

Van Gend en Loos v Nederlandse Administratie der Belastingen

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(1963) Case 26/62 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962J0026:EN:NOT>) was a landmark case of the European Court of Justice which established that provisions of the *Treaty Establishing the European Economic Community* were capable of creating legal rights which could be enforced by both natural and legal persons before the courts of the Community's member states. This is now called the principle of direct effect.^[1] The case is acknowledged as being one of the most important, and possibly the most famous development of European Union law.^[1]

The case arose from the reclassification of a chemical, by the Benelux countries, into a customs category entailing higher customs charges. Preliminary questions were asked by the Dutch Tariefcommissie in a dispute between Van Gend en Loos and the Dutch Tax Authority. The European Court of Justice held that this breached a provision of the treaty requiring member states to progressively reduce customs duties between themselves, and continued to rule that the breach was actionable by individuals before national courts and not just by the member states of the

van Gend en Loos



European Court of Justice

Submitted August 16 1962

Decided February 5 1963

Full case name	NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen
Case number	26/62 (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962CJ0026:EN:NOT)
ECLI	ECLI:EU:C:1963:1 (http://curia.europa.eu/juris/documents.jsf?critereEcli=ECLI:EU:C:1963:1)
Chamber	Full court
Nationality of parties	Netherlands
Procedural history	Tariefcommissie, decision of 14 August 1962 (8847/48 T)

Court composition

Community themselves.

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Judge-Rapporteur

Charles Léon Hammes

Judges

L. Delvaux ▪ R. Rossie ▪ O. Riese ▪ A. Trabucchi ▪ R. Recourt ▪
Andreas Matthias Donner

Advocate General

Karl Roemer

Legislation affecting

Interpreted Article 12 TEEC

Facts

Van Gend en Loos, a postal and transportation company, imported urea-formaldehyde from West Germany to the Netherlands. The Dutch customs authorities charged them a tariff on the import. Van Gend en Loos objected, submitting that the tariff was contrary to EC law. Article 12 of the Treaty of Rome (now replaced by Article 30 TFEU) stated:

"Member States shall refrain from introducing between themselves any new customs duties on imports and exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other."

Van Gend en Loos paid the tariff but then sought to retrieve the money in the national court (Tariefcommissie). The Tariefcommissie made a request for a preliminary ruling to the European Court of Justice, asking whether the

then Article 12 of the Treaty of Rome conferred rights on the nationals of a member state that could be enforced in national courts.

Advocate General's opinion

The opinion of the advocate general is distinct from the judgment of the court and has an advisory character. Advocate General Roemer indicated that some provisions of the treaty could have "direct effect" (that citizens could rely on them) but that Article 12 was not one of them.

Judgment

The European Court of Justice, delivering its judgment on the 5 February 1963, firmly held that Article 12 was capable of creating personal rights for Van Gend en Loos. In a seminal judgment it gave a wide and purposive interpretation to the Treaty of Rome.

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.

—Judgment of the Court of 5 February 1963.^[2]

The court gave guidance as to when a treaty article would be directly effective. It stated that it is necessary to consider the spirit, general scheme, and wording of a provision alleged to be directly effective. The court held that since the object of the Treaty of Rome was to establish a common market, for the benefit of individuals, the treaty is more than a typical international agreement. Not only does it create mutual obligations between states, but it is capable of giving individuals rights in the national courts.

The court decided that the fact that the failure of member states to comply with EU law could be supervised by enforcement actions brought either by the Commission or other member state, did not mean that individuals should not also be able to act as enforcers in national courts. Two reasons were given. The first was that a failure to recognise a concept of direct effect would not give sufficient legal protection to individuals. The second was that individual enforcement was an effective supervisory mechanism. The availability of supervision and legal application of article rights by individuals, the Commission and member states is described by Stephen Weatherill as being one of "dual vigilance".^[3]

On the question of the tariff on urea-formaldehyde, the Court ruled that the Netherlands could not impose a higher tariff than that in force on 1 January 1958 (when the Treaty came into force). The Court noted that increase in the tariff could arise either through an increase in the rate or through the reclassification of a product into a higher-rated category, and that both were illegal under Article 12. The question of the proper tariff for urea-formaldehyde (i.e., that which was correctly applied on 1 January 1958) was remitted to the national court.

Commentary

The case is authority for the proposition that articles of the EC treaty are directly effective (as distinct from directly applicable) in their application against the state.

The case illustrates the creative jurisprudence of the European Court of Justice. The concept of direct effect is not mentioned in the treaty. The court held that such a doctrine was necessary in order to ensure the compliance of member states with their obligations under the Treaty of Rome.

The case illustrates a procedure of enforcement of EC law at the national level—direct effect does not require the Commission to bring an action against the state. This is significant, because it provides a more effective, distributed enforcement mechanism.

See also

- European Union law
- Supremacy (European Union law)

- *Marbury v. Madison*

Notes

1. ^ ^a ^b Craig, Paul; de Búrca, Gráinne (2003). *EU Law: Text, Cases and Materials* (3rd ed.). Oxford University Press. p. 182. ISBN 0-19-924943-1. "The ECJ first articulated its doctrine of direct effect in 1963 in what is probably the most famous of its ruling."
2. ^ Case 26/62, *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61962J0026:EN:NOT>). See section B.
3. ^ Weatherill, Stephen (2007). *Cases and materials on EU law*. Oxford University Press. p. 96. ISBN 978-0-19-921401-3.

References

- Kent, Penelope (2001). *Law of the European Union*. Pearson Education. ISBN 0-582-42367-8.
- Craig, Paul; de Búrca, Gráinne (2003). *EU Law: Text, Cases and Materials* (3rd ed.). Oxford University Press. ISBN 0-19-924943-1.
- Weatherill, Stephen (2007). *Cases and materials on EU law*. Oxford University Press. ISBN 978-0-19-921401-3.

External links

- Case 26/62, *NV Algemene Transporten Expeditie Onderneming van Gend en Loos v Nederlandse Administratie der Belastingen* [1963] ECR 1 (<http://eur-lex.europa.eu/LexUriServ>

/LexUriServ.do?uri=CELEX:61962J0026:EN:NOT).

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