

1. Case 6/64 Flaminio Costa v. Enel (extract), pp. 1-2
2. Case 26/62 Van Gend en Loos (extract), pp. 3-6

By contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.

By creating a Community of unlimited duration, having its own institutions, its own personality, its own legal capacity and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the States to the Community, the Member States have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves.

The integration into the laws of each Member State of provisions which derive from the Community, and more generally the terms and the spirit of the Treaty, make it impossible for the States, as a corollary, to accord

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precedence to a unilateral and subsequent measure over a legal system accepted by them on a basis of reciprocity. Such a measure cannot therefore be inconsistent with that legal system. The executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty set out in Article 5 (2) and giving rise to the discrimination prohibited by Article 7.

The obligations undertaken under the Treaty establishing the Community would not be unconditional, but merely contingent, if they could be called in question by subsequent legislative acts of the signatories. Wherever the Treaty grants the States the right to act unilaterally, it does this by clear and precise provisions (for example Articles 15, 93 (3), 223, 224 and 225). Applications, by Member States for authority to derogate from the Treaty are subject to a special authorization procedure (for example Articles 8 (4), 17 (4), 25, 26, 73, the third subparagraph of Article 93 (2), and 226) which would lose their purpose if the Member States could renounce their obligations by means of an ordinary law.

The precedence of Community law is confirmed by Article 189, whereby a regulation 'shall be binding' and 'directly applicable in all Member States'. This provision, which is subject to no reservation, would be quite meaningless if a State could unilaterally nullify its effects by means of a legislative measure which could prevail over Community law.

It follows from all these observations that the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

The transfer by the States from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carries with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail. Consequently Article 177 is to be applied regardless of any domestic law, whenever questions relating to the interpretation of the Treaty arise.

The questions put by the Giudice Conciliatore regarding Articles 102, 93, 53, and 37 are directed first to enquiring whether these provisions produce direct effects and create individual rights which national courts must protect, and, if so, what their meaning is.

Van Gend en Loos

JUDGMENT

Issues of fact and of law

I—Facts and procedure

The facts and the procedure may be summarized as follows:

1. On 9 September 1960 the company N. V. Algemene Transport- en Expeditie Onderneming van Gend en Loos (hereinafter called 'Van Gend & Loos'), according to a customs declaration of 8 September on form D.5061, imported into the Netherlands from the Federal Republic of Germany a quantity of ureaformaldehyde, described in the import document as 'Harnstoffharz (U.F. resin) 70, aqueous emulsion of ureaformaldehyde'.

2. On the date of importation, the product in question was classified in heading 39.01-a-1 of the tariff of import duties listed in the 'Tariefbesluit' which entered into force on 1 March 1960. The nomenclature of the 'Tariefbesluit' is taken from the protocol concluded between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands at Brussels on 25 July 1958, ratified in the Netherlands by the Law of 16 December 1959.

3. The wording of heading 39.01-a-1 was as follows:

'Products of condensation, poly-condensation and poly-addition, whether modified or not, polymerized, or linear (phenoplasts, aminoplasts, alkyds, allylic polyesters and other non-saturated polyesters, silicones etc. . . .):

(a) Liquid or paste products, including emulsions, dispersions and solutions:

Duties applicable
gen. % spec. %

1. Aminoplasts
in aqueous
emulsions,
dispersions or
solutions

10% 8%

4. On this basis, the Dutch revenue authorities applied an *ad valorem* import duty of 8% to the importation in question.

5. On 20 September 1960 Van Gend & Loos lodged an objection with the Inspector of Customs and Excise at Zaandam against the application of this duty in the present case. The company put forward in particular the following arguments:

On 1 January 1958, the date on which the EEC Treaty entered into force, aminoplasts in emulsion were classified under heading 279-a-2 of the tariff in the 'Tariefbesluit' of 1947, and charged with an *ad valorem* import duty of 3%. In the 'Tariefbesluit' which entered into force on 1 March 1960, heading 279-a-2 was replaced by heading 39.01-a.

Instead of applying, in respect of intra-Community trade, an import duty of 3% uniformly to all products under the old heading 279-a-2, a sub-division was created: 39.01-a-1, which contained only aminoplasts in aqueous emulsions, dispersions or solutions, and in respect of which import duty was fixed at 8%. For the other products in heading 39.01-a, which also had been included in the old heading 279-a-2, the import duty of 3% applied on 1 January 1958 was maintained.

By thus increasing the import duty on the product in question after the entry

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into force of the EEC Treaty, the Dutch Government infringed Article 12 of that Treaty, which provides that Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.

6. The objection of Van Gend & Loos was dismissed on 6 March 1961 by the Inspector of Customs and Excise at Zaandam on the ground of inadmissibility, because it was not directed against the actual application of the tariff but against the rate.

7. Van Gend & Loos appealed against this decision to the Tariefcommissie, Amsterdam, on 4 April 1961.

8. The case was heard by the Tariefcommissie on 21 May 1962. In support of its application for the annulment of the contested decision Van Gend & Loos put forward the arguments already submitted in its objection of 20 September 1960. The Nederlandse administratie der belastingen replied in particular that when the EEC Treaty entered into force the product in question was not charged under the heading 279-a-2 with a duty of only 3% but, because of its composition and intended application, was classified under heading 332 bis ('synthetic and other adhesives, not stated or included elsewhere') and charged with a duty of 10% so that there had not in fact been any increase.

9. The Tariefcommissie, without giving a formal decision on the question whether the product in question fell within heading 332 bis or heading 279-a-2 of the 1947 'Tariefbesluit', took the view that the arguments of the parties raised a question concerning the interpretation of the EEC Treaty. It therefore suspended the proceedings and, in conformity with the third paragraph of Article 177 of the Treaty, referred to the Court of Justice on 16

August 1962, for a preliminary ruling the two questions set out above.

10. The decision of the Tariefcommissie was notified on 23 August 1962 by the Registrar of the Court to the parties to the action, to the Member States and to the Commission of the EEC.

11. Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC written observations were submitted to the Court by the parties to the main action, by the Government of the Kingdom of Belgium, the Government of the Federal Republic of Germany, the Commission of the EEC and the Government of the Kingdom of the Netherlands.

12. At the public hearing the Court on 29 November 1962, the oral submissions of the plaintiff in the main action and of the Commission of the EEC were heard. At the same hearing questions were put to them by the Court. Written replies to these were supplied within the prescribed time.

13. The Advocate-General gave his reasoned oral opinion at the hearing on 12 December 1962, in which he proposed that the Court should in its judgment only answer the first question referred to it and hold that Article 12 of the EEC Treaty imposes a duty only on Member States.

II—Arguments and observations

The arguments contained in the observations submitted in accordance with the second paragraph of Article 20 of the Protocol on the Statute of the Court of Justice of the European Economic Community by the parties to the main action, the Member States and the Commission may be summarized as follows:

A—The first question Admissibility

The Netherlands Government, the

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To ascertain whether the provisions of an international treaty extend so far in their effects it is necessary to consider the spirit, the general scheme and the wording of those provisions.

The objective of the EEC Treaty, which is to establish a Common Market, the functioning of which is of direct concern to interested parties in the Community, implies that this Treaty is more than an agreement which merely creates mutual obligations between the contracting states. This view is confirmed by the preamble to the Treaty which refers not only to governments but to peoples. It is also confirmed more specifically by the establishment of institutions endowed with sovereign rights, the exercise of which affects Member States and also their citizens. Furthermore, it must be noted that the nationals of the states brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.

In addition the task assigned to the Court of Justice under Article 177, the object of which is to secure uniform interpretation of the Treaty by national courts and tribunals, confirms that the states have acknowledged that Community law has an authority which can be invoked by their nationals before those courts and tribunals.

The conclusion to be drawn from this is that the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage. These rights arise not only where they are expressly granted by the Treaty, but also by reason of obligations which the Treaty imposes in a clearly defined way upon individuals as well as upon the Member States and upon the institutions of the Community.

With regard to the general scheme of the Treaty as it relates to customs duties and charges having equivalent effect it must be emphasized that Article 9, which bases the Community upon a customs union, includes as an essential provision the prohibition of these customs duties and charges. This provision is found at the beginning of the part of the Treaty which defines the 'Foundations of the Community'. It is applied and explained by Article 12.

The wording of Article 12 contains a clear and unconditional prohibition which is not a positive but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislative measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between Member States and their subjects.

The implementation of Article 12 does not require any legislative intervention on the part of the states. The fact that under this Article it is the Member States who are made the subject of the negative obligation does not imply that their nationals cannot benefit from this obligation.

In addition the argument based on Articles 169 and 170 of the Treaty put forward by the three Governments which have submitted observations to the Court in their statements of case is misconceived. The fact that these Articles of the Treaty enable the Commission and the Member States to bring before the Court a State which has not fulfilled its obligations does not mean that individuals cannot plead these obligations, should the occasion arise, before a national court, any more than the fact that the Treaty places at the disposal of the Commission ways of ensuring that obligations imposed upon those subject to the Treaty are observed, precludes the possibility, in actions between individuals before a national court, of pleading infringements of these obligations.

A restriction of the guarantees against an infringement of Article 12 by Member States to the procedures under Article 169 and 170 would remove all direct legal protection of the individual rights of their nationals. There is the risk that recourse to the procedure under these Articles would be ineffective if it were to occur after the implementation of a national decision taken contrary to the provisions of the Treaty.

The vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted by Articles 169 and 170 to the diligence of the Commission and of the Member States.

It follows from the foregoing considerations that, according to the spirit, the general scheme and the wording of the Treaty, Article 12 must be interpreted as producing direct effects and creating individual rights which national courts must protect.