

**Case C-5/94**

**The Queen**  
**v**  
**Ministry of Agriculture, Fisheries and Food,**  
**ex parte Hedley Lomas (Ireland) Ltd**

(Reference for a preliminary ruling  
from the High Court of Justice, Queen's Bench Division)

(Free movement of goods — Protection of animals —  
Harmonizing directive — Article 36 of the EC Treaty —  
Non-contractual liability of a Member State for  
breach of Community law)

Opinion of Advocate General Léger delivered on 20 June 1995 ..... I - 2556  
Judgment of the Court, 23 May 1996 ..... I - 2604

**Summary of the Judgment**

1. *Free movement of goods — Quantitative restrictions — Definition — Refusal to issue export licences*  
(*EC Treaty, Art. 34*)

2. *Free movement of goods — Derogations — Quantitative restrictions on exports purportedly based on Article 36 of the Treaty on the ground that the State of importation is not complying with a Community directive having precisely the same aim as that put forward to justify use of the derogating power made available by that article — Not permissible — No Community control procedure or sanctions — Not relevant — Member States' obligation to penalize breaches of the directive — Scope*  
(EC Treaty, Arts 5, first para., Arts 34, 36 and 189, third para.)
3. *Community law — Rights conferred on individuals — Breach by a Member State — Refusal, in breach of Article 34 of the Treaty, to issue export licences — Obligation to make good the damage caused to individuals — Conditions — Detailed rules governing reparation — Application of national law — Limits*  
(EC Treaty, Art. 34)
4. *Community law — Rights conferred on individuals — Breach by a Member State — Obligation to make good damage caused to individuals — Conditions — Sufficiently serious breach — Definition*

1. The refusal by a Member State to issue export licences constitutes a quantitative restriction on exports, contrary to Article 34 of the Treaty.

2. Community law precludes a Member State from invoking Article 36 of the Treaty to justify a limitation of exports of goods to another Member State on the sole ground that, according to the first State, the second State is not complying with the requirements of a Community harmonizing directive pursuing the objective which Article 36 is intended to protect.

directive does not lay down any Community procedure for monitoring compliance nor any penalties in the event of breach of its provisions, since that fact simply means that the Member States are obliged, in accordance with the first paragraph of Article 5 and the third paragraph of Article 189 of the Treaty, to take all measures necessary to guarantee the application and effectiveness of Community law. In this regard, the Member States must rely on trust in each other to carry out inspections on their respective territories and one Member State may not unilaterally adopt, on its own authority, corrective or protective measures designed to obviate any breach by another Member State of rules of Community law.

This exclusion of recourse to Article 36 cannot be affected by the fact that the

3. A Member State has an obligation to make reparation for the damage caused to

an individual by a refusal to issue an export licence in breach of Article 34 of the Treaty where the rule of Community law infringed is intended to confer rights on individuals, the breach is sufficiently serious and there is a direct causal link between the breach and the damage sustained by the individuals. Subject to that reservation, the State must make good the consequences of the loss or damage caused by a breach of Community law attributable to it, in accordance with its domestic law on liability. However, the conditions laid down by the applicable domestic laws must not be less favourable than those relating to similar domestic claims or framed in such a way as in practice to make it impossible or excessively difficult to obtain reparation.

4. Where the Member State which committed an infringement of a provision of Community law conferring rights on individuals was, at the time when it committed the infringement, not called upon to make any legislative choices and had only considerably reduced, or even no, discretion, the mere infringement of Community law may be sufficient to establish the existence of a sufficiently serious breach, which is required in order to give rise to an obligation to make good damage suffered by individuals.