Judgment of the Court (Seventh Chamber) of 17 March 2011 – Commission v Portugal

(Case C-23/10)

(Failure of a Member State to fulfil obligations — Placing fresh bananas in free circulation — Weight declared not corresponding to actual weight — Obligation of customs authorities to check the weight declared — Community Customs Code — Regulation (EEC) No 2913/92 — Article 68 et seq. — Regulation (EEC) No 2454/93 — Article 290a — Annex 38b — System of own resources — Loss of revenue — Regulation (EEC, Euratom) No 1552/89 — Regulation (EC, Euratom) No 1150/2000 — Articles 2, 6, 9, 10 and 11)

1. *European Union's own resources — Customs treatments — Placing in free circulation — Special provisions relating to bananas (Council Regulation No 2913/92, Arts 13, 68 and 71; Commission Regulation No 2454/93, Art. 290a) (see paras 47-54)*

2. *European Union's own resources — Establishing and making available by the Member States — Accepting, systematically and without checking, customs declarations mentioning a standard, and therefore fictitious, weight of imported fresh bananas (Council Regulation No 1552/89, Arts 2, 6 and 9 to 11, Council Regulation No 2913/92, Arts 13, 68 and 71, and Council Regulation No 1150/2000, Arts 2, 6 and 9 to 11; Commission Regulation No 2454/93, Art. 290a) (see paras 55, 71)*

3. *European Union's own resources — Establishing and making available by the Member States — Crediting of the amount to the Commission's account — Delay in crediting the amount (Council Regulation No 1552/89, Arts 2, 9, 11 and 17, and Council Regulation No 1150/2000, Arts 2, 9, 11 and 17) (see paras 57-66)*

Re:

Failure of a Member State to fulfil obligations – Infringement of Article 68 et seq. of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), of Article 290a of Commission

Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) and of Annex 38b thereto, and infringement of Articles 2, 6, 9, 10 and 11 of Council Regulations (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) and of Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources (OJ 2000 L 130, p. 1) – Placing bananas in free circulation – Weight declared not corresponding to actual weight – Own resources – Loss of revenue.

Operative part

The Court:

1. Declares that, by systematically accepting, during the years 1998 to 2002, customs declarations of release for free circulation of fresh bananas by its customs authorities, when the latter knew or ought reasonably to have known that the declared weight of the bananas did not correspond to their actual weight and because of the Portuguese authorities' refusal to make available own resources corresponding to the loss of revenue and interest due for late payment, the Portuguese Republic has failed to fulfil its obligations under Articles 13, 68 and 71 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, read in conjunction with Article 290a of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code, as amended by Commission Regulation (EC) No 89/97 of 20 January 1997, and under Articles 2, 6, and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources, as amended by Council Regulation (Euratom, EC) No 1355/96 of 8 July 1996, and under the same articles of Council Regulation (EC, Euratom)

No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources;

2. Dismisses the remainder of the action;

3. Orders the European Commission and the Portuguese Republic to bear their own costs.

Order of the Court (Sixth Chamber) of 18 March 2011 – Montoya Medina v Fondo de Garantía Salarial and Universidad de Alicante

(Case C-273/10)

(Article 104(3) of the Rules of Procedure — Social policy — Directive 1999/70/EC — Clause 4 of the Framework Agreement on fixed-term work — Fixed-term employment contracts in the public sector — Entitlement to triennial seniority bonuses — Principle of non-discrimination)

1. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Conditions of employment — Definition — Seniority bonus — Included — Duty to apply the principle of non-discrimination (Council Directive 1999/70, Annex, clause 4(1)) (see paras 32-34)*

2. *Social policy — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Directive 1999/70 — Workers doing the same work — 'Same work' — Meaning — Workers in a similar situation — Criteria for assessment (Council Directive 1999/70, Annex, clause 3(2)) (see paragraphs 36-39)*