JUDGMENT OF THE COURT
26 OCTOBER 1971[1]

Eunomia di Porro e C.
v Ministry of Education of the Italian Republic[2]
(Reference for a preliminary ruling
by the President of the Tribunale di Torino)

'Works of art'

Case 18/71

Summary

Customs duties on exports and charges having equivalent effect — Prohibition — Nature — Rights of individuals — Protection of such rights by national courts (EEC Treaty, Articles 9 and 16)

Articles 9 and 16 of the EEC Treaty taken together involve, at the latest, at the end of the first stage, with regard to all charges having an effect equivalent to customs duties on exports, a clear and precise prohibition on exacting the said charges, which is not subject to any reservation for the States to subject its implementation to a positive act of national law or to an intervention by the institutions of the Community.

These provisions which lend themselves, by their very nature to producing direct effects in the legal relations between Member States and those subject to their jurisdiction, have conferred on individuals from the end of the first stage rights which the national courts must protect and which must prevail over conflicting provisions of national law, even if the Member State has delayed in repealing such provisions.

In Case 18/71

Reference to the Court under Article 177 of the EEC Treaty by the President of the Tribunale di Torino for a preliminary ruling in the action pending before that court between

EUNOMIA DI PORRO E C.,

and

MINISTRY OF EDUCATION OF THE ITALIAN REPUBLIC,

on the interpretation of Article 16 of the EEC Treaty,

1 — Language of the Case: Italian.
2 — CMLR.

THE COURT

composed of: R. Lecourt, President, J. Mertens de Wilmars, Rapporteur and H. Kutscher, Presidents of Chambers, A. M. Donner, A. Trabucchi, R. Monaco and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

1. Law No 1089 of 1 June 1939 (Gazetta Ufficiale, No 184 of 8 August 1939) levied a progressive tax on the export of articles of an artistic, historical, archaeological or ethnographic interest.

The Commission considered that by continuing to levy this tax after 31 December 1961 the Italian Republic was failing to fulfil its obligations under Article 16 of the Treaty and it therefore brought the matter before the Court of Justice under Article 169 for a declaration to that effect. By a judgment dated 10 December 1968 (Case 7/68, *Commission of the European Communities* v *Italian Republic*, [1968] ECR 431) the Court declared that: 'The Italian Republic, by continuing to levy after 1 January 1962 the progressive tax ... on the export to other Member States of the Community of articles of an artistic, historical, archaeological or ethnographic interest, has failed to fulfil its obligations under Article 16 of the Treaty.' Law No 1089 of 1 June 1939 has not yet been expressly repealed.

2. On 4 March 1970 the Eunomia company exported a painting valued at Lit. 500 000 to the Federal Republic of Germany through the customs office at Domodossola. An export tax of Lit. 108 750 was levied on this transaction and paid by the exporter which, however, brought 'proceedings for a summary judgment' before the President of the Tribunale di Torino (Turin District Court) for the repayment of the sums which in its view had been improperly levied by the Italian State.

3. By a decision of 6 April 1971 the President of the Tribunale di Torino stayed the proceedings and under Article 177 of the EEC Treaty, requested the Court to give a preliminary ruling on the following questions:

(1) Does the provision in Article 16 of the Treaty of Rome constitute a legal rule which is immediately applicable and which has produced direct effects within the Italian State as from 1 January 1962?

(2) If so, has that legal rule since that date created against the Italian State for all those subject to the jurisdiction of that State individual rights which Italian courts must protect?

4. The order referring these questions was received at the Registry of the Court of Justice on 15 April 1971.

The Commission of the European Communities and the Eunomia company submitted written observations.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General the Court decided that it was unnecessary to hold any preparatory inquiry.

The parties presented oral argument on 21 September 1971.

SAS Eunomia was represented by Professor Ubertazzi and Mr Capelli.

The Commission was represented by its Legal Adviser, Armando Toledano-Laredo.

The Advocate-General delivered his opinion at the hearing on 5 October 1971.

II — Observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC

The observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

A — Observations of the Commission of the European Communities

1. The *Commission* observes that the Treaty contains two series of provisions for the abolition of existing duties and charges:

— as regards duties and charges on imports: progressive abolition during the transitional period (Article 9 and Articles 13 to 15);

— as regards duties and charges on *exports*: abolition by the end of the first stage at the latest, that is, by 31 December 1969 (Articles 9 and 16).

The duty to abolish duties and charges on exports is thus made to depend upon the fulfilment of a condition precedent—the end of the first stage of the transitional period—which was fulfilled on 1 January 1962. As from that date, this obligation was complete and legally perfect. The Commission maintains that it must produce immediate effects and create rights for individuals which the national courts must protect.

2. Moreover, all the conditions attached by the case-law of the Court to the direct applicability of the Treaty provisions concerning the obligations on the Member States are satisfied:

— In its judgment of 26 June 1966 *Alfons Lütticke GmbH* v *Hauptzollamt Saarlouis*, Case 57/65, [1966] ECR 205 *et seq.*), the Court decided as regards Article 95 that when a general rule is provided with a suspensory clause concerning the passing of a given period, the general rule emerges unconditionally into full force on the expiry of the said period.

— In its judgment of 19 December 1968 (*SpA. Salgoil* v *Italian Ministry for Foreign Trade*, Case 13/68, [1968] ECR 461), the Court decided that, in the case of positive obligations, consideration must be given to the question whether the Member States may in performing them exercise any discretion such as to exclude immediate applicability wholly or in part.

In the opinion of the Commission it appears impossible for any such discretion to be reserved to the Member States by Article 16, which must have the same effect in all the Member States.

— Finally, in a case concerning the obligation to abolish an import duty pursuant to Articles 9 and 13, the judgment in SpA *SACE* v *Ministry for Finance of the Italian Republic* (Case 33/70, [1970] ECR 1213) provided that a prohibition on the levy of those duties lends itself to producing direct effects where it is clear and precise and is not subject to any reservation for the States to subject its implementation to a positive act of national law or to an

intervention by the institutions of the Community.

According to the Commission, Articles 9 and 16, taken together, involve, as regards the levy of export charges, a similar prohibition which lends itself, as from 1 January 1962, to producing direct effects, particularly as, unlike Article 13, Article 16 does not even subject its implementation to intervention by the institutions of the Community.

B — Observations of the Eunomia company

1. The *Eunomia company* observes that there can be no doubt as to the lawful nature of the reference to the Court: the Court has already accepted (Judgment of 17 December 1970, Case 33/70, *SpA SACE* v *Ministry for Finance of the Italian Republic*, [1970] ECR 1213) that a reference is lawful within the context of proceedings for a summary judgment, even where the defendant has not yet been heard by the national court.

2. As regards the substance of the case the Eunomia company considers that the direct effect of the Community legislation and, therefore, the inapplicability of the tax on works of art introduced by the Law of 1939 result, first, from the decision of the Court of Justice of 10 December 1968 (Case 7/68, *Commission of the European Communities* v *Italian Republic*, [1968] ECR 423) and, secondly, from the established case-law of the Court on the question of direct effect.

(a) The judgment of 10 December 1968 (Case 7/68, *Commission of the European Communities* v *Italian Republic, loc. cit.*) defined the *nature* of the tax in question and demonstrated *its unlawful nature*. This Judgment, in fact, declared that the customs union also applies to works of an artistic, historic, etc. interest and that a tax on the export of these articles had an effect equivalent to a customs duty on exports. It was therefore impossible to levy this tax after 1 January 1962 since Community law takes precedence over national law.

(b) According to the case-law of the Court of Justice, the following conditions must be satisfied in order that a rule of Community law may be regarded as directly applicable:

— The provision must be clear and precise (Judgment of 5 February 1963, Case 26/62, *van Gend & Loos* v *Netherlands Inland Revenue Administration*, [1963] ECR 1; Judgment of 15 July 1964, Case 6/64, *Costa* v *ENEL*, [1964] ECR 1141; Judgment of 19 December 1968, Case 13/68, *Spa Salgoil* v *Italian Ministry for Foreign Trade* [1968] ECR 453);

— It must be unconditional and its implementation must not be subject to subsequent intervention by the Member States or Community institutions. However, as regards intervention by the Member States, this does not *ipso facto* deprive the Community provision of its direct applicability: this would only be the case if the subsequent intervention of a Member State was expressly provided for by the Community legislation and constituted a necessary adjunct to it, without which it could not apply. In other cases where the intervention by the State is only an implied result of the need to implement the Treaty (for example, the third paragraph of Article 95) or did not take place within the prescribed period (Judgment of 19 December 1966, Case 13/66, *SpA Salgoil*, [1968] ECR 453), the rule of Community law remains directly applicable;

— There must be no possibility of the Member States' having any discretionary power in its appli-

cation (as is the case in Article 97).

(c) The Eunomia company maintains that Article 16 satisfies all these conditions.

— This provision is clear and precise.

— The rule which it lays down is not subject to any condition: a time-limit was prescribed for its entry into force, but the relevant period expired on 1 January 1962. Moreover, the provision in question provides for no intervention by the Member States which could form an obstacle to immediate applicability. The only intervention to which Article 16 of the Treaty refers indirectly is that of the Member States' agreement to the implementation of the repealing condition which is by implication contained in this provision.

— Finally, the Member States have no discretionary power. The Court has already made this clear in relation to Articles 9 and 12 of the EEC Treaty (Judgment of 17 December 1970, Case 33/70, *SpA SACE* v *Ministry for Finance of the Italian Republic*, [1970] ECR 1213). *A fortiori* this must apply as regards the combined Articles 9 and 16 which make no provision for any intervention by means of a directive from one of the institutions.

The Eunomia company therefore suggests that an affirmative answer must be given to the two questions referred.

Grounds of judgment

[1] By decision of 6 April 1971, received at the Court Registry on 15 April 1971, the President of the Tribunale di Torino referred to the Court under Article 177 of the Treaty establishing the European Economic Community two questions on the interpretation of Article 16 of the EEC Treaty.

[2] The decision making the order for reference shows that the national court is dealing with a request for the refund of sums paid on the export of a work of art to another Member State by way of the tax on the export of articles of an artistic, historic, archaeological or ethnographic interest, which was introduced by the Italian Law No 1089 of 1 June 1939.

[3] As the Court of Justice found in its judgment of 10 December 1968 in Case 7/68, this tax constitutes a charge having an effect equivalent to customs duties on exports and is governed by Article 16 of the Treaty.

[4] In the first question the Court is asked to rule whether Article 16 constitutes a legal rule which is immediately applicable and which reproduces direct effects within the territory of the Italian State as from 1 January 1962. Should the answer to the first question be in the affirmative the Court is requested to rule whether, as from that date, this rule has created individual rights in relation to the Italian State which the courts must protect. As these two questions are closely connected they must be considered together.

5 According to Article 9 of the EEC Treaty, the Community is to be based upon a customs union which is to involve in particular the prohibition between Member States of customs duties and all charges having equivalent effect. Under Article 16 of the Treaty Member States are to abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest.

6 Articles 9 and 16 taken together involve, at the latest at the end of the first stage, with regard to all charges having an effect equivalent to customs duties on exports, a clear and precise prohibition on exacting the said charges, which is not subject to any reservation for the States to subject its implementation to a positive act of national law or to an intervention by the institutions of the Community. It lends itself, by its very nature, to producing direct effects in the legal relations between Member States and those subject to their jurisdiction.

7 Therefore, from the end of the first stage, that is, from 1 January 1962, these provisions have conferred on individuals rights which the national courts must protect and which must prevail over conflicting provisions of national law even if the Member State has delayed in repealing such provisions.

Costs

8 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of SAS Eunomia di Porro e C. and the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 9, 16 and 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

in answer to the questions referred to it by the President of the Tribunale di Torino by order of that court dated 6 April 1971, hereby rules:

Since 1 January 1962, the date on which the first stage of the transitional period came to an end, Article 16 of the Treaty has produced direct effects in the legal relations between the Member States and those persons subject to their jurisdiction and has conferred on the latter rights which the national courts must protect.

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 26 October 1971.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL ROEMER DELIVERED ON 5 OCTOBER 1971[1]

Mr President,
Members of the Court,

As we know from other cases, under Article 37 of Law No 1089 of 1 June 1939, Italy levies a progressive tax on the export of articles of an artistic, historic, archaeological or ethnographic interest. The Commission of the European Communities considers that the levy of this tax is not in accordance with Article 16 of the EEC Treaty, whereby 'Member States shall abolish between themselves customs duties on exports and charges having equivalent effect by the end of the first stage at the latest' (that is, in view of Article 8 of the EEC Treaty, with effect from 1 January 1962). The Commission therefore instituted against the Italian Republic formal proceedings under Article 169 of the EEC Treaty for a declaration that this State was failing to fulfil one of its obligations under the Treaty (Case 7/68, *Commission* v *Italian Republic*, [1968] ECR 423). In these proceedings the Court upheld the Commission's view. In its judgment of 10 December 1968 it affirmed the conclusions put forward by this body and declared that 'the Italian Republic, by continuing to levy after 1 January 1962 the progressive tax laid down by Article 37 of the Law of 1 June 1939 No 1089 on the export to other Member States of the Community of articles of an artistic, historic, archaeological or ethnographic interest, has failed to fulfil its obligations under Article 16 of the Treaty establishing the European Economic Community'.

However, the provisions of the Law at issue, which adversely affect intra-Community trade, have still not been re-

1 — Translated from the German.