

**Judgment of the Court of 5 February 1963.**

**NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration.**

**Reference for a preliminary ruling: Tariefcommissie - Pays-Bas.**

**Case 26-62.**

*European Court reports*

## Parties

IN CASE 26/62

REFERENCE TO THE COURT UNDER SUBPARAGRAPH ( A ) OF THE FIRST PARAGRAPH AND UNDER THE THIRD PARAGRAPH OF ARTICLE 177 OF THE TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY BY THE TARIEFKOMMISSIE, A NETHERLANDS ADMINISTRATIVE TRIBUNAL HAVING FINAL JURISDICTION IN REVENUE CASES, FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

N.V . ALGEMENE TRANSPORT - EN EXPEDITIE ONDERNEMING VAN GEND & LOOS, HAVING ITS REGISTERED OFFICE AT UTRECHT,

AND

NEDERLANDSE ADMINISTRATIE DER BELASTINGEN ( NETHERLANDS INLAND REVENUE ADMINISTRATION ), ,

## Subject of the case

ON THE FOLLOWING QUESTIONS :

**1 . WHETHER ARTICLE 12 OF THE EEC TREATY HAS DIRECT APPLICATION WITHIN THE TERRITORY OF A MEMBER STATE, IN OTHER WORDS, WHETHER NATIONALS OF SUCH A STATE CAN, ON THE BASIS OF THE ARTICLE IN QUESTION, LAY CLAIM TO INDIVIDUAL RIGHTS WHICH THE COURTS MUST PROTECT;**

**2 . IN THE EVENT OF AN AFFIRMATIVE REPLY, WHETHER THE APPLICATION OF AN IMPORT DUTY OF 8% TO THE IMPORT INTO THE NETHERLANDS BY THE APPLICANT IN THE MAIN ACTION OF UREA-FORMALDEHYDE ORIGINATING IN THE FEDERAL REPUBLIC OF GERMANY REPRESENTED AN UNLAWFUL INCREASE WITHIN THE MEANING OF ARTICLE 12 OF THE EEC TREATY OR WHETHER IT WAS IN THIS CASE A REASONABLE ALTERATION OF THE DUTY APPLICABLE BEFORE 1 MARCH 1960, AN ALTERATION WHICH, ALTHOUGH AMOUNTING TO AN INCREASE FROM THE ARITHMETICAL POINT OF VIEW, IS NEVERTHELESS NOT TO BE REGARDED AS PROHIBITED UNDER THE TERMS OF ARTICLE 12;**

## Grounds

I - THE FIRST QUESTION

A - JURISDICTION OF THE COURT

THE GOVERNMENT OF THE NETHERLANDS AND THE BELGIAN GOVERNMENT CHALLENGE THE JURISDICTION OF THE COURT ON THE GROUND THAT THE REFERENCE RELATES NOT TO THE INTERPRETATION BUT TO THE APPLICATION OF THE TREATY IN THE CONTEXT OF THE CONSTITUTIONAL LAW OF THE NETHERLANDS, AND THAT IN PARTICULAR THE COURT HAS NO JURISDICTION TO DECIDE, SHOULD THE OCCASION ARISE, WHETHER THE PROVISIONS OF THE EEC TREATY PREVAIL OVER NETHERLANDS LEGISLATION OR OVER OTHER AGREEMENTS ENTERED INTO BY THE NETHERLANDS AND INCORPORATED INTO DUTCH NATIONAL LAW . THE SOLUTION OF SUCH A PROBLEM, IT IS CLAIMED, FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE NATIONAL COURTS,

SUBJECT TO AN APPLICATION IN ACCORDANCE WITH THE PROVISIONS LAID DOWN BY ARTICLES 169 AND 170 OF THE TREATY .

HOWEVER IN THIS CASE THE COURT IS NOT ASKED TO ADJUDICATE UPON THE APPLICATION OF THE TREATY ACCORDING TO THE PRINCIPLES OF THE NATIONAL LAW OF THE NETHERLANDS, WHICH REMAINS THE CONCERN OF THE NATIONAL COURTS, BUT IS ASKED, IN CONFORMITY WITH SUBPARAGRAPH ( A ) OF THE FIRST PARAGRAPH OF ARTICLE 177 OF THE TREATY, ONLY TO INTERPRET THE SCOPE OF ARTICLE 12 OF THE SAID TREATY WITHIN THE CONTEXT OF COMMUNITY LAW AND WITH REFERENCE TO ITS EFFECT ON INDIVIDUALS . THIS ARGUMENT HAS THEREFORE NO LEGAL FOUNDATION .

THE BELGIAN GOVERNMENT FURTHER ARGUES THAT THE COURT HAS NO JURISDICTION ON THE GROUND THAT NO ANSWER WHICH THE COURT COULD GIVE TO THE FIRST QUESTION OF THE TARIEF-COMMISSIE WOULD HAVE ANY BEARING ON THE RESULT OF THE PROCEEDINGS BROUGHT IN THAT COURT .

HOWEVER, IN ORDER TO CONFER JURISDICTION ON THE COURT IN THE PRESENT CASE IT IS NECESSARY ONLY THAT THE QUESTION RAISED SHOULD CLEARLY BE CONCERNED WITH THE INTERPRETATION OF THE TREATY . THE CONSIDERATIONS WHICH MAY HAVE LED A NATIONAL COURT OR TRIBUNAL TO ITS CHOICE OF QUESTIONS AS WELL AS THE RELEVANCE WHICH IT ATTRIBUTES TO SUCH QUESTIONS IN THE CONTEXT OF A CASE BEFORE IT ARE EXCLUDED FROM REVIEW BY THE COURT OF JUSTICE . IT APPEARS FROM THE WORDING OF THE QUESTIONS REFERRED THAT THEY RELATE TO THE INTERPRETATION OF THE TREATY . THE COURT THEREFORE HAS THE JURISDICTION TO ANSWER THEM .

THIS ARGUMENT, TOO, IS THEREFORE UNFOUNDED .

B - ON THE SUBSTANCE OF THE CASE

THE FIRST QUESTION OF THE TARIEF-COMMISSIE IS WHETHER ARTICLE 12 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 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 .

## II - THE SECOND QUESTION

### A - THE JURISDICTION OF THE COURT

ACCORDING TO THE OBSERVATIONS OF THE BELGIAN AND NETHERLANDS GOVERNMENTS, THE WORDING OF THIS QUESTION APPEARS TO REQUIRE, BEFORE IT CAN BE ANSWERED, AN EXAMINATION BY THE COURT OF THE TARIFF CLASSIFICATION OF UREA-FORMALDEHYDE IMPORTED INTO THE NETHERLANDS, A CLASSIFICATION ON WHICH VAN GEND & LOOS AND THE INSPECTOR OF CUSTOMS AND EXCISE AT ZAANDAM

HOLD DIFFERENT OPINIONS WITH REGARD TO THE 'TARIEFBESLUIT' OF 1947 . THE QUESTION CLEARLY DOES NOT CALL FOR AN INTERPRETATION OF THE TREATY BUT CONCERNS THE APPLICATION OF NETHERLANDS CUSTOMS LEGISLATION TO THE CLASSIFICATION OF AMINOPLASTS, WHICH IS OUTSIDE THE JURISDICTION CONFERRED UPON THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES BY SUBPARAGRAPH ( A ) OF THE FIRST PARAGRAPH OF ARTICLE 177 .

THE COURT HAS THEREFORE NO JURISDICTION TO CONSIDER THE REFERENCE MADE BY THE TARIEFCOMMISSIE .

HOWEVER, THE REAL MEANING OF THE QUESTION PUT BY THE TARIEFCOMMISSIE IS WHETHER, IN LAW, AN EFFECTIVE INCREASE IN CUSTOMS DUTIES CHARGED ON A GIVEN PRODUCT AS A RESULT NOT OF AN INCREASE IN THE RATE BUT OF A NEW CLASSIFICATION OF THE PRODUCT ARISING FROM A CHANGE OF ITS TARIFF DESCRIPTION CONTRAVENES THE PROHIBITION IN ARTICLE 12 OF THE TREATY .

VIEWED IN THIS WAY THE QUESTION PUT IS CONCERNED WITH AN INTERPRETATION OF THIS PROVISION OF THE TREATY AND MORE PARTICULARLY OF THE MEANING WHICH SHOULD BE GIVEN TO THE CONCEPT OF DUTIES APPLIED BEFORE THE TREATY ENTERED INTO FORCE .

THEREFORE THE COURT HAS JURISDICTION TO GIVE A RULING ON THIS QUESTION .

B - ON THE SUBSTANCE

IT FOLLOWS FROM THE WORDING AND THE GENERAL SCHEME OF ARTICLE 12 OF THE TREATY THAT, IN ORDER TO ASCERTAIN WHETHER CUSTOMS DUTIES OR CHARGES HAVING EQUIVALENT EFFECT HAVE BEEN INCREASED CONTRARY TO THE PROHIBITION CONTAINED IN THE SAID ARTICLE, REGARD MUST BE HAD TO THE CUSTOMS DUTIES AND CHARGES ACTUALLY APPLIED AT THE DATE OF THE ENTRY INTO FORCE OF THE TREATY .

FURTHER, WITH REGARD TO THE PROHIBITION IN ARTICLE 12 OF THE TREATY, SUCH AN ILLEGAL INCREASE MAY ARISE FROM A RE-ARRANGEMENT OF THE TARIFF RESULTING IN THE CLASSIFICATION OF THE PRODUCT UNDER A MORE HIGHLY TAXED HEADING AND FROM AN ACTUAL INCREASE IN THE RATE OF CUSTOMS DUTY .

IT IS OF LITTLE IMPORTANCE HOW THE INCREASE IN CUSTOMS DUTIES OCCURRED WHEN, AFTER THE TREATY ENTERED INTO FORCE, THE SAME PRODUCT IN THE SAME MEMBER STATE WAS SUBJECTED TO A HIGHER RATE OF DUTY .

THE APPLICATION OF ARTICLE 12, IN ACCORDANCE WITH THE INTERPRETATION GIVEN ABOVE, COMES WITHIN THE JURISDICTION OF THE NATIONAL COURT WHICH MUST ENQUIRE WHETHER THE DUTIABLE PRODUCT, IN THIS CASE UREAFORMALDEHYDE ORIGINATING IN THE FEDERAL REPUBLIC OF GERMANY, IS CHARGED UNDER THE CUSTOMS MEASURES BROUGHT INTO FORCE IN THE NETHERLANDS WITH AN IMPORT DUTY HIGHER THAN THAT WITH WHICH IT WAS CHARGED ON 1 JANUARY 1958 .

THE COURT HAS NO JURISDICTION TO CHECK THE VALIDITY OF THE CONFLICTING VIEWS ON THIS SUBJECT WHICH HAVE BEEN SUBMITTED TO IT DURING THE PROCEEDINGS BUT MUST LEAVE THEM TO BE DETERMINED BY THE NATIONAL COURTS .

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 . 3 . THE DECISION AS TO COSTS IN THESE PROCEEDINGS IS A MATTER FOR THE TARIFFCOMMISSIE .