

Case C-162/96

A. Racke GmbH&Co.

v

Hauptzollamt Mainz

(Reference for a preliminary ruling
from the Bundesfinanzhof)

(EEC/Yugoslavia Cooperation Agreement — Suspension of trade concessions —
Vienna Convention on the Law of Treaties — *Rebus sic stantibus* clause)

Opinion of Advocate General Jacobs delivered on 4 December 1997	I - 3659
Judgment of the Court, 16 June 1998	I - 3688

Summary of the Judgment

1. *Preliminary rulings — Assessment of validity — Jurisdiction of the Court — Extent (EC Treaty, Art. 177)*
2. *International agreements — Agreements by the Community — Direct effect — Conditions — Article 22 of the EEC/Yugoslavia Cooperation Agreement (EEC/Yugoslavia Cooperation Agreement, Art. 22(4); Additional Protocol, Arts 2(1) and (2), and 4)*

3. *International agreements — Agreements by the Community — EEC/Yugoslavia Cooperation Agreement — Entitlement of individuals to challenge the validity under customary international law rules of a regulation suspending the trade concessions granted by the agreement (EEC/Yugoslavia Cooperation Agreement, Art. 22(4); Additional Protocol, Arts 2(1) and (2), and 4)*
4. *Public international law — Principles — Pacta sunt servanda — Rules of customary international law concerning the termination and the suspension of treaty relations — Entitlement of individuals to rely on those principles in order to challenge the validity of a regulation suspending the trade concessions granted by a cooperation agreement — Whether permissible — Judicial review — Limits (EEC/Yugoslavia Cooperation Agreement; Council Regulation No 3300/91)*

1. The jurisdiction of the Court of Justice to give preliminary rulings under Article 177 of the Treaty concerning the validity of acts of the Community institutions cannot be limited by the grounds on which the validity of those measures may be contested. Since such jurisdiction extends to all grounds capable of invalidating those measures, the Court is obliged to examine whether their validity may be affected by reason of the fact that they are contrary to a rule of international law.

Such is the case with Article 22(4) of the Cooperation Agreement between the EEC and the Socialist Federal Republic of Yugoslavia, which, as amended by Article 4 of the Additional Protocol to that agreement, lays down in respect of certain wines a Community tariff quota within which dismantling of customs duties on importation into the Community is to take place.

2. A provision of an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure.

3. When invoking in legal proceedings the preferential customs treatment granted to him by Article 22(4) of the Cooperation Agreement between the EEC and the Socialist Federal Republic of Yugoslavia, an individual may challenge the validity under customary international law rules of a regulation suspending the trade concessions granted under that Agreement.

An agreement concluded by the Council with a non-member country in accordance with the provisions of the EC Treaty

is, as far as the Community is concerned, an act of a Community institution, and the provisions of such an agreement form an integral part of Community law. If, therefore, a Community regulation suspending the application of a cooperation agreement were to be declared invalid by reason of its being contrary to rules of customary international law, the trade concessions granted by the provisions of that agreement would remain applicable in Community law until the Community brought that agreement to an end in accordance with the relevant rules of international law.

Moreover, the European Community must respect international law in the exercise of its powers. It is therefore required to comply with the rules of customary international law when adopting a regulation suspending the trade concessions granted by, or by virtue of, an agreement which it has concluded with a non-member country.

It follows that the rules of customary international law concerning the termination and the suspension of treaty relations by reason of a fundamental change of circumstances are binding upon the Community institutions and form part of the Community legal order.

4. Where an individual is incidentally challenging the validity of a Community regulation under rules of customary international law concerning the termination and the suspension of treaty relations by reason of a fundamental change of circumstances in order to rely upon rights which he derives directly from an agreement of the Community with a non-member country, the case in question does not concern the direct effect of those rules.

Moreover, those rules form an exception to the *pacta sunt servanda* principle, which constitutes a fundamental principle of any legal order and, in particular, the international legal order. Applied to international law, that principle requires that every treaty be binding upon the parties to it and be performed by them in good faith.

In those circumstances, an individual relying in legal proceedings on rights which he derives directly from an agreement with a non-member country may not be denied the possibility of challenging the validity of a regulation which, by suspending the trade concessions granted by that agreement, prevents him from relying on it, and of invoking, in order to challenge the validity of the suspending regulation, obligations deriving from rules of customary international law which govern the termination and suspension of treaty relations.

However, because of the complexity of those rules and the imprecision of some of the concepts to which they refer, judicial review must necessarily, and in particular in the context of a preliminary reference for an assessment of validity, be

limited to the question whether, by adopting the suspending regulation, the Council made manifest errors of assessment concerning the conditions for applying those rules.