

STRENGTHENING UNIVERSITY COOPERATION OSIJEK – PÉCS

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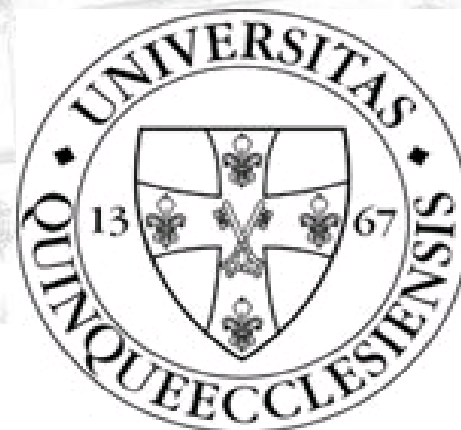


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EU Law – Institutions of the European Union

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Part Three: Case law study

Groundbreaking decisions of the ECJ – brief overview

1. *Van Gend en Loos*

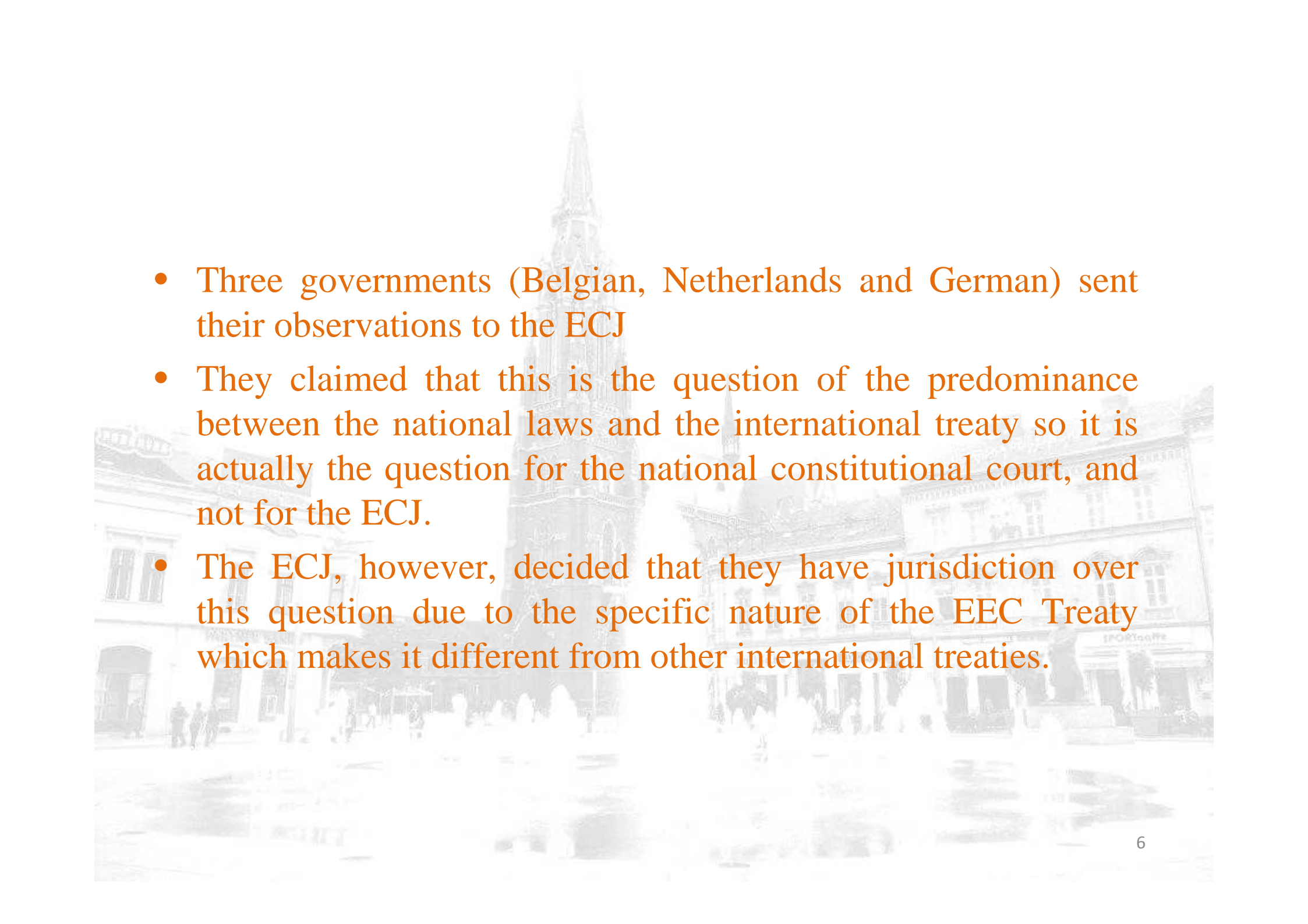
- An early stage of integration (FTA – free trade area)
- *Ex.art. 12 EC: “Member States shall refrain from introducing between themselves any new customs duties on imports or exports or any charges having equivalent effect, and from increasing those which they already apply in their trade with each other.”*





- **Facts:**

- The Van Gend en Loos company imported certain quantity of urea formaldehyde from Germany to Netherlands. It was charged by Customs and Excise with an import duty which had been increased since the coming into force of the EEC Treaty (by changing the tariff classification of the substance from a lower to a higher-tariff heading).
- Van Gend en Loos claimed that this was contrary to the Art. 12 of the EEC Treaty and appeal against payment of the duty was brought before the Dutch *Tariffcomissie*.
- The *Tariffcomissie* raised two questions before the ECJ:
 1. whether Article 12 has direct applicability within the territory of a MS?
 2. whether nationals of the State lay claim to individual rights on the basis of that Article?

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- Three governments (Belgian, Netherlands and German) sent their observations to the ECJ
 - They claimed that this is the question of the predominance between the national laws and the international treaty so it is actually the question for the national constitutional court, and not for the ECJ.
 - The ECJ, however, decided that they have jurisdiction over this question due to the specific nature of the EEC Treaty which makes it different from other international treaties.

ECJ Ruling

1. The key argument to decide whether the Article 12 is directly applicable or not is its **wording**. And, according to this criterion, the article in question is directly applicable.

Argument: *“The wording of the Article 12 contains a clear and unconditional prohibition which is not a positive, but a negative obligation. This obligation, moreover, is not qualified by any reservation on the part of states which would make its implementation conditional upon a positive legislation measure enacted under national law. The very nature of this prohibition makes it ideally adapted to produce direct effects in the legal relationship between MS and their subjects.”*



2. Article 12 creates individual rights of Member States' nationals.

Arguments:

- ❑ the preamble of the Treaty refers not only to governments, but also to peoples;
- ❑ the objective of the Treaty is to establish the common market, which is a direct concern of all the interested parties (i.e. the Member States) in the Community
- ❑ in pursuance of this objective, the MS willingly transferred some of their sovereignty to the Community, therefore the Community institutions are endowed with sovereign rights. This makes the EEC Treaty different from an ordinary international treaty.

- The conclusions are:

1. “the Community constitutes a **new legal order of international law** for the benefit of which the states have limited their sovereign rights, albeit within limited field
2. **the subjects** of which comprise not only Member states **but also their nationals.**
3. Independently of the legislation of Member States, **Community law therefore** not only imposes obligations on individuals but **is also intended to confer upon them rights which become part of their legal heritage.**”



2. Costa v. E.N.E.L

What was the case about?

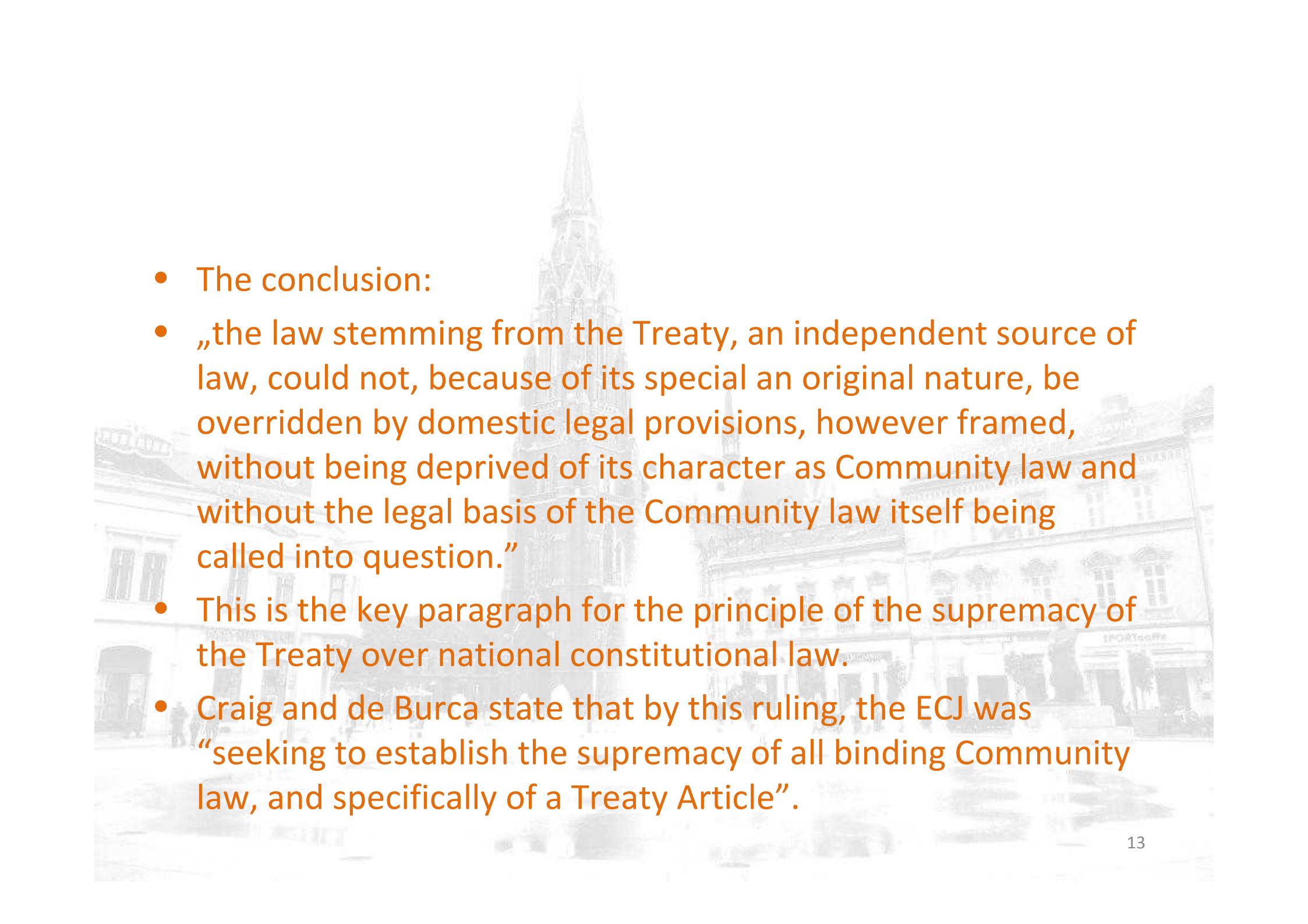


Facts

- The National Electricity company was nationalised after the EEC Treaty came into force.
- Mr. Costa did not pay bills because the E.N.E.L. was nationalised and he claimed that this nationalisation is not legal because it is contrary to the EEC Treaty.
- The Italian court Giudici Consiliatore asked the ECJ for the interpretation of the EEC Treaty provisions on the state commercial monopoles.
- The Italian government on the other side stated that this is the question for the national constitutional court, and not for the ECJ, since this is the question of the interpretation of the national law.

ECJ Ruling

- The ECJ admits that it has no jurisdiction over the validity of the provision of national law, neither can it apply the Treaty to the specific case.
- **However, it still holds the right “to extract from the question imperfectly formulated by the national court those questions which alone pertain to the interpretation of the Treaty.”**
- The ECJ in this ruling developed the constitutional theory of the Community providing the arguments for the **supremacy of the Community law over national law**, and also giving precise implications for a provision of national law which is in conflict with the EC law.

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- The conclusion:
 - „the law stemming from the Treaty, an independent source of law, could not, because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community law itself being called into question.”
 - This is the key paragraph for the principle of the supremacy of the Treaty over national constitutional law.
 - Craig and de Burca state that by this ruling, the ECJ was “seeking to establish the supremacy of all binding Community law, and specifically of a Treaty Article”.

3. Simmenthal II

What was the case about?



Facts

- The company «Simmenthal SpA» imported beef from France into Italy
- they had to pay **fees for the veterinary inspection** at the frontier.
- They asked for the **repayment** of the fees and the Italian Pretore, after asking for the preliminary ruling from the ECJ, ordered the repayment of the fee.
- However, the Italian fiscal authorities argued that the court could not simply refuse to apply the national law which is in conflict with the EC law, but claimed that the court should have brought the matter before the Italian Constitutional Court which could then declare the Italian law unconstitutional.
- They claimed that even though the national law was contrary to the EEC Treaty, the courts should still judge on the basis of that law until it was declared unconstitutional by the Italian Constitutional Court.
- The Pretore then referred the case again to the ECJ asking whether in these circumstances the national law must simply be disregarded, without waiting for the constitutional authority to declare the law unconstitutional.

ECJ Ruling

- *“The EC law, by creating new legal order, not only made automatically inapplicable any conflicting provision of the national law, but it also precludes the valid adoption of new national legislative measures to the extent they would be incompatible with the EC law.”*
- National court must *«apply EC law in its entirety and protect rights which the latter confers on the individuals and must accordingly **set aside any provision of national law which may conflict with it, whether prior or subsequent to the Community rule.**»*
- EC law (today EU Law) is supreme not only to national substantial law, but also to the national procedural law, including the national constitutional law.

4. Francovich

What was the case about?



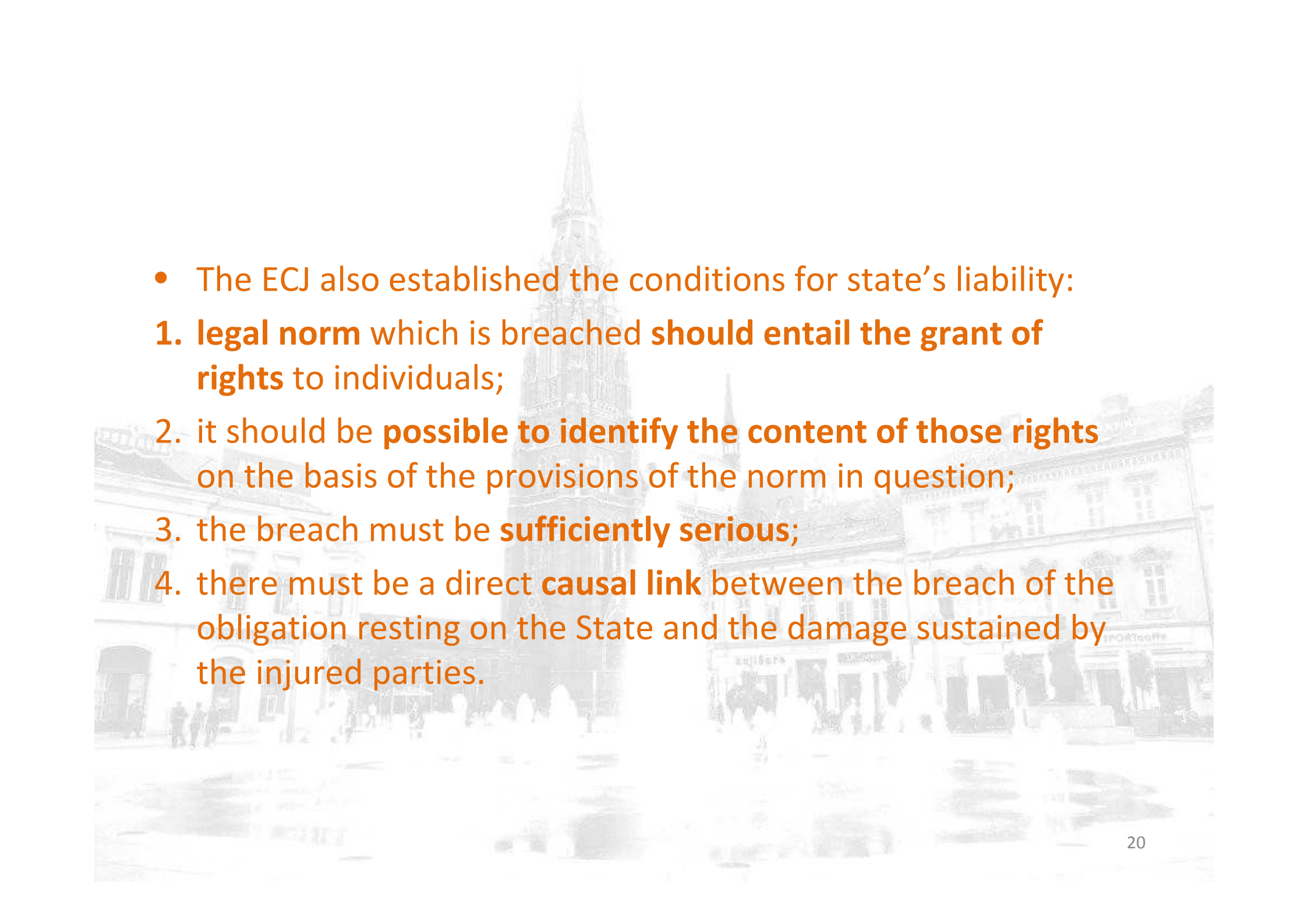
“Sorry, I went bankrupt. If you want payment you’ll have to get in line like everybody else.”

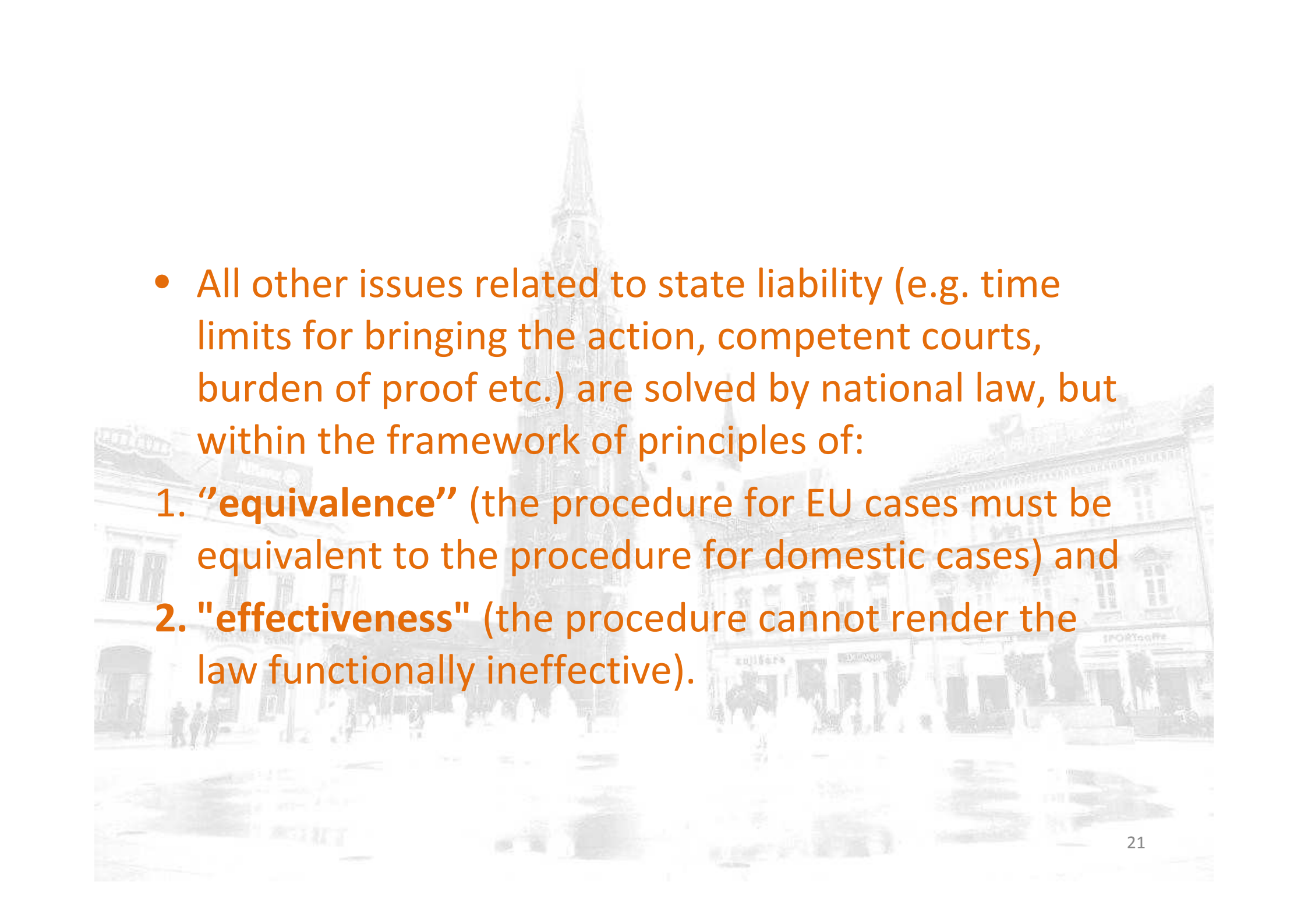
Facts

- *Andrea Francovich and Others v. Italian Republic*
- Possibility of pooling the cases by the ECJ
- Mr. Francovich sued the Italian government on the grounds that he had suffered loss as a result of the government's failure to implement EC Directive 80/987 ("on the approximation of the laws of Member States relating to the protection of employees in the event of insolvency of their employer").
- He was employed by an electronics company in Vicenza between January 1983 and April 1984.
- The employer went bankrupt owing him some 6 mil. lire pay.
- He obtained judgment against the employer in the local court but, with the employer bankrupt, could not recover the money.
- He sued the Italian government for damages for the government's failure to implement an EC/EU Directive which would have eliminated (or reduced) his loss.
- The local court in Vicenza referred questions to the ECJ

ECJ's ruling

- "The provisions of Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer which determine the rights of employees must be interpreted as meaning that the persons concerned cannot enforce those rights against the State before the national courts where no implementing measures are adopted within the prescribed period;
- A Member State is required to make good loss and damage caused to individuals by failure to transpose Directive 80/987/EEC."

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- The ECJ also established the conditions for state's liability:
 1. **legal norm** which is breached **should entail the grant of rights** to individuals;
 2. it should be **possible to identify the content of those rights** on the basis of the provisions of the norm in question;
 3. the breach must be **sufficiently serious**;
 4. there must be a direct **causal link** between the breach of the obligation resting on the State and the damage sustained by the injured parties.

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- All other issues related to state liability (e.g. time limits for bringing the action, competent courts, burden of proof etc.) are solved by national law, but within the framework of principles of:
 1. **"equivalence"** (the procedure for EU cases must be equivalent to the procedure for domestic cases) and
 2. **"effectiveness"** (the procedure cannot render the law functionally ineffective).

