above-mentioned judgment, the next step is to ascertain whether a restriction on the free movement of goods which entails a condition specifically for parallel importers is necessary in order to guarantee road safety and/or protect the environment and whether this restriction is not disproportionate to these objectives, particularly in the sense that it is not possible to adopt other, less restrictive measures. It is no longer disputed - or in any event no longer effectively disputed - that it is not possible to determine by means of simple or in any event routine technical inspections by the Road Transport Department whether a car imported as new and unused is indeed new and unused. Moreover, the Administrative Jurisdiction Division does not have any reason not to assume that this is impossible. Nor is there any evidence that the assurance that a vehicle is in fact new and unused could be obtained in any less restrictive way than by application of the so-called 2-day rule. It follows that there are no grounds for the view that the restriction of the free movement of goods is not necessary in this case or is disproportionate in the above-mentioned sense. The President of the District Court - i.e. the court of first instance - failed to recognise this.

2.5 As Snellers did not lodge a foreign registration certificate issued not more than two days previously, as referred to in Article 4 (3) of Regulation 1995, the appellant rightly took the position that under Regulation 1995 no registration certificate could be issued for the relevant vehicle showing as the date of first authorisation the date of issue of part 1 of the certificate.

The above leads to the conclusion that the appeal is well-founded. The disputed judgment should therefore be quashed. The Administrative Jurisdiction Division will do what the District Court should have done and declare the action brought before the District Court to be unfounded.

Decision of the President of the Administrative Jurisdiction Division of the Council of State of the Netherlands of 19 July 2002 on an application for a provisional remedy (section 8:81 of the General Administrative Law Act) pending the appeal of:

1. *'RTL/De Holland Media Groep S.A.'*, a company under Luxembourg law, and
2. *'CLT-UFA S.A.'*, a company under Luxembourg law, both established in Luxembourg, plaintiffs, against the judgment of 20 June 2002 by Amsterdam District Court in the action between: plaintiffs and the Media Authority.

Whether the preliminary questions raised by the plaintiffs must be answered in order to give judgment in the present case cannot be determined in the provisional remedy proceedings.

By decision of 20 November 1997 the Media Authority ('the Authority') designated RTL/Veronica de Holland Media Groep S.A. (now known as RTL/de Holland Media Groep S.A., 'HMG') as the broadcasting organisation responsible for the programmes of the RTL4 and RTL5 television channels, i.e. as a commercial broadcasting organisation within the meaning of the Media Act and established in the Netherlands, which is therefore subject to the Authority's supervision. In addition, the Authority indicated in this decision that it would tolerate the continued broadcasting of these programmes for a limited period on a de facto basis, subject to certain specified conditions.

In its decision of 5 February 2002 the Authority reaffirmed its decision of 20 November 1997, subject to the proviso that its de facto toleration of the retransmission of the RTL4 and RTL5 programmes by cable would end on 1 April 2002 unless HMG had by that date requested

the permission considered necessary by the Authority under section 71a of the Media Act, and that, if the RTL4 and RTL5 television programmes did not yet fulfil the (substantive) requirements laid down by or pursuant to the Media Act, the de facto toleration would be terminated on 1 September 2002. By further decision of 26 March 2002 the Authority extended the former period until 1 July 2002 and the latter period until 1 December 2002.

In its judgment of 10 April 2001, the Administrative Jurisdiction Division of the Council of State held that, in view of the facts and circumstances that had emerged during the proceedings, it had to be assumed that the determination and alteration of the profile, positioning and identity of the relevant programmes fell at least partly within the competence of HMG, and that it was not only the elaboration and implementation that took place in the Netherlands. The President too proceeds on the basis that the submissions made by HMG at that time do not warrant a different conclusion now. However, the President does not exclude the possibility that factual developments have occurred since then which warrant a different conclusion. In addition, he takes into account that the Authority is considering contacting the Dutch cable operators in the event of termination of the de facto toleration and demanding that they immediately cease retransmission of the RTL4 and RTL5 programmes, if HMG has still not requested permission as referred to in section 71a of the Media Act. In these circumstances, the harm inflicted on the position of HMG would be disproportionate to the interests served by the immediate enforcement of the decision of 5 February 2002.

This harm could not be obviated if HMG were to request permission after all, pending the proceedings. Such permission would give rise to restrictions on the broadcasting of television programmes to which HMG is not currently subject. No certainty could be obtained at the court hearing that an application to grant consent in such a way that it could be combined with the position adopted by HMG in these proceedings (without prejudice) would be treated by the Authority as a valid application.

In view of this, the President considers it necessary to make the provisional remedy described below.

The plaintiffs have urgently requested that questions be put to the EC Court of Justice for a preliminary ruling even at this early stage so that certainty can be obtained on a number of fundamental questions as quickly as possible. Article 234 of the Treaty establishing the

European Community provides *inter alia* that where a question regarding interpretation of the Treaty or the validity and interpretation of acts of the institutions is raised before any national court or tribunal, such court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling on it. Although the Administrative Jurisdiction Division saw no need in the judgment of 10 April 2001 to request a preliminary ruling, the possibility cannot be excluded in advance that this may become necessary given the present set of facts. However, this can be determined only after a thorough study of these facts. The President therefore takes the view that whether the preliminary questions raised by the plaintiffs must be answered in order to give judgment in the present case cannot be determined in the provisional remedy proceedings.

In view of the above, the President will arrange for an expedited hearing of the main action.

Further information on these cases can be obtained from Molle Eisma, Raad van State, The Hague, email address: m.eisma@raadvanstate.nl

5.c Sweden

Decision of the Regeringsrätten, of 5 april 2000, case no 7909 - 1998

Interpretation of article 73 of Regulation 1408/71 (family benefits)

Mrs K, a Finnish citizen, worked in Sweden for eleven months until February 1993. She received unemployment benefits until February 1994, when she gave birth to a child. She then received parental benefits until July 1994, at which time the local Social Insurance Office concluded that, according to the Swedish Social Security Act, she was no longer entitled to such benefits due to the fact that she had moved to Finland. - On appeal, an Administrative Court of Appeal requested a preliminary ruling by the ECJ concerning the interpretation of certain provisions of Regulation 1408/71. - The ECJ held, *inter alia*, that parental benefits, intended to enable one of the parents to devote himself or herself to the raising of a young child, should be treated as a family benefit within the meaning of Regulation 1408/71. The Court ruled that the Regulation does not preclude the legislation of a Member State from providing that a person who has ceased all occupational activity in its territory loses the right to receive family benefits on the ground that he has transferred his residence to another Member State where he lives with the members of his family (Case C-275/96, Kuusijärvi, [1998] ECR I-3419).

After the ruling by the ECJ was handed down, Mrs K claimed, however, that she was entitled to Swedish parental benefits on the ground that her husband still was gainfully employed in Sweden.

The Court of Appeal recalled that according to Article 73 of the Regulation, an employed person subject to the legislation of a Member State shall be entitled, in respect of members of his family who are residing in another Member State, to the family benefits provided for by the legislation of the former State, as if they were residing in that State. The Court of Appeal upheld the appeal and declared that Mrs K had the right to parental benefits even after July 1994.

The National Social Insurance Board pointed out, on appeal, that the Swedish parental benefit scheme is based on the principle that each person is individually insured. Article 73 should therefore, the Board argued, be interpreted as granting the father of the child - but not Mrs K - the right to parental benefits. If Mrs K would have the right to parental benefits after having moved to Finland, then a spouse never having resided in Sweden could also claim that right if the other spouse is employed in Sweden. This would, the Board emphasized, create a right which spouses residing in Sweden cannot claim. - The Regeringsrätten dismissed the appeal.

Decision of the Regeringsrätten of 25 June 2001, case no 4174-2000

Interpretation of the concept of filing system in the Directive on the protection of personal data.

According to the Swedish law on confidentiality, data in the possession of a public authority is to be kept confidential if it may be assumed that they, if handed out, will be processed in violation of the Swedish Personal Data Act, a law which is intended to implement Directive 95/46 on the protection of individuals with regard to the processing of personal data and the free movement of such data. - A company requested from the Royal Academy of Technique data concerning grades received by some 1 400 students. The company explained that it intended to manually go through the documents, sorted by family name, in order to calculate the average grade for each student. Data on students considered to be of possible interest for recruitment would then be arranged in a separate pile with "highest average grades at the top" for further evaluation. All other documents would be destroyed. The Academy turned down the request.

The Directive applies to the processing of personal data wholly or partly by automatic means, and to the processing otherwise than by automatic means of personal data which form, or are intended to form, part of a filing system (Article 3.1). For the purpose of the Directive, a personal data filing system shall mean any structured set of personal data which are accessible according to specific criteria (Article 2 c).

The Regeringsrätten found, that the existence of a structured set of personal data accessible according to specific criteria presupposes some form of preliminary or adaptive measures. In a filing system there must be a considerably more efficient way to search for data than to go through the documents one by one. To arrange a number of documents in a certain order cannot, without further measures being taken, constitute a filing system within the meaning of national law and the directive. Consequently, the requested documents were to be handed out to the appellant.

Decision of the Regeringsrätten of 5 juli 2001, case no 7888-1998

The serving of breakfast in hotels is a distinct supply of services for VAT purposes.

According to the Swedish law on value added tax, the rate of VAT is, as a general rule, 25 per cent. For the supply of hotel rooms that rate is, however, only 12 per cent. A hotel company, X AB, demanded that the serving of breakfast in its hotels should be regarded as an ancillary service to the principal service of providing hotel rooms and thus be taxed at the rate of 12 per cent. - The Regeringsrätten ruled that the serving of breakfast could not be regarded as such an ancillary service (cf C-349/96, Card Protection Plan Ltd, [1999] ECR I-973).

Decision of the Regeringsrätten of 5 november 2001, case no 1975-2001

Interpretation of Article 13 A of the Sixth VAT Directive - a reference for a preliminary ruling not called for.

The City of Stockholm demanded that guided tours of the City Hall should be regarded as exhibitions arranged for the public within a museum and thus, according to Swedish law on value added tax, be exempted from VAT. The City claimed that guided tours of the City Hall was a cultural service within the meaning of Article 13 A 1 n of the Sixth Directive and that Community law required a wide interpretation of the concept of

museum. The City demanded that the issue should be referred to the ECJ for a preliminary ruling.

The Regeringsrätten recalled that, according to Article 13 A of the Sixth Directive, the Member States should exempt from taxation, inter alia, "certain cultural services". It was evident, the Court stated, that - although the exceptions in Article 13 are autonomous concepts - the choice of the expression "certain cultural services" leaves to the Member States a considerable freedom to decide which services within the cultural sphere should be exempted from taxation. Thus, Community law cannot be of guidance for the interpretation of a concept of national law well within the notion of "certain cultural services". The Court found no reason to refer the issue to the ECJ and ruled that the guided tours of the Stockholm City Hall could not be exempted from taxation.

Decision of the Regeringsrätten of 13 November 2001, Case no 7461-1999

Equal treatment with regard to nationality within the EEA-area.

Mrs L was employed in Norway before she moved to Sweden in August 1997 where she, after an initial period of two and a half month, continued to work for the same employer. The question was raised whether she in Sweden was entitled to parental benefits (above a certain guaranteed minimum level) for taking care of a daughter, born in February 1998. According to the Swedish Social Insurance Act, a person is entitled to such benefits if he or she, for a period of at least 240 consecutive days prior to the birth of the child, has been insured to receive compensation in case of sick leave. Since Mrs L was considered not to fulfil that requirement, the local Social Insurance Office refused to grant her the right to parental benefits. - The Regeringsrätten draw attention to the fact that it followed from instructions issued by the National Social Insurance Board that a person should retain the right to a determined level of compensation in the case of sick leave, even when he or she temporarily, for a period of, at the time, not exceeding six months, was not gainfully employed. The Court held that, firstly, according to Regulation 1408/71, Mrs L had the right to have her employment in Norway taken into account and, secondly, that she, in order to comply with the principle of equal treatment in Community law, should enjoy the same protection against lowering the level of compensation in case of a temporary cessation of gainful employment as a person having resided in Sweden.

*Further information on these cases can be obtained
from mr M. Mats Mellin, Regeringsrätten, Suède :
Hans.Ragnemalm@reg.dom.se*