

Van Gend en Loos, Case 26/62 (Judgment Feb. 5, 1963)

A Dutch Tribunal (the Tariefcommissie) made a preliminary reference to the ECJ asking whether nationals of a Member State could claim individual rights under the Treaty which the courts must protect and, if so, whether applying an import duty of 8% to the import into the Netherlands of ureaformaldehyde originating in the Germany was an unlawful increase prohibited by the EEC Treaty.

...B - on the substance of the case

The first question of the Tariefcommissie is whether Article 12¹ of the Treaty has direct application in national law in the sense that nationals of member states may on the basis of this Article lay claim to rights which the national court must protect .

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 [234], 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' is applied and explained by Article 12 .

The wording of Article 12 contains a clear and unconditional prohibition which is not a

¹Art. 25 of the EC Treaty currently regulates customs duties.

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 [226 and 227] 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 [226 and 227] 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 [226 and 227] 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.

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Operative part

The court

In answer to the questions referred to it for a preliminary ruling by the Tariefcommissie by decision of 16 August 1962, hereby rules :

1. Article 12 of the Treaty establishing the European Economic Community produces direct effects and creates individual rights which national courts must protect.
2. in order to ascertain whether customs duties or charges having equivalent effect have been increased contrary to the prohibition contained in Article 12 of the Treaty, regard must be had to the duties and charges actually applied by the member state in question at the date of the entry into force of the Treaty. Such an increase can arise both from a re-arrangement of the tariff resulting in the classification of the product under a more highly taxed heading and from an increase in the rate of customs duty applied....