

[Powrót do listy wyników](#) | [Następny >>](#)

Dokument 61973CJ0034

[Podstawowe informacje](#) [Tekst](#) [Dokumenty powiązane](#) [Wszystko](#) [Streszczenie](#) [Zwiń wszystko](#) | [Rozwiń wszystko](#)

Tytuł i odniesienie do publikacji

Wyrok Trybunału z dnia 10 października 1973 r.
Fratelli Variola S.p.A. przeciwko Amministrazione italiana delle Finanze.
Wniosek o wydanie orzeczenia w trybie prejudycjalnym: Tribunale civile e penale di Trieste – Włochy.
Sprawa 34-73.

- Identyfikator ECLI: ECLI:EU:C:1973:101

Dostępne języki i formaty

	BG	ES	CS	DA	DE	ET	EL	EN	FR	GA	HR	IT	LV	LT	HU	MT	NL	PL	PT	RO	SK	SL	FI	SV
HTML																								
PDF																								

Widok wielojęzyczny

Język 1 Język 2 Język 3

Tekst

61973J0034

Judgment of the Court of 10 October 1973. - Fratelli Variola S.p.A. v Amministrazione italiana delle Finanze. - Reference for a preliminary ruling: Tribunale civile e penale di Trieste - Italy. - Unloading charge. - Case 34-73.

[European Court reports 1973 Page 00981](#)[Greek special edition Page 00657](#)[Portuguese special edition Page 00365](#)[Spanish special edition Page 00261](#)[Swedish special edition Page 00147](#)[Finnish special edition Page 00147](#)

[Summary](#)
[Parties](#)
[Subject of the case](#)
[Grounds](#)
[Decision on costs](#)
[Operative part](#)

Keywords

++++

1 . CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - MEANING - SAME MEANING IN THE TREATY AND IN THE AGRICULTURAL REGULATIONS

(EEC TREATY, ARTICLE 9)

2 . CUSTOMS DUTIES - CHARGES HAVING EQUIVALENT EFFECT - MEANING - UNLOADING CHARGE - INADMISSIBILITY

(EEC TREATY, ARTICLES 9, 13 (2))

3 . ACTS OF AN INSTITUTION - REGULATION - DIRECT APPLICABILITY - MEANING

(EEC TREATY 189)

4 . ACTS OF AN INSTITUTION - REGULATION - REPEAL - PRIVATE RIGHTS - VALIDITY

(EEC TREATY 189)

5 . COMMUNITY LEGAL ORDER - PRIMACY OVER NATIONAL LAW - COMMUNITY RULES - ENTRY INTO FORCE - DATE - ALTERATION BY MEMBER STATES - INADMISSIBILITY

Summary

1 . THE CONCEPT OF " CHARGE HAVING EQUIVALENT EFFECT " UNDER THE AGRICULTURAL REGULATIONS MUST BE TAKEN TO HAVE THE SAME MEANING AS IN ARTICLES 9 ET SEQ . OF THE TREATY .

2 . THE PROHIBITION OF ALL CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT COVERS ANY CHARGE LEVIED AT THE TIME OR BY REASON OF IMPORTATION AND WHICH, SPECIFICALLY AFFECTING THE

IMPORTED PRODUCT AND NOT THE HOME-PRODUCED PRODUCT, HAS THE SAME RESTRICTIVE EFFECT ON THE FREE MOVEMENT OF GOODS AS A CUSTOMS DUTY .

ACCORDINGLY, A CHARGE IMPOSED EXCLUSIVELY ON IMPORTED GOODS BECAUSE THEY HAVE BEEN UNLOADED IN HOME PORTS CONSTITUTES A " CHARGE HAVING EQUIVALENT EFFECT " AND IS PROHIBITED .

3 . OWING TO ITS VERY NATURE AND ITS PLACE IN THE SYSTEM OF SOURCES OF COMMUNITY LAW, A REGULATION HAS IMMEDIATE EFFECT AND, CONSEQUENTLY, OPERATES TO CONFER RIGHTS ON PRIVATE PARTIES WHICH THE NATIONAL COURTS HAVE A DUTY TO PROTECT .

THE DIRECT APPLICATION OF A REGULATION MEANS THAT ITS ENTRY INTO FORCE AND ITS APPLICATION IN FAVOUR OF OR AGAINST THOSE SUBJECT TO IT ARE INDEPENDENT OF ANY MEASURE OF RECEPTION INTO NATIONAL LAW .

A LEGISLATIVE PROVISION OF NATIONAL LAW REPRODUCING THE CONTENT OF A DIRECTLY APPLICABLE RULE OF COMMUNITY LAW CAN IN NO WAY AFFECT DIRECT APPLICABILITY, OR THE COURT' S JURISDICTION UNDER THE TREATY .

4 . IN THE ABSENCE OF VALID PROVISION TO THE CONTRARY, REPEAL OF A REGULATION DOES NOT MEAN ABOLITION OF THE PRIVATE RIGHTS IT CREATED .

5 . A LEGISLATIVE PROVISION OF INTERNAL LAW CANNOT BE SET UP AGAINST THE DIRECT APPLICATION, IN THE LEGAL ORDER OF MEMBER STATES, OF REGULATIONS OF THE COMMUNITY AND OTHER PROVISIONS OF COMMUNITY LAW WITHOUT COMPROMISING THE ESSENTIAL CHARACTER OF COMMUNITY RULES AND THE FUNDAMENTAL PRINCIPLE THAT THE COMMUNITY LEGAL SYSTEM IS SUPREME .

THIS IS PARTICULARLY TRUE AS REGARDS THE DATE FROM WHICH THE COMMUNITY RULE BECOMES OPERATIVE AND CREATES RIGHTS IN FAVOUR OF PRIVATE PARTIES .

THE FREEDOM OF MEMBER STATES, WITHOUT EXPRESS AUTHORITY, TO VARY THE DATE ON WHICH A COMMUNITY RULE COMES INTO FORCE IS EXCLUDED BY REASON OF THE NEED TO ENSURE UNIFORM AND SIMULTANEOUS APPLICATION OF COMMUNITY LAW THROUGHOUT THE COMMUNITY .

Parties

IN CASE 34/73

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE PRESIDENT OF THE TRIBUNAL OF TRIESTE FOR A PRELIMINARY RULING IN THE ACTION PENDING BEFORE THAT COURT BETWEEN

F.ILLI VARIOLA SPA, TRIESTE,

AND

AMMINISTRAZIONE ITALIANA DELLE FINANZE

Subject of the case

ON THE INTERPRETATION OF ARTICLES 18 AND 20 OF REGULATION NO 19 OF THE COUNCIL OF 4 APRIL 1962 ON THE GRADUAL ESTABLISHMENT OF A COMMON ORGANIZATION OF THE MARKET IN CEREALS (OJ OF 20 APRIL 1962, P . 933) AND OF ARTICLES 18 AND 21 OF REGULATION NO 120/67 EEC OF THE COUNCIL OF 13 JUNE 1967 ON THE COMMON ORGANIZATION OF THE MARKET IN CEREALS (OJ OF 19 JUNE 1967, P . 2269) AND ON CERTAIN OTHER QUESTIONS RELATING TO THE DIRECT APPLICATION OF THESE PROVISIONS,

Grounds

1 BY ORDER OF 12 JANUARY 1973, LODGED WITH THE REGISTRY ON 27 FEBRUARY 1973, THE PRESIDENT OF THE TRIBUNAL OF TRIESTE ASKED THE COURT FOR A PRELIMINARY RULING ON THE INTERPRETATION OF REGULATION NO 19 OF THE COUNCIL OF 4 APRIL 1962 AND REGULATION 120/67/EEC OF 13 JUNE 1967 ON THE COMMON ORGANIZATION OF THE MARKET IN CEREALS AND ON CERTAIN QUESTIONS RELATING TO THE DIRECT EFFECT OF THE RULES OF COMMUNITY LAW IN THE LEGAL ORDER OF MEMBER STATES .

ON THE FIRST QUESTION

2 IN THE FIRST QUESTION, THE COURT IS ASKED TO DECLARE WHETHER THE CONCEPT OF CHARGES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES, REFERRED TO IN ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND IN ARTICLES 18 AND 21 OF REGULATION NO 120/67, IS THE SAME AS THAT REFERRED TO IN ARTICLE 9 ET SEQ . OF THE TREATY .

3 THE PROVISIONS OF THE TREATY PROHIBITING MEMBER STATES, IN THE CONTEXT OF TRADE WITHIN THE COMMUNITY, FROM LEVYING CHARGES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES IS DESIGNED TO ENSURE THE FREE MOVEMENT OF GOODS WITHIN THE COMMUNITY .

THE PROVISIONS OF THE REGULATIONS ON THE ORGANIZATION OF THE AGRICULTURAL MARKET HAVE THE SAME PURPOSE INsofar AS, IN REGARD TO TRADE WITHIN THE COMMUNITY, THEY FORBID THE LEVYING OF ANY CUSTOMS DUTY OR CHARGE HAVING EQUIVALENT EFFECT, AND ALSO THE PURPOSE OF ENSURING UNIFORM ARRANGEMENTS AT THE EXTERNAL FRONTIERS OF A COUNTRY, INsofar AS THEY IMPOSE A SIMILAR PROHIBITION IN REGARD TO IMPORTS FROM THIRD COUNTRIES .

THERE IS NO CONSIDERATION WHICH COULD JUSTIFY DIFFERENT INTERPRETATIONS OF THE CONCEPT OF " CHARGE HAVING EQUIVALENT EFFECT " AS IT APPEARS IN ARTICLE 9 ET SEQ . OF THE TREATY, ON THE ONE HAND, AND ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND ARTICLES 18 AND 21 OF REGULATION NO 120/67, ON THE OTHER .

ON THE SECOND QUESTION

4 IN THE SECOND QUESTION, THE COURT IS ASKED TO DECLARE WHETHER A CHARGE IMPOSED SOLELY ON IMPORTED GOODS (WHETHER COMING FROM MEMBER COUNTRIES OR FROM THIRD COUNTRIES) SOLELY BECAUSE THEY HAVE BEEN UNLOADED IN THE NATIONAL PORTS CONSTITUTES A " CHARGE HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES ", WHICH IS PROHIBITED UNDER THE ABOVEMENTIONED PROVISIONS OF THE REGULATIONS .

5 THE FILE DISCLOSES THAT THE PRESENT CASE IS CONCERNED WITH THE CHARGE DESIGNATED " UNLOADING

CHARGE " IN ARTICLE 27 OF THE ITALIAN LAW NO 82 OF 9 FEBRUARY 1963 ON THE SUBJECT OF MARITIME CHARGES AND DUTIES LEVIED ON GOODS COMING FROM ABROAD AND UNLOADED IN THE PORTS, ROADSTEDS AND WHARVES OF THE STATE PENDING FINAL OR TEMPORARY IMPORTATION .

FOR CEREALS, THIS DISEMBARKATION DUTY AMOUNTS TO 30 LIRE PER METRIC TON .

INCOME FROM THE DUTY IS DEVOTED TO THE PROVISION AND MAINTENANCE OF PORT INSTALLATIONS .

6 THE PROHIBITION OF ALL CUSTOMS DUTIES AND CHARGES HAVING EQUIVALENT EFFECT COVERS ANY CHARGE LEVIED AT THE TIME OR BY REASON OF IMPORTATION AND WHICH, SPECIFICALLY AFFECTING THE IMPORTED PRODUCT AND NOT THE HOME-PRODUCED PRODUCT, HAS THE SAME RESTRICTIVE EFFECT ON THE FREE MOVEMENT OF GOODS AS A CUSTOMS DUTY .

THE LEVYING OF SUCH A CHARGE, HOWEVER SMALL, TOGETHER WITH THE ADMINISTRATIVE FORMALITIES WHICH IT OCCASIONS, CONSTITUTE AN OBSTRUCTION OF THE FREE MOVEMENT OF GOODS .

ON QUESTIONS 3 AND 6

7 IN THE THIRD AND SIXTH QUESTIONS, THE COURT IS ASKED WHETHER THE PROVISIONS OF ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND OF ARTICLES 18 AND 21 OF REGULATION NO 120/67 ARE TO BE CONSIDERED AS RULES DIRECTLY APPLICABLE IN MEMBER STATES, THUS CONFERRING RIGHTS ON PRIVATE PARTIES WHICH THE NATIONAL COURTS MUST PROTECT .

8 BY THE SECOND PARAGRAPH OF ARTICLE 189 OF THE TREATY, A REGULATION " SHALL HAVE GENERAL APPLICATION " AND " SHALL BE DIRECTLY APPLICABLE IN ALL MEMBER STATES " .

ACCORDINGLY, OWING TO ITS VERY NATURE AND ITS PLACE IN THE SYSTEM OF SOURCES OF COMMUNITY LAW, A REGULATION HAS IMMEDIATE EFFECT AND, CONSEQUENTLY, OPERATES TO CONFER RIGHTS ON PRIVATE PARTIES WHICH THE NATIONAL COURTS HAVE A DUTY TO PROTECT .

THE ANSWER TO THE QUESTION MUST THEREFORE BE IN THE AFFIRMATIVE .

ON QUESTIONS 4 AND 5

9 IN THE FOURTH AND FIFTH QUESTIONS, THE COURT IS, IN EFFECT, ASKED TO DETERMINE WHETHER THE DISPUTED PROVISIONS OF THE REGULATIONS CAN BE INTRODUCED INTO THE LEGAL ORDER OF MEMBER STATES BY INTERNAL MEASURES REPRODUCING THE CONTENTS OF COMMUNITY PROVISIONS IN SUCH A WAY THAT THE SUBJECT - MATTER IS BROUGHT UNDER NATIONAL LAW, AND THE JURISDICTION OF THE COURT IS THEREBY AFFECTED .

10 THE DIRECT APPLICATION OF A REGULATION MEANS THAT ITS ENTRY INTO FORCE AND ITS APPLICATION IN FAVOUR OF OR AGAINST THOSE SUBJECT TO IT ARE INDEPENDENT OF ANY MEASURE OF RECEPTION INTO NATIONAL LAW .

BY VIRTUE OF THE OBLIGATIONS ARISING FROM THE TREATY AND ASSUMED ON RATIFICATION, MEMBER STATES ARE UNDER A DUTY NOT TO OBSTRUCT THE DIRECT APPLICABILITY INHERENT IN REGULATIONS AND OTHER RULES OF COMMUNITY LAW .

STRICT COMPLIANCE WITH THIS OBLIGATION IS AN INDISPENSABLE CONDITION OF SIMULTANEOUS AND UNIFORM APPLICATION OF COMMUNITY REGULATIONS THROUGHOUT THE COMMUNITY .

11 MORE PARTICULARLY, MEMBER STATES ARE UNDER AN OBLIGATION NOT TO INTRODUCE ANY MEASURE WHICH MIGHT AFFECT THE JURISDICTION OF THE COURT TO PRONOUNCE ON ANY QUESTION INVOLVING THE INTERPRETATION OF COMMUNITY LAW OR THE VALIDITY OF AN ACT OF THE INSTITUTIONS OF THE COMMUNITY, WHICH MEANS THAT NO PROCEDURE IS PERMISSIBLE WHEREBY THE COMMUNITY NATURE OF A LEGAL RULE IS CONCEALED FROM THOSE SUBJECT TO IT .

UNDER ARTICLE 177 OF THE TREATY IN PARTICULAR, THE JURISDICTION OF THE COURT IS UNAFFECTED BY ANY PROVISIONS OF NATIONAL LEGISLATION WHICH PURPORT TO CONVERT A RULE OF COMMUNITY LAW INTO NATIONAL LAW .

ON QUESTION 7

12 IN THE SEVENTH QUESTION, THE COURT IS INVITED TO DECLARE WHETHER THE RIGHTS CONFERRED ON PRIVATE PARTIES UNDER ARTICLES 18 AND 20 OF REGULATION NO 19/62 REMAINED VALID AFTER REGULATION NO 120/67 CAME INTO FORCE .

13 ARTICLE 33 OF REGULATION NO 120/67 PROVIDES THAT THE ARRANGEMENTS SET OUT THEREIN WERE EFFECTIVE FROM 1 JULY 1967 AND THAT REGULATION NO 19/62 WAS REPEALED WITH EFFECT FROM THE SAME DATE .

IN THE ABSENCE OF VALID PROVISION TO THE CONTRARY, REPEAL OF A REGULATION DOES NOT MEAN ABOLITION OF THE INDIVIDUAL RIGHTS WHICH IT HAS CREATED .

MOREOVER, THE PROHIBITIONS, CONTAINED IN ARTICLES 18 AND 20 OF REGULATION NO 90/62, AGAINST STATES LEVYING CHARGES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES, WERE REPEALED BY ARTICLES 18 AND 21 OF REGULATION NO 120/67 .

IT FOLLOWS FROM THIS THAT THE RIGHTS CREATED IN FAVOUR OF PRIVATE PARTIES UNDER ARTICLES 18 AND 20 OF REGULATION NO 19/62 REMAINED IN FORCE, WITHOUT INTERRUPTION, AFTER REGULATION NO 120/67 CAME INTO EFFECT .

ON QUESTION 8

14 IN THE EIGHTH QUESTION, THE COURT IS ASKED TO DECLARE WHETHER, BY A LEGISLATIVE PROVISION ENACTED AFTER ENTRY INTO FORCE OF THE REGULATIONS IN DISPUTE, A MEMBER STATE CAN CHANGE THE DATE FROM WHICH THE PROHIBITION OF CHARGES HAVING EQUIVALENT EFFECT BECOMES OPERATIVE .

IT IS CLEAR FROM THE FILE THAT THIS QUESTION IS OCCASIONED BY THE ITALIAN LAW NO 447 OF 24 JUNE 1971 UNDER WHICH WERE ABOLISHED THE STATISTICS DUTY AND THE ADMINISTRATIVE SERVICES DUTY WHICH, IN ITS JUDGEMENTS OF 1 JULY 1961 IN CASE 24/68 (REC . 1969) AND OF 18 NOVEMBER 1970 IN CASE 8/70 (REC . 1970), THE COURT DECLARED TO BE INCOMPATIBLE WITH COMMUNITY PROVISIONS PROHIBITING THE LEVYING OF DUTIES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES .

THE ITALIAN LAW PROVIDES THAT ABOLITION TAKES EFFECT ONLY FROM THE DATE ON WHICH THE LAW CAME INTO FORCE, VIZ . 1 AUGUST 1971, EXCEPT FOR THE ADMINISTRATIVE SERVICES DUTY LEVIED ON GOODS IMPORTED FROM OTHER MEMBER STATES, WHICH WAS ABOLISHED WITH EFFECT FROM 30 JUNE 1968 .

15 A LEGISLATIVE PROVISION OF INTERNAL LAW COULD NOT BE SET UP AGAINST THE DIRECT EFFECT, IN THE LEGAL ORDER OF MEMBER STATES, OF REGULATIONS OF THE COMMUNITY AND OTHER PROVISIONS OF

COMMUNITY LAW, INCLUDING THE PROHIBITION, UNDER ARTICLES 9 ET SEQ. OF THE TREATY, OF CHARGES HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES, WITHOUT COMPROMISING THE ESSENTIAL CHARACTER OF COMMUNITY RULES AS SUCH AND THE FUNDAMENTAL PRINCIPLE THAT THE COMMUNITY LEGAL SYSTEM IS SUPREME.

THIS IS PARTICULARLY TRUE AS REGARDS THE DATE FROM WHICH THE COMMUNITY RULE BECOMES OPERATIVE AND CREATES RIGHTS IN FAVOUR OF PRIVATE PARTIES.

THE FREEDOM OF EACH MEMBER STATE TO VARY, IN RELATION TO ITSELF AND WITHOUT EXPRESS AUTHORITY, THE DATE ON WHICH A COMMUNITY RULE COMES INTO FORCE IS EXCLUDED BY REASON OF THE NEED TO ENSURE UNIFORM AND SIMULTANEOUS APPLICATION OF COMMUNITY LAW THROUGHOUT THE COMMUNITY.

Decision on costs

16 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 A STEP IN THE ACTION PENDING BEFORE A NATIONAL COURT, THE DECISION ON COSTS IS A MATTER FOR THAT COURT.

Operative part

THE COURT,

IN ANSWER TO THE QUESTIONS REFERRED TO IT BY THE PRESIDENT OF THE TRIBUNAL OF TRIESTE BY ORDER OF 12 JANUARY 1973, HEREBY RULES :

ON QUESTION 1

1 . THE CONCEPT OF " CHARGE HAVING EQUIVALENT EFFECT " UNDER ARTICLES 18 AND 20 OF REGULATION 19/62 AND ARTICLES 18 AND 21 OF REGULATION NO 120/67 MUST BE TAKEN TO HAVE THE SAME MEANING AS IN ARTICLES 9 ET SEQ. OF THE TREATY .

ON QUESTION 2

2 . A CHARGE WHICH IS IMPOSED EXCLUSIVELY ON IMPORTED GOODS SOLELY BECAUSE THEY HAVE BEEN UNLOADED IN THE NATIONAL PORTS CONSTITUTES A " CHARGE HAVING EQUIVALENT EFFECT TO A CUSTOMS DUTY " AND IS ACCORDINGLY PROHIBITED SO FAR AS THE IMPORTATION OF CEREALS IS CONCERNED, WHETHER FROM OTHER MEMBER COUNTRIES OR THIRD COUNTRIES, UNDER ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND ARTICLES 18 AND 21 OF REGULATION NO 120/67 .

ON QUESTIONS 3 AND 6

3 . THE PROVISIONS OF ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND OF ARTICLES 18 AND 21 OF REGULATION NO 120/67 PROHIBITING MEMBER STATES FROM LEVYING ANY CHARGE HAVING EQUIVALENT EFFECT TO CUSTOMS DUTIES ARE DIRECTLY APPLICABLE IN THE LEGAL ORDER OF MEMBER STATES AND ACCORDINGLY CONFER RIGHTS ON PRIVATE PARTIES WHICH THE NATIONAL COURTS MUST PROTECT .

ON QUESTIONS 4 AND 5

4 . A LEGISLATIVE MEASURE UNDER NATIONAL LAW WHICH REPRODUCES THE TEXT OF A DIRECTLY APPLICABLE RULE OF COMMUNITY LAW CANNOT IN ANY WAY AFFECT SUCH DIRECT APPLICABILITY, OR THE COURT'S JURISDICTION UNDER THE TREATY .

ON QUESTION 7

5 . THE RIGHTS CREATED IN FAVOUR OF PRIVATE PARTIES UNDER ARTICLES 18 AND 20 OF REGULATION NO 19/62 REMAINED IN FORCE, WITHOUT INTERRUPTION, AFTER REGULATION NO 120/67 CAME INTO EFFECT .

ON QUESTION 8

6 . THE DIRECT EFFECT OF ARTICLES 18 AND 20 OF REGULATION NO 19/62 AND OF ARTICLES 18 AND 21 OF REGULATION NO 120/67 PREVAILS AGAINST ANY NATIONAL LEGISLATIVE MEASURE PURPORTING TO CHANGE THE DATE FROM WHICH THESE PROVISIONS BECAME OPERATIVE .