JUDGMENT OF THE COURT
8 FEBRUARY 1968[1]

I. G. F. Van Leeuwen
v City of Rotterdam

Case 32/67

Summary

1. *EEC Officials — Privileges and immunities — Exemption from national taxes and levying of a Community tax — Complementary nature of the provisions relating thereto — Scope of the exemption from national taxes*
   (Protocol on Privileges and Immunities of the EEC, Article 12)

2. *EEC Officials — Privileges and immunities — Charge or due representing the consideration for a service rendered by public authorities — Exemption not justified*
   (Protocol on the Privileges and Immunities of the EEC, Article 12)

1. It is as a result of the first paragraph of Article 12 of the Protocol on the Privileges and Immunities of the EEC, which provides for the payment of a tax on salaries, wages and emoluments of officials and other servants of the Community for the benefit of the Community, that the second paragraph of Article 12 exempts salaries, wages and emoluments from national taxes, so that Article 12 taken as a whole ensures a uniform treatment of the said salaries, wages and emoluments for all the officials and servants of the Community, preventing, first and chiefly, their effective remuneration from differing according to their nationality or fiscal domicile as a result of the assessment of different national taxes, and secondly preventing this remuneration from being inordinately taxed as a result of double taxation. It appears from this context that the second paragraph of Article 12 refers, like the first paragraph, to national taxes on salaries, no matter what form such taxes take or whatever they are called.
   Cf. paragraph 6, summary, Case 6/60, Rec. 1960, p. 1129.
2. A charge or due representing the consideration for a given service rendered by the public authorities is not a tax within the meaning of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the Community annexed to the EEC Treaty, even if this charge or due is calculated on the basis of the salary paid by the Community to the person liable.

In Case 32/67

Reference to the Court under Article 177 of the EEG Treaty by the Gerechtshof (Court of Appeal), The Hague (First Tax Chamber with a panel of judges sitting), for a preliminary ruling in the action pending before that court between

I. G. F. VAN LEEUWEN, residing at Wezembeek-Oppem (Belgium)

1 — Language of the Case: Dutch.

and

CITY OF ROTTERDAM

on the interpretation of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the European Economic Community,

THE COURT

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

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

gives the following

JUDGMENT

Issues of fact and of law

I — Summary of the facts and procedure

The facts may be summarized as follows:
The action pending before the Netherlands court was brought against the charge imposed by the City of Rotterdam on the plaintiff by way of school levy ('schoolgeld') for the year 1964–1965. On 1 October 1963 the plaintiff was established as an official at the Commission of the European Communities and he is resident in Belgium.
It appears from the documents that under the Netherlands Law on school levy of 20 May 1955 (Staatsblad 223), as amended on 8 December 1955 (Staatsblad 558), the levy is payable in respect of pupils of schools which are, wholly or in part, financed from public funds. It is payable almost exclusively in respect of children attending school who have not yet reached or who have passed the age of compulsory school attendance (Articles 1 to 3).
The maximum school levy per annum for each pupil is Fl. 200. In order to take account of the parents' ability to contribute, the law provides for the payment of the levy to be related to the amount of income tax and wealth tax. When this amount is less than Fl. 100, the school levy is not payable; when it is equal to Fl. 100, the school levy is Fl. 8, and it increases by 2% for each Fl. 50 above Fl. 100. As has been said, the maximum is Fl. 200 and it is reached when personal taxation is Fl. 9 000.

Articles 8 and 9 of the law provide as follow:

Article 8: Any person resident in the Netherlands and liable to pay school levy who is exempted in whole or in part from income tax and wealth tax by virtue of legal provisions relating to the said taxes shall pay the maximum school levy, unless he proves that he would have been liable to pay a lesser sum if he had not been entitled to such exemption. In such case he shall be liable to pay the lesser sum.

Article 9: Any person not resident in the Netherlands and liable to pay school levy shall pay the maximum school levy, unless he proves that he would have been liable to

pay a lesser sum if he lived in the administrative district where the school is situated. In such case he shall be liable to pay the lesser sum.

The plaintiff, to whom these provisions were applied, claimed that he was not liable to school levy, since by virtue of Articles 12 and 13 of the Protocol on the Privileges and Immunities annexed to the EEC Treaty he did not pay income tax in the Netherlands. He takes the view that the judgment of 16 December 1960 in Case 6/60, *Humblet*, confirms his view that the salary which he receives as an official of the EEC must not be taken into account in assessing his income and the tax relating thereto.

On the other hand the City of Rotterdam takes the view that Articles 8 and 9 of the Law apply to the plaintiff. In its view the judgment in *Humblet* does not apply in the present case since the school levy is not a tax but a due paid in consideration of a direct educational service provided by the public authorities. Although the levy is imposed in proportion to the ability to pay and the salary of the person liable is taken into account, it cannot be regarded as a tax on the salary paid by the Community.

The Gerechtshof of The Hague takes the view:

'That the dispute between the parties depends ultimately on a question of law, namely whether the expression "national taxes on salaries, wages and emoluments paid by the Community" (second paragraph of Article 12 of the Protocol) likewise covers school levy payable under the Netherlands Law on school levy.'

This is the question which the Gerechtshof of The Hague has put to the Court of Justice.

The application for a preliminary ruling reached the Court Registry on 21 August 1967.

Written observations in accordance with Article 20 of the Protocol on the Statute of the Court of Justice were lodged:

— on 23 October 1967 by the Netherlands and Belgian Governments;
— on 24 October 1967 by the plaintiff in the main action;
— on 25 October 1967 by the Commission of the European Communities.

By letter dated 18 October 1967 which reached the Registry on 19 October, the City of Rotterdam stated that it adopted the same view as that of the Netherlands Government.

Oral observations were made by the Commission of the European Communities at the hearing on 12 December 1967.

The Advocate-General delivered his opinion on 18 January 1968.

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

These observations may be summarized as follows:

Mr Van Leeuwen, the plaintiff in the main action, claims that in applying Article 8 of the Law on school levy Articles 12 and 13 of the Protocol must be taken into consideration, since national provisions do not have the force of law if they are incompatible with Article 12 of the Protocol. It appears from the judgment in the case of *Humblet* that salaries paid by the Community cannot be taken into account either directly or indirectly in assessing Netherlands income tax. The plaintiff takes the view that this principle holds not only when Article 8 of the Law on school levy is directly applicable, but also when it is indirectly applicable in conjunction with Article 9.

He concludes that the answer to the question put must be the following: although the school levy payable under the law is not to be regarded as coming under the description 'national taxes on salaries, wages and emoluments paid by the Community', Articles 12 and 13 of the Protocol may nevertheless affect this lability, since it depends on national taxes on salaries.

The *Belgian Government* observes that an official of an international institution cannot be exempt from a charge constituting a due for services rendered by a public body. The question is therefore whether the school levy comes under the concept of a due. In the opinion of the Belgian Government the difference between a due and a tax must be decided exclusively by the law of the Member State concerned.

The *Netherlands Government* takes the view

that the school levy does not come under the description of 'national taxes' referred to in the second paragraph of Article 12 of the Protocol. According to the practice commonly followed, the exemptions from tax of the staff of diplomatic and consular corps and of that of international organizations does not cover charges and contributions generally called 'dues'. In this respect the Netherlands Government refers, *inter alia*, to the third paragraph of Article 3 of the Protocol granting the Community itself no exemption from taxes 'which amount merely to charges for public utility services'. If dues are not expressly excluded from the exemption of officials from taxes it is because no tax exemption save that from national income tax is granted to them and it goes without saying that dues do not come under this category.

According to a second practice commonly followed, privileges are granted to international organizations exclusively in the interests of these organizations and are limited by this objective (cf. as regards the EEC, Article 17 of the Protocol). In Case 6/60 the Court considered that as regards the exemption from income tax the interest of the Community lay in the fact that only exemption in actual fact enabled the Community effectively to determine the income of its officials. The possible payment of a school levy does not have to be taken into account in calculating net salaries. The non-payment of such a levy is of no interest to the Community and cannot be justified on any objective grounds.

In this respect the Netherlands Government refers to the Staff Regulations of the EEC and the EAEC which apart from the provision in the second sentence of Article 23 provides for an educational allowance in Article 67(1)(c).

The Netherlands Government considers that for the purpose of the interpretation of the expression 'national taxes on salaries, wages and emoluments paid by the Community', the wording of the third paragraph of Article 3 of the Protocol is a little too restricted to define the concept of levies and dues, since the intention is to refer only to obligations which do not benefit from the much wider exemption of the first paragraph of Article 3 granted to the Community itself. Relying on the definition of the concept of a due, as stated by various Dutch writers, which stresses the connexion existing between the payment and consideration provided by the public authorities, the Netherlands Government concludes that in the present case there can be no question of taxes, as it deduces further from the fact that when private schools are involved the school levy is not paid to the public authorities but to the private schools concerned. The fact that in assessing the amount of the school levy the amount of income tax is taken as a basis cannot lead to the erroneous conclusion that the levy must as a result be regarded as a tax on income. The essential difference lies in the fact that the payment of income tax is not consideration for a special service and income tax applies equally to every citizen. The school levy does not arise as a result of the payment of a particular salary but from the fact that children go to schools maintained out of public funds.

Finally the Netherlands Government stresses the relationship existing between the first and second paragraphs of Article 12 of the Protocol. The exemption provided for in the second paragraph is obviously given to avoid a double charge. This is never the case as regards the payment of school levy, first because such payment cannot be made under the first paragraph, and second because a child attends only one school at a time.

The *Commission of the European Communities* inquires what relevance the judgment in the case of *Humblet* can have for the solution of the question of interpretation raised. Can it be inferred from this judgment that when it is a question of calculating a levy, which represents the consideration for a service rendered in the public interest, the second paragraph of Article 12 prohibits salaries paid by the Community from being taken into account by reason of the fact that between the income in question and the amount which is finally due on account of the payment required there is the same connexion between cause and effect as that which was recognized by the judgment in the *Humblet* case? The Commission considers that this inference is not justified. It is unlikely that in drafting the second paragraph of Article 12 the draftsmen of the

Protocol intended to refer to charges constituting the consideration for a service rendered in the public interest which citizens are free to use or not. In this respect the Commission states:

— as a rule the word 'tax' is not used in international fiscal language when it is a question of a levy of the nature of the one in question;

— Exemption from these levies is rarely granted to diplomatic agents accredited to Member States;

— It can scarcely be maintained that officials of the Community must be exempted from these levies because in their calculation regard is had to the income which is paid to them as officials, whereas under the third paragraph of Article 3 of the Protocol no exemption from these charges is granted to the Community itself.

The Commission concludes that the question put must receive a negative answer irrespective of whether or not, in the calculation of the levy, regard is had to the income received by an official of the Community in that capacity.

Grounds of judgment

By letter dated 18 August 1967 which reached the Court Registry on 21 August 1967 the Gerechtshof of The Hague (First Tax Chamber) referred for a preliminary ruling under Article 177 of the EEC Treaty the question whether the exemption 'from national taxes on salaries, wages and emoluments paid by the Community' provided for in the second paragraph of Article 12 of the Protocol on the Privileges and Immunities annexed to the EEC Treaty likewise refers to the school levy charged under the Netherlands Law on school levy (Schoolgeldwet).

The said question concerns the school levy claimed from an official of the EEC whose child, during the school year 1964–1965, attended a school in Rotterdam financed from public funds. It appears from the facts supplied by the court making the reference that this levy applies only to children who attend courses of education which are not compulsory and is calculated in proportion to income tax up to a maximum of Fl. 200. Furthermore, the law provides that a person liable who is partially or completely exempt from income tax shall pay the maximum levy unless he proves that if this exemption did not apply he would be liable to pay a lesser sum. On being assessed to levy in the sum of Fl. 120, the plaintiff brought an action before the court of appeal, claiming that under Article 12 of the beforementioned Protocol he is exempt from national taxes on salary paid to him by the Community and therefore from school levies calculated on the basis of this salary.

The question referred for a preliminary ruling seeks an interpretation of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities annexed to the EEC Treaty and in particular the words 'national taxes on salaries, wages and emoluments paid by the Community'. In this respect the second paragraph of the said Article 12 cannot be read in isolation from the first, which provides that, in accordance with the conditions and procedure laid down by the Council, officials and other servants of the Community shall be liable to a tax for the benefit of the Community on salaries, wages and emoluments paid to them by the Community.

It is as a result of this provision that the second paragraph exempts salaries, wages and emoluments subject to tax for the benefit of the Community from national taxes, so that the Article taken as a whole ensures a uniform treatment of the said salaries, wages and emoluments for all the officials and servants of the Community, preventing, first and chiefly, their effective remuneration from differing according to their nationality or fiscal domicile as a result of the assessment of different national taxes, and secondly preventing this remuneration from being inordinately taxed as a result of double taxation. It appears from this context that the second paragraph of Article 12 refers, like the first paragraph, to national taxes on salaries, no matter what form such taxes take or whatever they are called.

As regards the interpretation of the provisions referred to it is proper to distinguish between a tax intended to provide for the general expenses of public authorities and a due constituting a consideration for a given service. The national law of various Member States recognizes this distinction in different forms and under various names. Moreover the Protocol on the Privileges and Immunities of the Community itself recognizes the distinction, since the first paragraph of Article 3 thereof provides that the Community, its assets, revenues and other property shall be exempt from all direct taxes and the last paragraph that no exemption shall be granted in respect of taxes and dues which amount merely to charges for public utility services.

Neither the spirit nor the wording of the exemption provided for in the second paragraph of Article 12 of the Protocol contains any factor capable of being relied upon against the charges and dues required as a consideration for a given service supplied by public authorities. This conclusion remains valid even in a case in which the amount of the charge to be paid is determined by reference to the income of the person concerned.

Where, in relation to dues, modern laws for reasons of a social nature often take account of the ability to pay on the part of the persons concerned, this fact does not divest the due of its quality of a charge constituting the consideration for a given service. It is only where, as a result of the fixing of the rate of the due in this way, it appears to exceed the reasonable payment for the service rendered, that under certain circumstances its compatibility with the second paragraph of Article 12 may need to be considered. A complaint of this nature has not been made in the present case and moreover the assessment of its relevance would primarily be a matter for the national court concerned.

For these reasons a charge or due representing the consideration for a given service rendered by the public authorities, such as the school levy in question in the present case, which, moreover, is only payable in respect of non-compulsory education, is not a tax within the meaning of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the Community, even if that charge or due is calculated on the basis of the salary paid by the Community to the person liable.

Costs

The costs incurred by the Commission of the European Communities and the Governments of the Member States, which have submitted observations to the Court, are not recoverable, and as the proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before the Gerechtshof of The Hague (First Tax Chamber), the decision on 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 the Commission of the European Communities;
Upon hearing the opinion of the Advocate-General;
Having regard to the Protocol on the Privileges and Immunities of the EEC, especially Articles 3 and 12;
Having regard to the Protocol on the Statute of the Court of Justice of the European Communities, 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 question referred to it by the Gerechtshof of The Hague (First Tax Chamber) by letter dated 18 August 1967, hereby rules:

A charge or due representing the consideration for a given service rendered by the public authorities is not a tax within the meaning of the second paragraph of Article 12 of the Protocol on the Privileges and Immunities of the Community annexed to the EEC Treaty, even if that charge or due is calculated on the basis of the salary paid by the Community to the person liable;

and declares:

It is for the Gerechtshof at The Hague to decide the question of costs in the present case.

Lecourt Donner Strauß

Trabucchi Monaco Mertens de Wilmars Pescatore

Delivered in open court in Luxembourg on 8 February 1968.

A. Van Houtte
Registrar

R. Lecourt
President