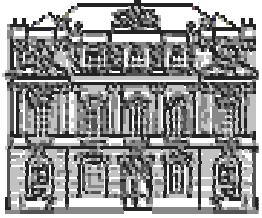


Seminar on EC case-law

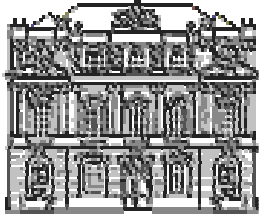
Bedanna Bapuly

Brno, 2007 October
15th



Introduction

- Seminar on the discussion of case-law
- Please prepare the reading materials
- How do we proceed in the seminar?
 - brief revision of the topic
 - summary of the facts of the case
 - questions on the case



Introduction

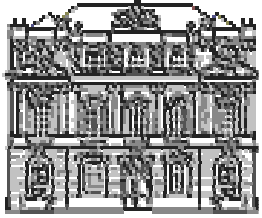
- How to find the case-law?

<http://eur-lex.europa.eu/en/index.htm>

- How to cite the case-law correctly?

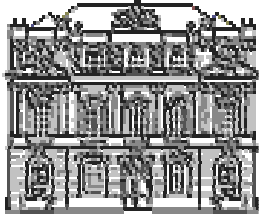
Date, case number, name, European Court Report (ECR), year, page, para.

ECJ 5.2.1963, Case 26/62, **van Gend & Loos**,
ECR 1963, 1.



Van Gend & Loos, Case 26/62

- Facts of the case
- Art. 12 EEC (now: art. 25 EC)
„Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.“
- Art. 234 EC (ex-art. 177)



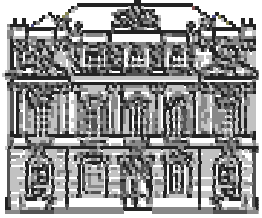
Art 234 EC

The Court of Justice shall have jurisdiction to give preliminary rulings concerning:

- (a) the interpretation of this Treaty;
- (b) the validity and interpretation of acts of the institutions of the Community and of the ECB;
- (c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.

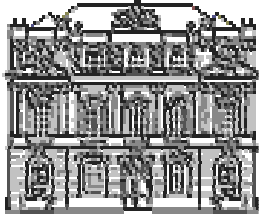
Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court of Justice to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.



Van Gend & Loos

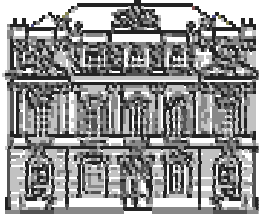
- What is the legal nature of EC law?
- What does direct applicability mean?
- Which legal order sets the prerequisites for the direct application of EC law?
- Which legal acts are directly applicable?
- Which prerequisites have to be fulfilled for a norm to be directly effective?



Van Duyn

- Please quote the decision
- Facts of the case
- Art. 39 EC (ex-art. 48 EEC):
free movement of workers

"1. Freedom of movement for workers shall be secured within the community... 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the member states, as regards employment,... 3. It shall entail the right, subject to limitations justified on grounds of public policy, public safety or security...; (a) to accept offers of employment actually made,... (c) to stay in a member state for the purpose of employment in accordance with the provisions governing the employment of nationals of that state laid down by law,..."



Van Duyn

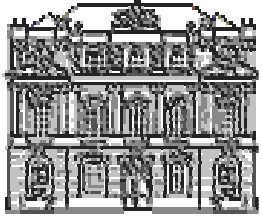
- **Directive 64/221/EEC**

"Measures taken on grounds of public policy or of public security shall be based exclusively on the personal conduct of the individual concerned."

=>

The ECJ recognises the direct effect not only of the provisions of the Treaties (Article 39 "ex Article 48" EC Treaty), but also of the directives laid down for their application (Article 3 of Directive 64/221/EEC).

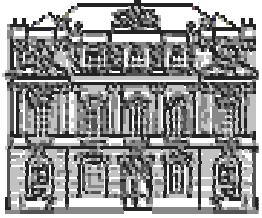
It interprets the notion of 'public policy' as a justification for derogating from a fundamental principle of Community law: the freedom of movement of workers.



Kolpinghuis Nijmegen

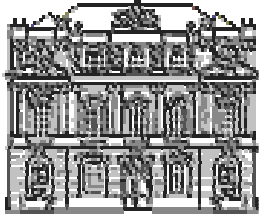
Please read and quote the decision

- Facts of the case?
- Questions:
 1. Can the MS (prosecuting body) rely against nationals on a provision of a Directive which has not been implemented?
 2. What is the obligation of the MS?
 3. Is there an application before implementation?



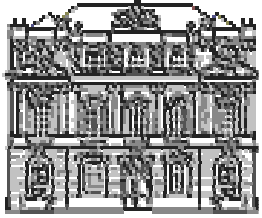
Faccini Dori

- Please quote the decision
- Facts of the case?
- What is the vertical and horizontal effect?
- What does the national court have to do?
- Consequences for the non-transposition of a Directive? Under what circumstances?



Marleasing

- Facts of the case?
- What kind of procedure is it?
- What does the national judge have to do?
- How to interpret the national law?



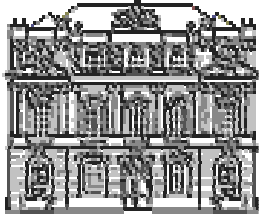
Thermal Power Station Großkrotzenburg

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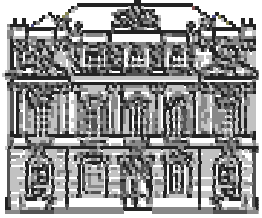
- Facts of the case?
- What kind of procedure is it?

The procedure is a procedure with which the European Commission fulfils one of its most fundamental duties, that is supervision of the implementation of the acquis. The infringement procedure can be initiated ex officio, following a proposal from a Member State or from a person reporting the infringement, be it a legal or a natural person.



Thermal Power Station Großkrotzenburg

- When does a Directive have direct effect?
- Does it have direct effect even if it does not constitute individual rights?
- Are courts and authorities obliged to apply directly effective provisions of Directives ex officio?



Costa/ENEL

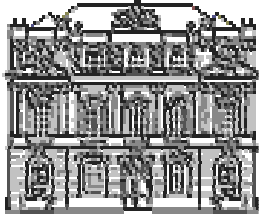
- **Facts of the case?**

Article 31

1. Member States shall adjust any State monopolies of a commercial character so as to ensure that no discrimination regarding the conditions under which goods are procured and marketed exists between nationals of Member States.

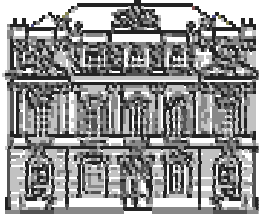
The provisions of this Article shall apply to any body through which a Member State, in law or in fact, either directly or indirectly supervises, determines or appreciably influences imports or exports between Member States. These provisions shall likewise apply to monopolies delegated by the State to others.

2. Member States shall refrain from introducing any new measure which is contrary to the principles laid down in paragraph 1 or which restricts the scope of the articles dealing with the prohibition of customs duties and quantitative restrictions between Member States.



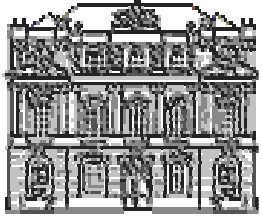
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- Why is the ECJ competent to decide on the question?
- The nature of EC Law?
- The relationship between EC and domestic law?
- Under which circumstances are provisions of the EC Treaty capable of producing rights to individuals (direct effect)?
- Who decides on the compliance between national and supranational law?



Kühne & Heitz

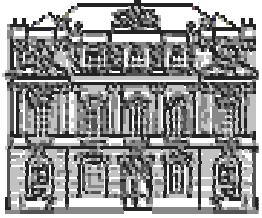
- Facts of the case?
- Questions:
 - What does the ECJ examine in the preliminary reference procedure?
 - Does the interpretation also apply to decisions of national authorities prior to the ECJ ruling?
 - Under what circumstances are national authorities obliged to review a final decision?



Kühne & Heitz

Para 28: „In light of the above considerations, the answer to the question referred must be that the principle of cooperation arising from Article 10 EC imposes on an administrative body an obligation to review a final administrative decision, where an application for such review is made to it, in order to take account of the interpretation of the relevant provision given in the meantime by the Court where

- under national law, it has the power to reopen that decision;
- the administrative decision in question has become final as a result of a judgment of a national court ruling at final instance;
- that judgment is, in the light of a decision given by the Court subsequent to it, based on a misinterpretation of Community law which was adopted without a question being referred to the Court for a preliminary ruling under the third paragraph of Article 234 EC; and
- the person concerned complained to the administrative body immediately after becoming aware of that decision of the Court.”



22.10.2007

Enforcement:

205-215/82 Milchkontor

C-24/95 Alcan

C-143/88 and C-92/89 Zuckerfabrik

Süderdithmarschen

C-312/93 Peterbroeck

C-119/05 Lucchini

Infringement Procedure:

C-387/97 COM/GR