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These reports contain references to the following major works of legal reference described in the manner indicated below.

Halsbury's Laws of England

The reference 26 *Halsbury's Laws* (4th edn) para 577 refers to paragraph 577 on page 296 of volume 26 of the fourth edition of *Halsbury's Laws of England*.

The reference 15 *Halsbury's Laws* (4th edn reissue) para 355 refers to paragraph 355 on page 283 of reissue volume 15 of the fourth edition of *Halsbury's Laws of England*.

The reference 7(1) *Halsbury's Laws* (4th edn) (1996 reissue) para 9 refers to paragraph 9 on page 24 of the 1996 reissue of volume 7(1) of the fourth edition of *Halsbury's Laws of England*.

Halsbury's Statutes of England and Wales

The reference 26 *Halsbury's Statutes* (4th edn) 734 refers to page 734 of volume 26 of the fourth edition of *Halsbury's Statutes of England and Wales*.

The reference 40 *Halsbury's Statutes* (4th edn) (1997 reissue) 269 refers to page 269 of the 1997 reissue of volume 40 of the fourth edition of *Halsbury's Statutes of England and Wales*.

Halsbury's Statutory Instruments

The reference 17 *Halsbury's Statutory Instruments* 305 refers to page 305 of volume 17 of the grey volumes series of *Halsbury's Statutory Instruments*.

The reference 14 *Halsbury's Statutory Instruments* (1994 reissue) 201 refers to page 201 of the 1994 reissue of volume 14 of the grey volumes series of *Halsbury's Statutory Instruments*.

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b

Practice note

Constitution of the Court of First Instance

c

COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
PRESS AND INFORMATION DIVISION
30 JUNE 1999

European Community – Court of First Instance – Constitution – Criteria under which single judge able to hear and decide cases.

d

30 June 1999. **Press release No 49/99.**

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES MAY NOW GIVE DECISIONS WHEN CONSTITUTED BY A SINGLE JUDGE

e

The Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities provides that the Court of First Instance is to sit in chambers of three or five judges, or in plenary session.

f

By decision of 26 April 1999 the Council has amended its 1988 decision by adding a provision enabling the Court of First Instance to sit 'when constituted by a single judge' (OJ 1999 L114 p 52). The Council has taken the view that this amendment is necessary having regard to the workload of the Court of First Instance, which has considerably increased since its creation, and which will increase further as a result of new litigation relating to intellectual property rights, and in particular arising from the application of Council Regulation (EC) 40/94 (on the Community trade mark).

g

Consequently, on 17 May 1999, with the unanimous approval of the Council, the Court of First Instance amended its Rules of Procedure in order to determine the circumstances in which a single judge may be called upon to give a decision in a case and the detailed rules in accordance with which a case may be heard by a single judge.

h

In cases which do not raise any difficult questions of law or fact, which are of limited importance or which do not involve any other special circumstances, the Judge-Rapporteur, sitting as a single judge, may decide: cases concerning officials of the Communities; direct actions brought by natural or legal persons contesting decisions of the European Parliament, the Council, the Commission or the European Central Bank which are addressed to them or which are of direct and individual concern to them, as well as direct actions concerning the non-contractual liability of the Community, provided that those cases raise only questions already clarified by established case law or form part of a series of cases in which the same relief is sought and of which one has already been finally decided; cases in which the Court of First Instance has jurisdiction to give judgment pursuant to an arbitration clause contained in a contract concluded by or on behalf of the Community.

j

The decision to delegate a case to a single judge must be taken, after the parties have been heard, unanimously by the chamber composed of three judges before which the case is pending. Where a member state or an institution of the European Communities which is a party to the proceedings objects to the case being heard by a single judge, the case must be maintained before or referred to the chamber to which the Judge-Rapporteur belongs. a

Delegation to a single judge is not possible in cases which raise issues as to the legality of an act of general application; in cases concerning the implementation of the rules on competition and on control of concentrations, relating to aid granted by States, relating to measures to protect trade, relating to the common organisation of the agricultural markets, with the exception of cases that form part of a series of cases in which the same relief is sought and where one of those cases has already been finally decided; in cases concerning proceedings brought against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) and against the Community Plant Variety Office. b
c

These amendments to the Rules of Procedure of the Court of First Instance, together with further details, have recently been published in the Official Journal of the European Communities (OJ 1999 L135 p 92). d

**Arbeitsgemeinschaft Deutscher
Rundfunkanstalten (ARD) v PRO Sieben
Media AG (supported by SAT 1
Satellitenfernsehen GmbH and another)**

(Case C-6/98)

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES (SIXTH CHAMBER)

JUDGES SCHINTGEN (PRESIDENT OF THE SECOND CHAMBER, ACTING AS PRESIDENT OF THE SIXTH CHAMBER), KAPTEYN (RAPPORTEUR) AND RAGNEMALM

ADVOCATE GENERAL JACOBS

22 APRIL, 24 JUNE, 28 OCTOBER 1999

European Community – Freedom of movement – Services – Television broadcasting – Community and national legislation restricting transmission time allocated to television advertising – Different methods of calculation of authorised number of interruptions for advertising – Whether Community law authorising gross principle or net principle – Whether member states able to prescribe net principle under national legislation – Council Directive (EEC) 89/552, arts 3, 11, 20.

ARD, which consisted of 11 public law broadcasting organisations in Germany, brought proceedings against PRO, a German private television broadcasting company, for unfair competition, concerning the method of calculation under national legislation of the number of permissible interruptions, by advertisements, of films shown on television. National legislation had transposed art 11 of Council Directive (EEC) 89/552 (on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities) as amended by EP and Council Directive (EC) 97/36. Article 11(3)¹ of the directive provided that the transmission of audiovisual works such as films, whose scheduled duration was more than 45 minutes, could be interrupted once for each period of 45 minutes, and a further interruption was allowed if their scheduled duration was at least 20 minutes longer than two or more complete periods of 45 minutes. Under art 3(1)² of the directive, member states were free to require television broadcasters, under their own jurisdiction, to comply with more detailed or stricter rules than provided by the directive. Article 20³ provided that, with due regard for Community law, member states could lay down conditions other than those in art 11 in respect of broadcasts intended solely for the national territory. Two interpretations were advanced on the method of calculation of the number of advertising interruptions authorised, the gross principle and the net principle. According to the gross principle, supported by PRO, the duration of advertisements was to be included in the period of time in relation to which the permissible number of interruptions was calculated. According to the net

¹ Article 11(3) is set out at p 8 f g, post

² Article 3(1) is set out at p 17 f, post

³ Article 20 is set out at p 17 e, post

principle, prescribed by the national law and supported by ARD, only the duration of the films themselves was to be included. It was common ground that, in certain circumstances, the application of the gross principle permitted a greater number of interruptions than was permitted by the application of the net principle. The Stuttgart Landesgericht (Regional Court) ordered PRO not to apply the gross principle to the broadcasting of films. On appeal, the Stuttgart Oberlandesgericht (Higher Regional Court) stayed the proceedings and referred to the Court of Justice of the European Communities for a preliminary ruling, the questions: (i) whether art 11(3) of the directive prescribed the gross principle or the net principle for the calculation of the periods of transmission time; and (ii) whether art 11(3), in conjunction with art 3(1) of the directive, authorised member states to prescribe the net principle and, further, whether such authorisation was precluded under the general principles of the EC Treaty. PRO contended, inter alia, that, notwithstanding art 3(1), member states could only provide more restrictive rules than those laid down in art 11(3) in the circumstances provided by art 20. a
b
c

Held – (1) On its true construction, art 11(3) of Directive 89/552 prescribed the gross principle. Thus, in order to calculate the relevant 45-minute period, the duration of the advertisements was to be included in that period. Such a conclusion was consistent with the main purpose of the directive, namely to ensure freedom to provide television broadcasting services. A provision which imposed a restriction, in the matter of the provision of services, on an activity involving the exercise of a fundamental freedom such as the freedom to provide television broadcasting services, had to express that restriction in clear terms and, where unclear, was to be given a restrictive interpretation. Since art 11(3), whose wording was ambiguous, imposed a restriction on the possibility of interrupting the transmission of audiovisual works by advertising, that restriction had to be interpreted in the strictest possible sense. Accordingly, since the gross principle allowed a greater number of interruptions for advertising than the net principle, art 11(3) was to be construed as prescribing the gross principle (see p 24 f to p 25 c and p 27 h j, post); *Société d'Importation Édouard Leclerc-Siplec v TF1 Publicité SA* Case C-412/93 [1995] All ER (EC) 343 and *Konsumentombudsmannen (KO) v De Agostini (Svenska) Förlag AB, Konsumentombudsmannen (KO) v TV-Shop i Sverige AB* Joined cases C-34–36/95, [1997] All ER (EC) 687 considered. d
e
f
g

(2) Article 11(3), in conjunction with art 3(1), of the directive authorised member states to prescribe, for television broadcasters under their jurisdiction, the net principle for advertisements which could be inserted during programmes, provided that such rules were compatible with other relevant provisions of Community law. It was clear from the wording of art 20 of the directive that it applied without prejudice to art 3(1) and, if art 3(1) was interpreted restrictively, it would render that article nugatory as a general provision in an essential area covered by the directive. Moreover, nothing in the directive suggested that art 20 had to be construed so as to deprive member states of the right provided by art 3(1), and the attainment of the objective of the directive would not be affected in any way by member states imposing stricter rules on advertising. Further, the application of the net principle to restrictions on advertising did not infringe the general principles of freedom of movement of goods and freedom to provide services provided h
j

- a by the EC Treaty, nor the general principle of equal treatment (see p 25 h j, p 26 a to d and p 27 j to p 28 b, post).

Notes

For Community provisions on establishment and freedom to provide services in general, see 52 *Halsbury's Laws* (4th edn) paras 16.01–16.05.

b

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- Alpine Investments BV v Minister van Financiën* Case C-384/93 [1995] All ER (EC) 543, [1995] ECR I-1141, ECJ.
- Defrenne v Sabena* Case 43/75 [1981] 1 All ER 122, [1976] ECR 455, ECJ.
- Hönig v Stadt Stockach* Case C-128/94 [1995] ECR I-3389.
- c *Keck (Criminal proceedings against), Mithouard (Criminal proceedings against)* Joined cases C-267–268/91 [1993] ECR I-6097.
- Konsumentombudsmannen (KO) v De Agostini (Svenska) Förlag AB, Konsumentombudsmannen (KO) v TV-Shop i Sverige AB* Joined cases C-34–36/95, [1997] All ER (EC) 687, [1997] ECR I-3843, ECJ.
- d *Netherlands v EEC Commission* Case 11/76 [1979] ECR 245.
- Procurator Fiscal v Wood* Joined cases C-251–252/90 [1992] ECR I-2873.
- R v Immigration Appeal Tribunal, ex p Antonissen* Case C-292/89 [1991] ECR I-745.
- RTI v Ministero delle Poste e Telecomunicazioni* Joined cases C-320/94, C-328–329/94, C-337–339/94 [1996] ECR I-6471.
- e *Sacchi* Case 155/73 [1974] ECR 409.
- Société d'Importation Édouard Leclerc-Siplec v TF1 Publicité SA* Case C-412/93 [1995] All ER (EC) 343, [1995] ECR I-179, ECJ.
- Stichting Collectieve Antennevoorziening Gouda v Commissariaat voor de Media* Case C-288/89 [1991] ECR I-4007.
- f *UK v EC Commission* Case C-106/96 [1998] ECR I-2729.

Reference

- By order of 17 December 1997, the Oberlandesgericht (Higher Regional Court), Stuttgart, referred to the Court of Justice of the European Communities for a preliminary ruling under art 177 of the EC Treaty (now art 234 EC) two questions
- g (set out at p 23 f g, post) on the interpretation of art 11(3) of Council Directive (EEC) 89/552 (on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities) (OJ 1989 L298 p 23), as amended by EP and Council Directive (EC) 97/36 (OJ 1997 L202 p 60). Those questions arose in
- h proceedings between Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD) and PRO Sieben Media AG (PRO Sieben) supported by SAT 1 Satellitenfernsehen GmbH (SAT 1) and Kabel 1, K 1 Fernsehen GmbH (Kabel 1). Written observations were submitted on behalf of: ARD, by W Keßler, Rechtsanwalt, Stuttgart; PRO Sieben, by H-J Rabe of the Brussels Bar; Kabel 1, by T Jestaedt of the Brussels Bar;
- j the Luxembourg government, by N Schmit, Director of International Economic Relations and Cooperation at the Ministry of Foreign Affairs, acting as agent; the Netherlands government, by J G Lammers, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as agent; the Portuguese government, by L Fernandes, Director of the Legal Service of the Directorate General for the European Communities in the Ministry of Foreign Affairs, and P Borges, a lawyer in the

Directorate General for the European Communities in that Ministry, acting as agents; the Swedish government, by E Brattgård, Departementsråd in the Ministry of Foreign Affairs, acting as agent; the United Kingdom government, by D Cooper, of the Treasury Solicitors Department, acting as agent, and R Thompson, barrister; the Commission of the European Communities, by J Sack, Legal Adviser, acting as agent. Oral observations were made by: ARD, represented by W Keßler; PRO Sieben, represented by H-J Rabe; Kabel 1, represented by T Jestaedt; the French government, represented by A Maitrepierre, Chargé de Mission in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as agent; the Italian government, represented by F Quadri, Avvocato dello Stato; the United Kingdom government, represented by J Eadie, barrister; and the Commission, represented by J Sack. The language of the case was German. The facts are set out in the opinion of the Advocate General.

24 June 1999. **The Advocate General (F Jacobs)** delivered the following opinion.

1. The dispute in this case concerns the interruption by advertisements of films shown on television: specifically, the method by which, under the 'Television without frontiers' Directive⁴ the permissible number of such interruptions is to be calculated.

THE FACTS AND THE MAIN PROCEEDINGS

2. The applicants are 11 public law broadcasting institutions of the German Länder grouped together in the Arbeitsgemeinschaft Deutscher Rundfunkanstalten (ARD). Under the German Basic Law, television broadcasting falls within the competence of the Länder. Those institutions are collectively responsible for the ARD television channel. The defendant, PRO Sieben Media AG (PRO Sieben), is a private television broadcaster.

3. The dispute arises from the wording of art 11(3) of Council Directive (EEC) 89/552, which provides that the permissible number of interruptions by advertisements of films shown on television is to be calculated by reference to a period referred to as the 'programmed duration' (or 'scheduled duration').

4. Under 'the gross principle', which is supported by PRO Sieben, the duration of the advertisements is to be included in the duration of time according to which the permissible number of interruptions is calculated. Under 'the net principle', which is supported by ARD, the advertisements are not to be included in such time, ie the relevant duration relates only to the length of the film itself. The difference is that, in certain circumstances, application of the gross principle would permit a greater number of interruptions than would be allowed by the net principle.

5. ARD has raised the issue before the German courts by taking proceedings against PRO Sieben for unfair competition. Two other private television broadcasters, SAT 1 Satellitenfernsehen GmbH (SAT 1) and Kabel 1, K1 Fernsehen GmbH (Kabel 1), have intervened in the German

⁴ Council Directive (EEC) 89/552 (on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities) (OJ 1989 L298 p 23), amended by EP and Council Directive (EC) 97/36 (OJ 1997 L202 p 60) (see para 8, post).