



# FLAMINIO COSTA V ENEL

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# Facts



1

Mr. Costa, in 1962, was damaged by an Italian law, the 1643/62 which nationalized the production and distribution of electricity, through the establishment of ENEL, creating a state monopoly.

2

The lawyer Costa, the partner of an electricity company, suffered an expropriation, and at the same time, receiving an electricity bill, refused to pay it.

3

He appealed to the Conciliatory Judge of Milan, suing the State, and arguing that National Law 1643/62 was contrary to a provision of the EEC Treaty.

4

Costa requests the Milan Conciliator Judge to apply Art. 177 of the EEC Treaty to obtain the interpretation of Articles 102, 93, 53, and 37 of the Treaty.

## Article 11 of the Italian Constitution

Flaminio Costa posed a doubt: Article 11 in the Italian Constitution provides for the possibility of surrendering sovereignty to international organizations promoting justice and equality.

In his view,  
the 1959 national law was contrary to the Italian Constitution, and the EEC Treaty was therefore to acquire a para-constitutional value.

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A question of constitutionality to the Italian Constitutional Court was put



# Questions

- Does Article 11 of the Constitution represent the constitutional coverage of EEC law? Is an ordinary law, therefore, in breach of the provisions of the EEC Treaty unconstitutional?
- Moreover, Could National legislation adopted after 1958 prevail over the original Treaties?
- Could Member States unilaterally determine the status of European law in their national legal order?
- Regarding Articles 102, 93, 53, and 37: ascertaining whether these provisions have immediate effect by attributing to individuals rights that national courts must protect and, if so, what their meaning is.

# Italian Constitutional Court

The Constitutional Court responded first, and rejected the question of constitutionality.

	<ul style="list-style-type: none"><li>• Article 11 did not alter the hierarchy of sources</li></ul>
	<ul style="list-style-type: none"><li>• Equality of rank between treaties and ordinary laws</li></ul>
	<ul style="list-style-type: none"><li>• The law of the European Union could not place itself above the value of the law of the State</li></ul>
	<ul style="list-style-type: none"><li>• The chronological criterion must be applied</li></ul>

# Court of Justice

## Art. 102



**1**

If «there is reason to fear» that the adoption of a legislative provision causes distortion», the member state intending to proceed with it «consults the Commission» which can recommend to the States suitable measures to avoid the dreaded distortion.

**2**

With these provisions, the Member States have limited their freedom of initiative.

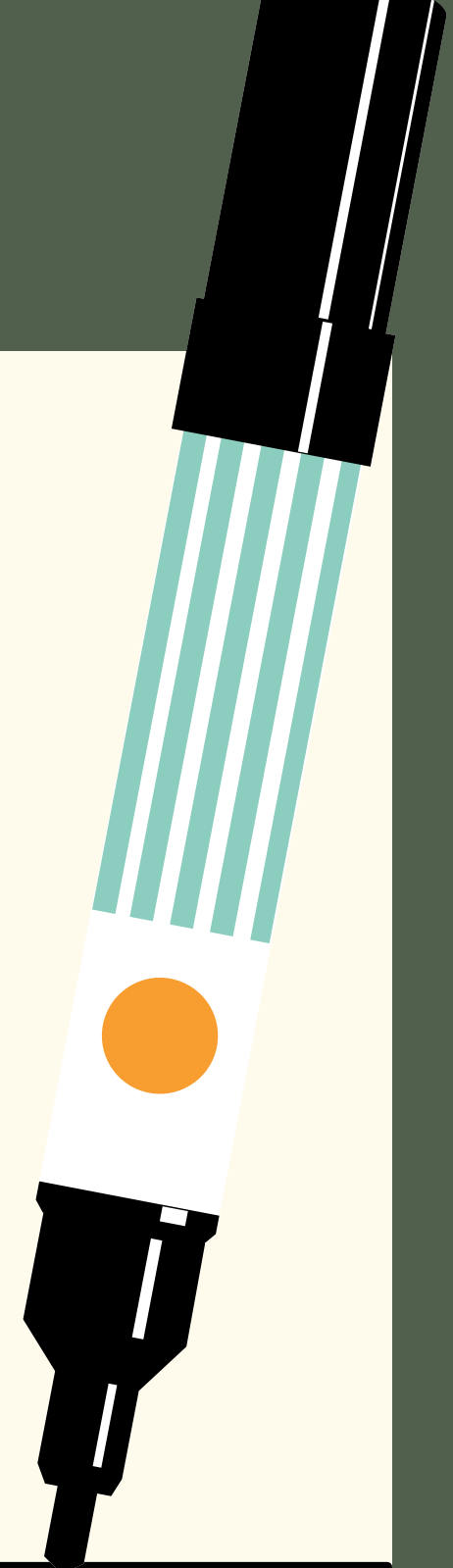
**3**

The States have therefore assumed an undertaking vis-à-vis the Community which binds them as States, but it does not confer rights on individuals.

# ART. 93

- Commission proceeds with the Member States «to constantly examine the aid systems existing in those States with a view to adopting the appropriate measures required by the functioning of the common market.
- The Commission must be promptly informed of plans to establish or modify aid.
- States recognized the aid in question as incompatible with the common market.
- States have assumed, towards the Community, a commitment that binds them as States, but does not directly create individual rights for individuals.





# Art. 53

the States undertake not to introduce new restrictions on the establishment in their territory of nationals of the other Member States.

It directly concerns citizens of Member States to whom it attributes individual rights which the judges nationals must protect.



# Art. 37

The Member States shall gradually reorganize their national monopolies of a commercial nature" in order to exclude any discrimination between nationals of the Member States.

	<ul style="list-style-type: none"><li>• Positive obligation: concerns the reorganization of national monopolies</li></ul>
	<ul style="list-style-type: none"><li>• Negative obligation: concerns the prohibition of new measures</li></ul>
	<ul style="list-style-type: none"><li>• Community rules aimed at attributing rights to individuals that national judges are required to protect.</li></ul>



# Argumentation

The Italian law 1643/42 is to be considered invalid and illegitimate.

- By contrast with ordinary international Treaties, The EU Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal system of the MS and which their courts are bound to apply.
- In situations where there is a conflict between the laws of MS and European Union law, EU LAW PREVAILS
- The law born of the Treaty could not find a limit in any domestic provision without losing its Community character
- The Community States limited their sovereign powers, albeit in circumscribed fields, and thus created a body of law binding on their citizens and on themselves.