OPINION OF MR ADVOCATE GENERAL DARMON

delivered on 3 July 1990 *

Mr President,
Members of the Court,

1. The question concerning the interpretation of the Common Customs Tariff which the Bundesfinanzhof has raised is going to lead the Court to give a ruling on a difficulty similar to that which has arisen in the *Dzodzi* case: [1] to what extent has the Court jurisdiction to interpret a Community provision solely in order to enable the national court to apply national law which contains a reference to Community law?

2. In the present case the difficulty is as follows: before importing a work of art from the Netherlands into the Federal Republic of Germany Mrs Gmurzynska requested a tariff classification notice for the purposes of German tax law in relation to import turnover tax. The national law refers to the nomenclature of the Common Customs Tariff for the purposes of granting exemptions or deductions in such matters.

3. In fact the problem is not entirely new to the Court since the *Thomasdünger* case [2] also concerned the interpretation of the Common Customs Tariff for the purposes of applying national law. The Advocate General in that case concluded firmly in his Opinion that the Court had no jurisdiction, but the Court consented to answer the question and clearly intimated that the prerogatives of the national courts in matters concerning preliminary rulings must be respected.

4. However, in my opinion, that decision does not resolve the issue of principle which is now submitted to the Court. Obviously the division of jurisdiction between the national court, which alone has jurisdiction to determine the relevance of the questions and the need for them, and this Court prevents the Court from reviewing the national court's findings in that respect. The Court is bound, however, to consider whether its own jurisdiction enables it to answer a question put to it.

5. It is as well to recall the purpose of the preliminary ruling procedure:

'Article 177 is essential for the preservation of the Community character of the law established by the Treaty and has the object of *ensuring that in all circumstances this law is the same* in all States of the Community.' [3]

That object of the preliminary ruling procedure — to ensure the uniformity of Community law — obviously concerns only the scope of Community law as defined by Community law itself and by itself alone.

6. The fact that national legislation incorporates a reference to Community law

* Original language: French.

1 — On which I am also delivering my Opinion today (judgment of 18 October 1990 in Joined Cases C-297/88 and C-197/89 [1990] ECR I-3763, at p. I-3778).

2 — Judgment of 26 September 1985 [1985] ECR 3001.

3 — Judgment in Case 166/73 *Rheinmühlen-Düsseldorf* v *Einfuhr-und Vorratsstelle für Getreide und Futtermittel* [1974] ECR 33, at p. 38, paragraph 2, my emphasis.

cannot extend the scope *ratione materiae* and *ratione personae* of the latter. It is a unilateral and independent operation which, whilst referring to a particular substantive provision of Community origin, does not affect in any way the scope of Community law as such.

7. In such a case the interpretation of Community law is in no sense intended to ensure that its effects are the same, that is to say that its substance is uniform within its field of application. It is an operation *sui generis* intended to assist the national court in implementing national law alone, outside the scope of Community law.

8. Let me stress that the unity of the Community legal system is unaffected by situations outside its scope, whatever the substance of the rules governing them. *There is no Community law outside its scope*: what thus matters for its correct application is its uniformity as regards the persons and subject-matter it governs, as defined by it. Whether the definitions which it adopts in that respect can be unilaterally used to govern a particular aspect of national rules cannot extend the scope of Community law and, in consequence, the jurisdiction of the Court.

9. Nevertheless, I should like to mention briefly some questions which would arise in the present case from extending the object of the preliminary ruling procedure:

(i) Is it conceivable that national courts against whose decisions no appeal lies should be required to make a reference in cases similar to the present?

(ii) Similarly, is it possible to contemplate even as a matter of principle a reference to determine the validity of Community provisions to which national law has referred unilaterally and independently?

(iii) Finally, and above all, what would be the authority of the Court's judgment? In that respect, apart from the attitude which the particular national court would foreseeably adopt after requesting a ruling, which is simply a matter of fact, would national courts be legally bound by the terms of this Court's judgment when applying national, and only national, law?

Those important questions show the serious difficulties which would arise were this Court to engage in a vaguely defined form of collaboration, outside the framework and precise objectives of the preliminary ruling procedure. In other words, the Court's role would be to deliver opinions or consultations of the kind which an expert lawyer is sometimes required to provide a court trying a matter involving the application of foreign law. That is not this Court's task in preliminary rulings. [4]

10. True, the Court may hesitate to adopt that analysis for purely practical reasons, such as those stressed by the Commission, which nevertheless admitted at the hearing that 'theoretical reasons could argue against jurisdiction'.

4 — 'The truly original innovation of the Rome Treaties was to establish, as regards the application of *Community law*, a direct relationship between judicial powers in the form of a relationship which is *much more than simple consultation*: it is a relationship on the basis of jurisdiction and powers', in P. Pescatore: *Le droit de l'intégration* 1972, A. W. Sijthoff-Leiden, Institut universitaire des hautes études internationales, Geneva, my emphasis.

11. I am aware that my proposal leads to a result which is at first sight surprising: the national court cannot ask this Court for interpretation in the present case whereas it could if it had to apply the *same text*, albeit as part of the Common Customs Tariff. Does not such a solution in addition involve risks as regards the uniform application of Community law?

12. I have given much thought to that point and am convinced that it is a fallacious problem which gives rise to a fallacious answer. My proposal is confined to recognizing that the national court is the sole arbiter of the rules which it has to apply as part of national law. The fact that the substance of those rules is borrowed from Community law poses no greater potential threat to the uniformity of Community law than the fact that the Community legal system allows the national court, except in cases in which it gives judgment from which there is no appeal, to interpret Community law directly.

13. One last observation which is pertinent in the present case: would it not be odd 20 years after the establishment of the customs union for the Court to interpret the Common Customs Tariff for the purpose of judgment in an action arising from the importation of goods from one Member State into another, even if it is, as in the present case, for the purpose of applying tax law and not customs duties?

14. In consequence I propose that the Court inform the Bundesfinanzhof that it has no jurisdiction to answer the questions contained in the order of 6 June 1989.