

JUDGMENT OF THE COURT
16 DECEMBER 1976

**Rewe-Zentralfinanz eG and Rewe-Zentral AG v
Landwirtschaftskammer für das Saarland (preliminary ruling
requested by the Bundesverwaltungsgericht)**

**Case
33/76**

Summary

1. Customs duties - Charges having effect equivalent - Abolition - Direct effect - Rights of individuals - Protection by national courts

([Article 30 TFEU], Regulation No 159/66/EEC, Article 13)

2. [Union] law - Direct effect - Rights of individuals - Protection by national courts - Recourse to the courts - National procedural rules Application

In Case 33/76

Reference to the Court under [Article 267 TFEU] by the VIIth Senate of the Bundesverwaltungsgericht for a preliminary ruling in the action pending before that court between

1. REWE-ZENTRALFINANZ EG, Cologne,
2. REWE-ZENTRAL AG, Cologne,

and

LANDWIRTSCHAFTSKAMMER FÜR DAS SAARLAND, Saarbrücken
(Agricultural Chamber for the Saar),

on the interpretation of [the second and third paragraphs of Article 4(3) TEU], [Article 28 TFEU] and Article 13(2) of the EEC Treaty [repealed],

THE COURT

composed of: H. Kutscher, President, A. M. Donner and P. Pescatore (Presidents of Chambers), J. Mertens de Wilmars, M. Sorensen, Lord Mackenzie Stuart, A. O'Keefe, G. Bosco and A. Touffait, Judges,

Advocate-General: J.-P. Warner

Registrar: A. Van Houtte

gives the following

JUDGMENT

Law

- 1 By order dated 23 January 1976, received at the Court Registry on 6 April 1976, the Bundesverwaltungsgericht referred to the Court three questions on [the second and third paragraphs of Article 4(3) TEU], [Article 28 TFEU] and Article 13(2) of the EEC Treaty [repealed] for a preliminary ruling under [Article 267 TFEU].
- 2 These questions have arisen in a case relating to the payment in 1968 on the importation by the appellants of French apples of charges for phytosanitary inspection, regarded as equivalent to customs duties by the

judgment of the Court of 11 October 1973 in Case 39/73 (*Reve Zentralfinanzze GmbH* [1973] ECR 1039).

The respondent to the appeal rejected the appellants' claims to have the decisions imposing the charges annulled and the amounts paid, refunded (with interest) on the ground that they were inadmissible because the time-limits laid down by Article 58 of the Verwaltungsgerichtsordnung (Code of Procedure before the Administrative Courts) had not been observed.

- 3 The first question asks whether where an administrative body in a State has infringed the prohibition on charges having an effect equivalent to customs duties ([the second and third paragraphs of Article 4(3) TEU], [Article 28 TFEU] and Article 13(2) of the EEC Treaty [repealed]) the [Union] citizen concerned has a right under [Union] law to the annulment or revocation of the administrative measure and/or to a refund of the amount paid even if under the rules of procedure of the national law the time-limit for contesting the validity of the administrative measure is past.

The second question asks whether this is so if the Court of Justice has already ruled that there does exist an infringement of the prohibition contained in [Union] law.

The third question asks whether, if a right to refund is held to exist under [Union] law, interest is to be paid on the amount and if so from what date and at what rate.

The first question

- 4 Both the respondent and the national court accept that the charges in question had been unlawfully exacted.

Although it has been possible to rely on the direct effect of Article 13 (2) of

the EEC Treaty [repealed] only as from 1 January 1970, the end of the transitional period, it should be stated however that the levying of the said charges was already previously unlawful by virtue of Article 13 (1) of Regulation No 159/66/EEC of the Council of 25 October 1966 (JO 192 of 27 October 1966) which abolished them in respect of fruit and vegetables as from 1 January 1967.

- 5 The prohibition laid down in [Article 30 TFEU] and that laid down in Article 13 of Regulation No 159/66/EEC have a direct effect and confer on citizens rights which the national courts are required to protect.

Applying the principle of cooperation laid down in [the second and third paragraphs of Article 4(3) TEU], it is the national courts which are entrusted with ensuring the legal protection which citizens derive from the direct effect of the provisions of [Union] law.

Accordingly, in the absence of [Union] rules on this subject, it is for the domestic legal system of each Member State to designate the courts having jurisdiction and to determine the procedural conditions governing actions at law intended to ensure the protection of the rights which citizens have from the direct effect of [Union] law, it being understood that such conditions cannot be less favourable than those relating to similar actions of a domestic nature.

Where necessary, [Articles 115 to 117 TFEU] and [the first sentence of Article 352(1) TFEU] enable appropriate measures to be taken to remedy differences between the provisions laid down by law, regulation or administrative action in Member States if they are likely to distort or harm the functioning of the Common Market.

In the absence of such measures of harmonization the right conferred by [Union] law must be exercised before the national courts in accordance with the conditions laid down by national rules.

The position would be different only if the conditions and time-limits made it impossible in practice to exercise the rights which the national courts are obliged to protect.

This is not the case where reasonable periods of limitation of actions are fixed.

The laying down of such time-limits with regard to actions of a fiscal nature is an application of the fundamental principle of legal certainty protecting both the tax-payer and the administration concerned.

- 6 The answer to be given to the first question is therefore that in the present state of [Union] law there is nothing to prevent a citizen who contests before a national court a decision of a national authority on the ground that it is incompatible with [Union] law from being confronted with the defence that limitation periods laid down by national law have expired, it being understood that the procedural conditions governing the action may not be less favourable than those relating to similar actions of a domestic nature.

The second question

- 7 The fact that the Court has given a ruling on the question of infringement of the Treaty does not affect the reply given to the first question.

The third question

- 8 In view of the reply given to the first question the third question does not arise.

Costs

- 9 The costs incurred by the Government of the Federal Republic of Germany, the Government of the Italian Republic, the Government of the United Kingdom and the Commission of the European [Union], which have made observations to the Court, are not recoverable.

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, costs are a matter for that court.

On those grounds,

THE COURT

in answer to the questions referred to it by the Bundesverwaltungsgericht by order of 23 January 1976, hereby rules:

- 1. In the present state of [Union] law there is nothing to prevent a citizen who contests before a national court a decision of a national authority on the ground that it is incompatible with [Union] law from being confronted with the defence that limitation periods laid down by national law have expired, it being understood that the procedural conditions governing the action may not be less favourable than those relating to similar actions of a domestic nature.**
- 2. The fact that the Court has given a ruling on the question of infringement of the Treaty does not affect the reply given to the first question.**

Kutscher
Sorensen

Donner
Mackenzie Stuart

Pescatore
O'Keefe

Mertens de Wilmars
Bosco Touffait

Delivered in open court in Luxembourg on 16 December 1976.

A. Van Houtte
Registrar

H. Kutscher
President