

## Case 104/79 Foglia v Novello [1980]

**Facts:** Foglia, an Italian undertaking that traded wines, sent Italian wine to a person living in France by request of Mrs Novello, outsourcing the transport to Danzas. Danzas was charged French customs when the goods crossed the frontier. Mrs Novello refused to reimburse this amount to Foglia on the basis that these duties had been unlawfully paid and their contract stipulated that she should not be liable for duties claimed contrary to the provisions on the free movement of goods. In connection with these proceedings between Foglia and Mrs Novello, the Italian court referred for a preliminary ruling whether the imposition of the tax paid by Danzas was in accordance with the provisions of the EEC Treaty or not.

**Held:** The two parties to the main action considered that the French tax created a serious discrimination against Italian wines incompatible with Community law. They were in agreement as to the result to be attained and intended to induce the Italian court to give a ruling on the point. Danzas did not exercise its rights under French law to institute proceedings over the tax although it had an interest in doing so, and Foglia paid without protest that Danza's bill which included a sum paid in respect of that tax. This expedient had an artificial nature. The duty of the Court of Justice under Article 177 of the EEC Treaty is to supply all courts in the Community with the information on the interpretation of Community law which is necessary to enable them to settle genuine disputes which are brought before them. A situation in which the Court was obliged by the expedient of arrangements like these to give rulings would jeopardize the whole system of legal remedies available to private individuals to enable them to protect themselves against tax provisions which are contrary to the Treaty. The questions asked by the national court do not fall within the framework of the duties of the Court of Justice under Article 177 of the treaty and it has no jurisdiction to give a ruling.