

Da Costa en Schaake N.V., Jacob Meijer N.V. and Hoechst-Holland N.V. v Nederlandse Belastingadministratie (reference for a preliminary ruling by the Tariefcommissie, Amsterdam)

Joined Cases 28, 29 and 30/62

Summary

1. Preliminary ruling-National courts or tribunals of last instance - Duty to bring matter before the Court - Extinction in case of a question of interpretation already decided by the Court

([Article 267 TFEU])

2. Preliminary ruling-Jurisdiction of the Court and of national courts

([Article 267 TFEU])

3. Procedure-Preliminary ruling-Question of interpretation already decided by the Court-Fresh reference- Admissibility

([Article 267 TFEU]; Statute of the Court of Justice of the E[U], Article 20)

1. The obligation imposed by the limits itself to deducing the meaning of third paragraph of [Article 267 TFEU] [Union] rules from the wording and the spirit of the Treaty, it being left to the national court to apply in the particular case the rules which are thus interpreted.

Court under [Article 267 TFEU] in those cases in which the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case.

2. When giving a ruling within the framework of [Article 267 TFEU], the Court

3. [Article 267 TFEU] always allows a national court or tribunal, if it considers it appropriate, to refer questions of interpretation to the Court again even if they have already formed the subject of a preliminary ruling in a similar case.

In Joined Cases 28, 29 and 30/62

each being a Reference to the Court, under subparagraph (a) of the first paragraph and under the third paragraph of [Article 267 TFEU], by the Tariefcommissie, the Dutch administrative court of last instance in taxation matters, for a preliminary ruling in the actions pending before that court, between

DA COSTA EN SCHAAKE N.V., Amsterdam, represented by H.G. Stibbe and L.F.D. ter Kuile, advocates of Amsterdam (Case 28/62),

JACOB MEIJER N.V., Venlo,
(Case 29/62),

HOECHST-HOLLAND N.V., Amsterdam,
(Case 30/62),

and

NEDERLANDSE BELASTINGADMINISTRATIE, represented by the Inspectors of Customs and Excise at Amsterdam (Case 28/62), at Venlo (Case 29/62) and at Rotterdam (Case 30/62) respectively,

on the following questions:

1. Whether [Article 30 TFEU] has direct application within the territory of a Member State, as is claimed by the applicants, in other words, whether nationals of such a State can, on the basis of the Article, in question, lay claim to individual rights which the courts must protect;

2. In the event of an affirmative reply, whether there has been an unlawful increase in customs duty, or only a reasonable alteration of duties applicable before 1 March 1960, an alteration which, although amounting to an increase from an arithmetical point of view, is, nevertheless, not to be regarded as prohibited under the terms of [Article 30 TFEU],

THE COURT

composed of: A. M. Donner, President, L. Delvaux and R. Rossi (Presidents of Chambers), Ch. L. Hammes, A. Trabucchi (Rapporteur), R. Lecourt and W. Strauß, Judges,

Advocate-General: M. Lagrange
Registrar: A. Van Houtte

gives the following

JUDGMENT

Grounds of judgment

The regularity of the procedure followed by the Tariefcommissie in requesting the Court for a preliminary ruling under [Article 267 TFEU] has not been disputed and there is no ground for the Court to raise the matter of its own motion.

The Commission, appearing by virtue of the provisions of Article 20 of the Statute of the Court of Justice of the E[U], urges that the request should be dismissed for lack of substance, since the questions on which an interpretation is requested from the Court in the present cases have already been decided by the judgment of 5 February 1963 in Case 26/62, which covered identical questions raised in a similar case.

This contention is not justified. A distinction should be made between the obligation imposed by the third paragraph of [Article 267 TFEU] upon national courts or tribunals of last instance and the power granted by the second paragraph of [Article 267 TFEU] to every national court or tribunal to refer to the Court of the [Union] a question on the interpretation of the Treaty. Although the third paragraph of [Article 267 TFEU] unreservedly requires courts or tribunals of a Member State against whose decisions there is no judicial remedy under national law-like the Tariefcommissie-to refer to the Court every question of interpretation raised before them, the authority of an interpretation under [Article 267 TFEU] already given by the Court may deprive the obligation of its purpose and thus empty it of its substance. Such is the case especially when the question raised is materially identical with a question which has already been the subject of a preliminary ruling in a similar case.

When it gives an interpretation of the Treaty in a specific action pending before a national court, the Court limits itself to deducing the meaning of the [Union] rules from the wording and spirit of the Treaty, it being left to the national court to apply in the particular case the rules which are thus interpreted. Such an attitude conforms with the function assigned to the Court by [Article 267

TFEU] of ensuring unity of interpretation of [Union] law within the six Member States. If [Article 267 TFEU] had not such a scope, the procedural requirements of Article 20 of the Statute of the Court of Justice, which provides for the participation in the hearing of the Member States and the [Union] institutions, and of [the second paragraph of Article 251 TFEU], which requires the Court to sit in plenary session, would not be justified. This aspect of the activity of the Court within the framework of [Article 267 TFEU] is confirmed by the absence of parties, in the proper sense of the word, which is characteristic of this procedure.

It is no less true that [Article 267 TFEU] always allows a national court, if it considers it desirable, to refer questions of interpretation to the Court again. This follows from Article 20 of the Statute of the Court of Justice, under which the procedure laid down for the settlement of preliminary questions is automatically set in motion as soon as such a question is referred by a national court.

The Court must, therefore, give a judgment on the present application.

The interpretation of [Article 30 TFEU], which is here requested, was given in the Court's judgment of 5 February 1963 in Case 26/62. This ruled that:

1. [Article 30 TFEU] produces direct effects and creates individual rights which national courts must protect.
2. In order to ascertain whether customs duties or charges having equivalent effect have been increased contrary to the prohibition contained in [Article 30 TFEU], regard must be had to the duties and charges actually applied by the Member State in question at the date of the entry into force of the Treaty. Such an increase can arise both from a re-arrangement of the tariff resulting in the classification of the product under a more highly taxed heading and from an increase in the rate of customs duty applied.'

The questions of interpretation posed in this case are identical with those settled as above and no new factor has been presented to the Court.

In these circumstances the Tariefcommissie must be referred to the previous judgment.

Costs

The costs incurred by the Commission of the [EU] and the Governments of those Member States which 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 Tariefcommissie, 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 the Commission of the European [Union];

Upon hearing the opinion of the Advocate-General;

Having regard to [Articles 28, 30, 258, 259 and 267 TFEU], and Article 14 establishing the European Economic Community [repealed];

Having regard to the Protocol on the Statute of the Court of Justice of the European [Union];

Having regard to the Rules of Procedure of the Court of Justice of the European [Union];

Having further regard to its judgment of 5 February 1963 in Case 26/62;

THE COURT

in answer to the question referred to it, for a preliminary ruling, by the Tariefcommissie on 19 September 1962, hereby rules:

- 1. There is no ground for giving a new interpretation of [Article 30 TFEU];**
- 2. It is for the Tariefcommissie to decide as to the costs of the present proceedings.**

Donner

Delvaux

Rossi

Hammes

Trabucchi Lecourt

Strauß

Delivered in open court in Luxembourg on 27 March 1963.

A. Van Houtte

Registrar

A. M. Donner

President