

## 61986J0080

**Judgment of the Court (Sixth Chamber) of 8 October 1987. - Criminal proceedings against Kolpinghuis Nijmegen BV. - Reference for a preliminary ruling: Arrondissementsrechtbank Arnhem - Netherlands. - The possibility for a directive which has not yet been implemented to be relied upon against an individual. - Case 80/86.**

*European Court reports 1987 Page 03969*

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### Keywords

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*1 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - DIRECT EFFECT - CONDITIONS - LIMITS - POSSIBILITY OF RELYING UPON A DIRECTIVE AGAINST AN INDIVIDUAL - NONE*

*( EEC TREATY, ART . 189\*(3 )\*)*

*2 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - IMPLEMENTATION BY THE MEMBER STATES - NEED TO ENSURE THAT DIRECTIVES ARE EFFECTIVE - OBLIGATIONS OF THE NATIONAL COURTS - LIMITS - PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY*

*( EEC TREATY, ART . 189\*(3 )\*)*

### Summary

*1 . WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR, AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED, TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE, THOSE PROVISIONS MAY BE RELIED UPON BY AN INDIVIDUAL AGAINST THE STATE WHERE THAT STATE FAILS TO IMPLEMENT THE DIRECTIVE IN NATIONAL LAW BY THE END OF THE PERIOD PRESCRIBED OR WHERE IT FAILS TO IMPLEMENT THE DIRECTIVE CORRECTLY .*

*HOWEVER, ACCORDING TO ARTICLE 189 OF THE EEC TREATY THE BINDING NATURE OF A DIRECTIVE, WHICH CONSTITUTES THE BASIS FOR THE POSSIBILITY OF RELYING ON THE DIRECTIVE BEFORE A NATIONAL COURT, EXISTS ONLY IN RELATION TO "EACH MEMBER STATE TO WHICH IT IS ADDRESSED " . IT FOLLOWS THAT A DIRECTIVE MAY NOT OF ITSELF IMPOSE OBLIGATIONS ON AN INDIVIDUAL AND THAT A PROVISION OF A DIRECTIVE MAY NOT BE RELIED UPON AS SUCH AGAINST SUCH A PERSON BEFORE A NATIONAL COURT .*

*2 . IN APPLYING NATIONAL LAW AND IN PARTICULAR THE PROVISIONS OF A NATIONAL LAW SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT THE DIRECTIVE, NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSES OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY .*

*HOWEVER, THAT OBLIGATION IS LIMITED BY THE GENERAL PRINCIPLES OF LAW WHICH FORM PART OF COMMUNITY LAW AND IN PARTICULAR THE PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY . THEREFORE A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A NATIONAL LAW ADOPTED BY A MEMBER STATE FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .*

## Parties

*IN CASE 80/86*

*REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE  
ARRONDISSEMENTSRECHTBANK ( DISTRICT COURT ), ARNHEM, FOR A PRELIMINARY RULING IN THE  
CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT AGAINST*

*KOLPINGHUIS NIJMEGEN BV, NIJMEGEN,*

*ON THE INTERPRETATION OF COUNCIL DIRECTIVE 80/777/EEC OF 15 JULY 1980 ON THE  
APPROXIMATION OF THE LAWS OF THE MEMBER STATES RELATING TO THE EXPLOITATION AND  
MARKETING OF NATURAL MINERAL WATERS ( OFFICIAL JOURNAL 1980, L\*229, P.\*1 ), IN PARTICULAR  
AS REGARDS THE EFFECTS OF THAT DIRECTIVE BEFORE IT HAS BEEN IMPLEMENTED IN NATIONAL LAW,  
THE COURT ( SIXTH CHAMBER )*

*COMPOSED OF : O . DUE, PRESIDENT OF CHAMBER, G . C . RODRIGUEZ IGLESIAS, T . KOOPMANS, K .  
BAHLMANN AND C . KAKOURIS, JUDGES,*

*ADVOCATE GENERAL : J . MISCHO*

*REGISTRAR : D . LOUTERMAN, ADMINISTRATOR*

*AFTER CONSIDERING THE OBSERVATIONS SUBMITTED ON BEHALF OF*

*THE NETHERLANDS GOVERNMENT, IN THE WRITTEN PROCEDURE BY I . VERKADE, SECRETARY-  
GENERAL, AND AT THE HEARING BY ITS AGENT, G . M . BORCHARDT,*

*THE UNITED KINGDOM, IN THE WRITTEN PROCEDURE BY ITS AGENT, S . J . HAY, AND AT THE HEARING  
BY H . L . PURSE, ASSISTANT SOLICITOR,*

*THE ITALIAN GOVERNMENT, BY LUIGI FERRARI BRAVO, HEAD OF THE DEPARTMENT FOR CONTENTIOUS  
DIPLOMATIC AFFAIRS, ACTING AS AGENT, ASSISTED BY M . CONTI, AVVOCATO DELLO STATO,*

*THE COMMISSION OF THE EUROPEAN COMMUNITIES, IN THE WRITTEN PROCEDURE BY AUKE HAAGSMA,  
A MEMBER OF ITS LEGAL DEPARTMENT, ACTING AS AGENT, REPLACED AT THE HEARING BY R . C .  
FISCHER, LEGAL ADVISER, ACTING AS AGENT,*

*HAVING REGARD TO THE REPORT FOR THE HEARING AND FURTHER TO THE HEARING ON 3 FEBRUARY  
1987,*

*AFTER HEARING THE OPINION OF THE ADVOCATE GENERAL DELIVERED AT THE SITTING ON 17 MARCH  
1987,*

*GIVES THE FOLLOWING*

*JUDGMENT*

## Grounds

*1 BY AN ORDER OF 3 FEBRUARY 1986, WHICH WAS RECEIVED AT THE COURT ON 14 MARCH 1986, THE  
ARRONDISSEMENTSRECHTBANK, ARNHEM, SUBMITTED TO THE COURT FOR A PRELIMINARY RULING  
UNDER ARTICLE 177 OF THE EEC TREATY FOUR QUESTIONS ON THE INTERPRETATION OF COMMUNITY  
LAW WITH REGARD TO THE EFFECT OF A DIRECTIVE UNDER THE NATIONAL LAW OF A MEMBER STATE  
WHICH HAS NOT YET ADOPTED THE MEASURES NEEDED TO IMPLEMENT THAT DIRECTIVE .*

*2 THOSE QUESTIONS AROSE IN CRIMINAL PROCEEDINGS BROUGHT AGAINST AN UNDERTAKING  
RUNNING A CAFE FOR STOCKING FOR SALE AND DELIVERY A BEVERAGE WHICH IT CALLED "MINERAL  
WATER" BUT WHICH CONSISTED OF TAP-WATER AND CARBON DIOXIDE . THE UNDERTAKING IS  
CHARGED WITH INFRINGING ARTICLE 2 OF THE KEURINGSVERORDENING ( INSPECTION REGULATION )  
OF THE MUNICIPALITY OF NIJMEGEN WHICH PROHIBITS THE STOCKING FOR SALE AND DELIVERY OF  
GOODS INTENDED FOR TRADE AND HUMAN CONSUMPTION WHICH ARE OF UNSOUND COMPOSITION .*

*3 BEFORE THE POLITIERECHTER ( MAGISTRATE DEALING WITH COMMERCIAL OFFENCES ), THE  
OFFICIER VAN JUSTITIE ( PUBLIC PROSECUTOR ) RELIED INTER ALIA UPON COUNCIL DIRECTIVE  
80/777/EEC OF 15 JULY 1980 ON THE APPROXIMATION OF THE LAWS OF THE MEMBER STATES  
RELATING TO THE EXPLOITATION AND MARKETING OF NATURAL MINERAL WATERS ( OFFICIAL JOURNAL  
1980, L\*229, P.\*1 ). THE DIRECTIVE PROVIDES IN PARTICULAR THAT THE MEMBER STATES ARE TO  
TAKE THE MEASURES NECESSARY TO ENSURE THAT ONLY WATERS EXTRACTED FROM THE GROUND OF  
A MEMBER STATE AND RECOGNIZED BY THE RESPONSIBLE AUTHORITY OF THAT MEMBER STATE AS*

NATURAL MINERAL WATERS SATISFYING THE PROVISIONS OF ANNEX I, SECTION I, OF THE DIRECTIVE MAY BE MARKETED AS NATURAL MINERAL WATERS . THAT PROVISION OF THE DIRECTIVE OUGHT TO HAVE BEEN IMPLEMENTED WITHIN FOUR YEARS AFTER THE DIRECTIVE WAS NOTIFIED, THAT IS TO SAY BY 17 JULY 1984, BUT THE NETHERLANDS LEGISLATION WAS AMENDED ONLY WITH EFFECT FROM 8 AUGUST 1985, WHEREAS THE OFFENCES WITH WHICH THE ACCUSED IN THE MAIN PROCEEDINGS IS CHARGED TOOK PLACE ON 7 AUGUST 1984 .

4 UNDER THOSE CIRCUMSTANCES THE ARRONDISSEMENTSRECHTBANK SUBMITTED TO THE COURT THE FOLLOWING QUESTIONS :

"( 1 ) CAN AN AUTHORITY OF A MEMBER STATE ( IN THIS CASE THE PROSECUTING BODY ) RELY AS AGAINST NATIONALS OF THAT MEMBER STATE ON A PROVISION OF A DIRECTIVE IN A CASE WHICH IS NOT COVERED BY THE STATE' S OWN LEGISLATION OR IMPLEMENTING PROVISIONS?

( 2 ) IS A NATIONAL COURT OBLIGED, WHERE A DIRECTIVE HAS NOT BEEN IMPLEMENTED, TO GIVE DIRECT EFFECT TO PROVISIONS OF THE DIRECTIVE WHICH LEND THEMSELVES TO SUCH TREATMENT EVEN WHERE THE INDIVIDUAL CONCERNED DOES NOT SEEK TO DERIVE ANY RIGHT FROM THOSE PROVISIONS?

( 3 ) WHERE A NATIONAL COURT IS REQUIRED TO INTERPRET A NATIONAL RULE, SHOULD OR MAY THAT COURT BE GUIDED IN ITS INTERPRETATION BY THE PROVISIONS OF AN APPLICABLE DIRECTIVE?

( 4 ) DOES IT MAKE A DIFFERENCE TO THE ANSWERS TO QUESTIONS 1, 2 AND 3 IF ON THE MATERIAL DATE ( IN THIS CASE 7 AUGUST 1984 ) THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED?"

5 REFERENCE IS MADE TO THE REPORT FOR THE HEARING FOR A FULLER ACCOUNT OF THE FACTS OF THE MAIN PROCEEDINGS, THE RELEVANT COMMUNITY AND NATIONAL RULES AND THE OBSERVATIONS SUBMITTED TO THE COURT, WHICH ARE MENTIONED OR DISCUSSED HEREINAFTER ONLY IN SO FAR AS IS NECESSARY FOR THE REASONING OF THE COURT .

#### THE FIRST TWO QUESTIONS

6 THE FIRST TWO QUESTIONS CONCERN THE POSSIBILITY WHETHER THE PROVISIONS OF A DIRECTIVE WHICH HAS NOT YET BEEN IMPLEMENTED IN NATIONAL LAW IN THE MEMBER STATE IN QUESTION MAY BE APPLIED AS SUCH .

7 IN THIS REGARD IT SHOULD BE RECALLED THAT, ACCORDING TO THE ESTABLISHED CASE-LAW OF THE COURT ( IN PARTICULAR ITS JUDGMENT OF 19 JANUARY 1982 IN CASE 8/81 BECKER V FINANZAMT MUENSTER-INNENSTADT (( 1982 )) ECR 53 ), WHEREVER THE PROVISIONS OF A DIRECTIVE APPEAR, AS FAR AS THEIR SUBJECT-MATTER IS CONCERNED, TO BE UNCONDITIONAL AND SUFFICIENTLY PRECISE, THOSE PROVISIONS MAY BE RELIED UPON BY AN INDIVIDUAL AGAINST THE STATE WHERE THAT STATE FAILS TO IMPLEMENT THE DIRECTIVE IN NATIONAL LAW BY THE END OF THE PERIOD PRESCRIBED OR WHERE IT FAILS TO IMPLEMENT THE DIRECTIVE CORRECTLY .

8 THAT VIEW IS BASED ON THE CONSIDERATION THAT IT WOULD BE INCOMPATIBLE WITH THE BINDING NATURE WHICH ARTICLE 189 CONFERS ON THE DIRECTIVE TO HOLD AS A MATTER OF PRINCIPLE THAT THE OBLIGATION IMPOSED THEREBY CANNOT BE RELIED ON BY THOSE CONCERNED . FROM THAT THE COURT DEDUCED THAT A MEMBER STATE WHICH HAS NOT ADOPTED THE IMPLEMENTING MEASURES REQUIRED BY THE DIRECTIVE WITHIN THE PRESCRIBED PERIOD MAY NOT PLEAD, AS AGAINST INDIVIDUALS, ITS OWN FAILURE TO PERFORM THE OBLIGATIONS WHICH THE DIRECTIVE ENTAILS .

9 IN ITS JUDGMENT OF 26 FEBRUARY 1986 IN CASE 152/84 MARSHALL V SOUTH-WEST HAMPSHIRE AREA HEALTH AUTHORITY (( 1986 )) ECR 723, THE COURT EMPHASIZED, HOWEVER, THAT ACCORDING TO ARTICLE 189 OF THE EEC TREATY THE BINDING NATURE OF A DIRECTIVE, WHICH CONSTITUTES THE BASIS FOR THE POSSIBILITY OF RELYING ON THE DIRECTIVE BEFORE A NATIONAL COURT, EXISTS ONLY IN RELATION TO "EACH MEMBER STATE TO WHICH IT IS ADDRESSED ". IT FOLLOWS THAT A DIRECTIVE MAY NOT OF ITSELF IMPOSE OBLIGATIONS ON AN INDIVIDUAL AND THAT A PROVISION OF A DIRECTIVE MAY NOT BE RELIED UPON AS SUCH AGAINST SUCH A PERSON BEFORE A NATIONAL COURT .

10 THE ANSWER TO THE FIRST TWO QUESTIONS SHOULD THEREFORE BE THAT A NATIONAL AUTHORITY MAY NOT RELY, AS AGAINST AN INDIVIDUAL, UPON A PROVISION OF A DIRECTIVE WHOSE NECESSARY IMPLEMENTATION IN NATIONAL LAW HAS NOT YET TAKEN PLACE .

#### THE THIRD QUESTION

11 THE THIRD QUESTION IS DESIGNED TO ASCERTAIN HOW FAR THE NATIONAL COURT MAY OR MUST TAKE ACCOUNT OF A DIRECTIVE AS AN AID TO THE INTERPRETATION OF A RULE OF NATIONAL LAW .

12 AS THE COURT STATED IN ITS JUDGMENT OF 10 APRIL 1984 IN CASE 14/83 VON COLSON AND KAMANN V LAND NORDRHEIN-WESTFALEN (( 1984 )) ECR 1891, THE MEMBER STATES' OBLIGATION ARISING FROM A DIRECTIVE TO ACHIEVE THE RESULT ENVISAGED BY THE DIRECTIVE AND THEIR DUTY

UNDER ARTICLE 5 OF THE TREATY TO TAKE ALL APPROPRIATE MEASURES, WHETHER GENERAL OR PARTICULAR, TO ENSURE THE FULFILMENT OF THAT OBLIGATION, IS BINDING ON ALL THE AUTHORITIES OF MEMBER STATES INCLUDING, FOR MATTERS WITHIN THEIR JURISDICTION, THE COURTS . IT FOLLOWS THAT, IN APPLYING THE NATIONAL LAW AND IN PARTICULAR THE PROVISIONS OF A NATIONAL LAW SPECIFICALLY INTRODUCED IN ORDER TO IMPLEMENT THE DIRECTIVE, NATIONAL COURTS ARE REQUIRED TO INTERPRET THEIR NATIONAL LAW IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY .

13 HOWEVER, THAT OBLIGATION ON THE NATIONAL COURT TO REFER TO THE CONTENT OF THE DIRECTIVE WHEN INTERPRETING THE RELEVANT RULES OF ITS NATIONAL LAW IS LIMITED BY THE GENERAL PRINCIPLES OF LAW WHICH FORM PART OF COMMUNITY LAW AND IN PARTICULAR THE PRINCIPLES OF LEGAL CERTAINTY AND NON-RETROACTIVITY . THUS THE COURT RULED IN ITS JUDGMENT OF 11 JUNE 1987 IN CASE 14/86 PRETORE DE SALO V X (( 1987 )) ECR ... THAT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A NATIONAL LAW ADOPTED BY A MEMBER STATE FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .

14 THE ANSWER TO THE THIRD QUESTION SHOULD THEREFORE BE THAT IN APPLYING ITS NATIONAL LEGISLATION A COURT OF A MEMBER STATE IS REQUIRED TO INTERPRET THAT LEGISLATION IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY, BUT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A LAW ADOPTED FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .

THE FOURTH QUESTION

15 THE QUESTION WHETHER THE PROVISIONS OF A DIRECTIVE MAY BE RELIED UPON AS SUCH BEFORE A NATIONAL COURT ARISES ONLY IF THE MEMBER STATE CONCERNED HAS NOT IMPLEMENTED THE DIRECTIVE IN NATIONAL LAW WITHIN THE PRESCRIBED PERIOD OR HAS IMPLEMENTED THE DIRECTIVE INCORRECTLY . THE FIRST TWO QUESTIONS WERE ANSWERED IN THE NEGATIVE . HOWEVER, IT MAKES NO DIFFERENCE TO THOSE ANSWERS IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED . AS REGARDS THE THIRD QUESTION CONCERNING THE LIMITS WHICH COMMUNITY LAW MIGHT IMPOSE ON THE OBLIGATION OR POWER OF THE NATIONAL COURT TO INTERPRET THE RULES OF ITS NATIONAL LAW IN THE LIGHT OF THE DIRECTIVE, IT MAKES NO DIFFERENCE WHETHER OR NOT THE PERIOD PRESCRIBED FOR IMPLEMENTATION HAS EXPIRED .

16 THE ANSWER TO THE FOURTH QUESTION MUST THEREFORE BE THAT IT MAKES NO DIFFERENCE TO THE ANSWERS SET OUT ABOVE IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED .

## Decision on costs

COSTS

17 THE COSTS INCURRED BY THE NETHERLANDS GOVERNMENT, THE ITALIAN GOVERNMENT, THE UNITED KINGDOM AND THE COMMISSION OF THE EUROPEAN COMMUNITIES, WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT, ARE NOT RECOVERABLE . SINCE THESE PROCEEDINGS ARE, IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED, A STEP IN THE PROCEEDINGS PENDING BEFORE THE NATIONAL COURT, THE DECISION ON COSTS IS A MATTER FOR THAT COURT .

## Operative part

ON THOSE GROUNDS,

THE COURT ( SIXTH CHAMBER )

HEREBY RULES :

( 1 ) A NATIONAL AUTHORITY MAY NOT RELY, AS AGAINST AN INDIVIDUAL, UPON A PROVISION OF A DIRECTIVE WHOSE NECESSARY IMPLEMENTATION IN NATIONAL LAW HAS NOT YET TAKEN PLACE .

( 2 ) IN APPLYING ITS NATIONAL LEGISLATION, A COURT OF A MEMBER STATE IS REQUIRED TO INTERPRET THAT LEGISLATION IN THE LIGHT OF THE WORDING AND THE PURPOSE OF THE DIRECTIVE IN ORDER TO ACHIEVE THE RESULT REFERRED TO IN THE THIRD PARAGRAPH OF ARTICLE 189 OF THE

*TREATY, BUT A DIRECTIVE CANNOT, OF ITSELF AND INDEPENDENTLY OF A LAW ADOPTED FOR ITS IMPLEMENTATION, HAVE THE EFFECT OF DETERMINING OR AGGRAVATING THE LIABILITY IN CRIMINAL LAW OF PERSONS WHO ACT IN CONTRAVENTION OF THE PROVISIONS OF THAT DIRECTIVE .*

*( 3 ) IT MAKES NO DIFFERENCE TO THE ANSWERS SET OUT ABOVE IF ON THE MATERIAL DATE THE PERIOD WHICH THE MEMBER STATE HAD IN WHICH TO ADAPT NATIONAL LAW HAD NOT YET EXPIRED .*