

## **Joined Cases C-430/93 and C-431/93 Schijndel [1995]**

**Facts:** Mr van Veen and Mr van Schijndel unsuccessfully applied for exemption from compulsory membership of the occupational pension scheme for physiotherapists. They challenged these decisions, which were dismissed on appeal. In support of their plea in cassation, they contended for the first time that the lower court should have considered of its own motion the compatibility of the compulsory Fund membership with higher-ranking competition rules of Community Law. In connection with these proceedings, the cassation court referred for a preliminary ruling different questions with regard to the power of a national court to consider of its own motion the compatibility of a rule of domestic law with articles 3(f), 5, 85, 86 and/or 95 of the EEC Treaty.

**Held:** The competition rules mentioned by the national court are binding rules, directly applicable in the national legal order. Where, by virtue of domestic law, courts must raise of their own motion points of law based on binding domestic rules which have not been raised by the parties, such an obligation also exists where binding Community rules are concerned. Therefore, in proceedings concerning civil rights and obligations freely entered into by the parties, it is for the national court to apply the abovementioned articles even when the party has not relied on them, where domestic law allows such application by the national court. However, in the present case, the domestic law principle that in civil proceedings a court must or may raise points of its own motion is limited by its obligation to keep to the subject-matter of the dispute and to base its decision on the fact put before it. This limitation is justified by the principle that, in a civil suit, it is for the parties to take the initiative, the court being able to act of its own motion only in exceptional cases where the public interest requires its intervention. Community law does not require national courts to raise of their own motion an issue concerning the breach of provisions of Community law where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of those provision bases his claim.