

Case Comments

Decisions of International and Foreign Tribunals

RENÉ H. HIMEL, JR., Departmental Editor

Court of Justice of the European Communities

In *Parke, Davis & Company v. Probel*, the plaintiff sued in a Dutch court for breach of its patent on chloramphenicol. One defense was that the chloramphenicol sold by the defendants was imported by them from Italy, which does not grant patent protection to medicaments, and that Articles 85 and 86 of the EEC Treaty preclude use of a Dutch patent to prevent import of products lawfully prepared in Italy. The Court of Appeal at The Hague referred this question to the Court of Justice of the European Communities. On February 29, 1968, the latter held that since a patent, of itself, is not an agreement or concerted practice, Article 85 would not apply except in the case of use of a patent in concert between different enterprises to affect trade and distort competition. The Court held further that Article 86 would not apply, since lawful enforcement of patent rights is not an improper exploitation of the patent, unless some abuse of the rights can be shown, leaving open the question whether charging a higher price in Holland for the product prepared there than for the same product imported from Italy would constitute such an abuse. *Recueil XIV/2*, p. 81, 8 *Common Market Law Reports* 47.

France

In the case of *Inacio da Palma*, the Cour d'Appel de Paris, on December 4, 1967, refused extradition by Portugal of a well-known political militant who was able to convince the court that the bank robbery with which he was charged had been committed "uniquely for a political motive". [1968] II JCP 15387.

Commission of the European Communities

On March 13, 1969, the Commission granted a negative clearance as to the rule of the European Machine-Tool Expositions (EEMO), a trade-fair association, prohibiting manufacturers exhibiting at an EEMO fair from participating in the same year in any other fair in any of the 12 European countries whose machine-tool trade associations are members of EEMO's organizing committee (CECIMO). EEMO fairs are held every other year. The Commission found that the rule restricts competition and is likely to affect trade among Common Market countries. Nevertheless, clearance was granted under Article 85(3) in view of the advantages to manufacturers and consumers of the regular, comprehensive EEMO fairs, of the detrimental effects of the trend toward proliferation of trade fairs, and the fact that the restrictive rule is no more than necessary for the achievement of its lawful objectives. IV-93 – European Machine-Tool Expositions. Official Journal No. L69, p. 13, CCH Common Market Reporter § 9295.

England

In *Mather v. Mahoney*, Payne, J., on June 24, 1968, recognized the validity in England of a Reno divorce obtained by an American wife from her English husband. The parties had been married in Rome, where the husband was living although domiciled in England. After three years (apparently in Italy), the wife returned to America. She had lived most of her life in Pennsylvania, but went to Nevada to get a divorce. The divorce papers were served on the husband in Italy, and he was represented by counsel in the Nevada proceeding. Finding that the divorce would be recognized in Pennsylvania, with which the wife had a substantial connection, the English court held that the divorce must be recognized also in England on the authority of *Indyka v Indyka* and *Angelo v Angelo* (noted at 3 International Lawyer 181, 182). The court did not discuss the possibly distinguishing elements of the federal nature of the American Union and the Full-Faith-and-Credit Clause. [1968] 3 All ER 223.

Attorney-General v. Nissan involved the claim of a British hotelkeeper in Cyprus for compensation for the occupation of his hotel by British peace-keeping troops in 1963-64. The troops were under British command for part of the period, and under United Nations command thereafter. Holding for the plaintiff on preliminary issues of law, the House of Lords decided on February 11, 1969, that the troops' actions were the responsibility of the British, not the Cyprus, government, since the former had their own interest in preserving peace in the Middle East. Their lordships also

held that the act-of-state doctrine no more precludes recovery by a British subject for actions outside, than for actions within, British territory; and that the United Nations command of the troops for part of the period did not relieve the British government from responsibility for the troops' actions, since the United Nations is not a sovereign entity. [1969] 1 All ER 629.

European Court of Human Rights

The Neumeister Case

Fritz Neumeister, an Austrian citizen living in Vienna, was arrested in February 1961 on a charge of fiscal fraud. It was alleged that he had improperly obtained reimbursement (under a program designed to encourage exports) of more than 54,000,000 schillings in turnover tax during the period 1952-58. Neumeister was released on parole in May 1961. Thereafter he left Austria on two short trips with the permission of the Investigating Judge. In the Spring of 1962, Neumeister advised the Judge that he planned to vacation in Finland (with which Austria had no extradition treaty) in July. In early July, Neumeister was first interrogated by the Judge and then confronted with an alleged co-conspirator. The following day the Judge denied Neumeister permission to go to Finland, and he was then arrested a second time.

Two years and two months later he was released. His case had not yet been tried, and while in custody he had made unremitting applications for release on bail. The Austrian courts had, until the fall of 1964, consistently fixed bail at an amount beyond Neumeister's means or those of his family, relating the amount of the bail to the amount of his possible civil liability for restitution rather than to his means. Subsequent investigation having reduced the amount of the civil claim, bail was ultimately reduced to a figure within the family means and Neumeister was released.

On his application to the Commission, referred by the latter to the Court of Human Rights, the latter on June 27, 1968, held unanimously that bail, being designed to assure his presence at the trial rather than to furnish security for his civil liability, should have been fixed in relation to Neumeister's means rather than his civil liability, and that his continued detention constituted a violation of Article 5, paragraph 3 of the European Convention on Human Rights. By a vote of 5 to 2, the Court declined to find a violation of Article 6(1) of the Convention by virtue of the long delay in bringing the case to trial, citing the international complexity of the investigation and the difficulties attendant on inability to find one

co-conspirator and to extradite another and frustration by the Swiss banking secrecy laws and failure to obtain cooperation from the Soviet Armed Forces Bank. Finally, the Court held unanimously that there had been no violation of the "equality of arms" principle included in the fair-trial provisions of Articles 5(4) and 6(1), by virtue of *ex parte* representations by the prosecuting authority to the Austrian courts in connection with the bail applications, since the cited provisions do not apply to such applications. Eight International Legal Materials 547.

International Arbitration

Brazil-United States Dispute on Processed Coffee

An arbitration panel was established pursuant to Article 44 of the International Coffee Agreement 1968, in connection with a dispute between Brazil and the United States as to processed or soluble coffee. The panel consisted of Messrs. Bengt Odevall of Sweden (Chairman), David Herwitz of the United States, and Paulo Egydio Martins of Brazil. On February 28, 1969, the panel handed down its conclusion, over the dissent of Mr. Martins, (a) that the action of Brazil in imposing a contribution quota to which United States purchasers, but not Brazilian purchasers, of Brazilian green coffee are subject, and in prohibiting the export of certain lower-grade and less expensive types of Brazilian green coffee, constituted discriminatory treatment by enabling Brazilian manufacturers to produce soluble coffee at a lower cost, and (b) the United States is accordingly entitled to take appropriate remedial action under Article 44, paragraph 3 of the Agreement. Eight International Legal Materials 564. The two Governments have since exchanged diplomatic notes looking to initiation of discussion of a proposal by the United States per pound on exports of soluble coffee which terminate in the United States. Eight ILM 57980.

Lesotho

Molefi v. Principal Legal Adviser

On January 15, 1969, the High Court of Lesotho held *inter alia* that the applicant, who had fled South Africa to escape prosecution for involvement in the activities of the Pan Africanist Congress, was not a refugee within the restricted definition of the Convention on the Status of Refugees (one who is outside the country of his nationality as a result of events occurring before 1 January 1951 and owing to well-founded fear of prosecution on racial, religious, national, social or political grounds) since the Pan African-

ist Congress was not founded until 1959, despite the fact that the law under which the applicant was charged was enacted in 1950 and the applicant's contention that organization of the Congress was the result of South African laws antedating 1951. 8 *International Legal Materials* 581.