

## Case C-398/92

### Mund & Fester v Hatrex Internationaal Transport

(Reference for a preliminary ruling  
from the Hanseatisches Oberlandesgericht (Higher Regional Court), Hamburg)

(Seizure order -- Sufficient grounds: enforcement of a judgment in another Contracting  
State party to the Brussels Convention -- Prohibition of discrimination)

Opinion of Mr Advocate General Tesouro delivered on 16 December 1993 .....?I - 0000  
Judgment of the Court (Sixth Chamber), 10 February 1994 .....?I - 0000

#### Summary of the Judgment

1. *EEC Treaty -- Fourth indent of Article 220 -- Convention on Jurisdiction and Enforcement of Judgments -- Connection of Treaty with both the Convention and the national provisions referred to by the Convention (EEC Treaty, Art. 220; Convention of 27 September 1968)*
  2. *Community law -- Principles -- Equal treatment -- Discrimination on grounds of nationality -- National provision authorizing seizure based on the presumption of foreseeable difficulties in the event of a judgment being enforced abroad -- Presumption not justified where enforcement takes place in a Member State party to the Brussels Convention -- Unlawful (EEC Treaty, Arts 7 and 220; Convention of 27 September 1968)*
1. By providing that the Member States shall, so far as is necessary, enter into negotiations with each other with a view to ensuring for the benefit of their nationals the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts and tribunals, the purpose of the fourth indent of Article 220 of the Treaty is to facilitate the working of the common market through the adoption of rules of jurisdiction for disputes relating thereto and the elimination, as far as is possible, of difficulties concerning the recognition and enforcement of judgments in the territory of the Contracting States. It follows that the provisions of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, concluded on the basis of that article and within the framework defined by it, and also the national provisions to which the Convention refers, are linked to the EEC Treaty.
  2. Article 7 of the Treaty, read in conjunction with Article 220 thereof and the Brussels Convention, precludes a national provision of civil procedure which, in the case of a judgment to be enforced within national territory, authorizes seizure only on the

ground that it is probable that enforcement will otherwise be made impossible or substantially more difficult but, in the case of a judgment to be enforced in another Member State, authorizes seizure simply on the ground that enforcement is to take place abroad.

The distinction made by such a provision is not justified by objective circumstances, since all the Member States are Contracting Parties to the Brussels Convention and the conditions for enforcing judgments and the risks attached to the difficulties raised by enforcement are the same.

