Reports of Cases

JUDGMENT OF THE COURT (Seventh Chamber)

12 May 2021 *

(Reference for a preliminary ruling – Protection of species of wild fauna and flora by regulating trade therein – Regulations (EC) No 338/97 and (EC) No 865/2006 – Sturgeon caviar – Introduction into the customs territory of to the European Union for personal and household effects – Import permit – Derogation – Limit of 125 grams per person – Exceeded – Intention to give as a gift to a third party)

In Case C-87/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesfinanzhof (Federal Finance Court, Germany), made by decision of 15 October 2019, received at the Court on 19 February 2020, in the proceedings

Hauptzollamt B

v

XY,

THE COURT (Seventh Chamber),

composed of A. Kumin, President of the Chamber, A. Arabadjiev (Rapporteur), President of the Second Chamber, and T. von Danwitz, Judge,

Advocate General: J. Richard de la Tour

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Hauptzollamt B, by A. Wollschläger, acting as Agent,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– the Czech Government, by M. Smolek and J. Vláčil, and by L. Dvořáková, acting as Agents,

– the European Commission, by C. Hermes and R. Tricot, acting as Agents,

* Language of the case: German.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 7(3) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), as amended by Commission Regulation (EU) No 1320/2014 of 1 December 2014 (OJ 2014 L 361, p. 1) ('Regulation No 338/97'), and Article 57(5)(a) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules for the implementation of Council Regulation No 338/97 (OJ 2006 L 166, p. 1), as amended by Commission Regulation (EU) 2015/870 of 5 June 2015 (OJ 2015 L 142, p. 3) ('Regulation No 865/2006').

2 The request has been made in proceedings between the Hauptzollamt B (Principal Customs Office B, Germany) and XY, concerning the confiscation of six tins of sturgeon caviar weighing 50 grams (g) each due to the failure of the person concerned to present an import permit when entering the customs territory of the European Union.

Legal context

International law

3 The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 3 March 1973 (*United Nations Treaty Series*, Vol. 993, No I-14537, ('CITES'), seeks to ensure that international trade in species listed in its appendices, and in parts and derivatives thereof, does not damage the conservation of biodiversity and is based on a sustainable use of wild species.

4 That convention, to which the European Union became a party on 8 July 2015, was implemented in the European Union as from 1 January 1984 by virtue of Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1). That regulation was repealed by Regulation No 338/97, the second paragraph of Article 1 of which provides that that regulation is to apply in compliance with the objectives, principles and provisions of CITES.

5 Under the terms of Resolution 13.7 (Rev. CoP17) of the Conference of Parties on Control of Trade in Personal and Household Effects:

'…

The Conference of the Parties to [CITES]

1. Decides that the term "personal or household effects" in Article VII(3) shall apply to specimens which:
   (a) are held or possessed in a personal capacity, for non-commercial purposes;
   (b) have been legally acquired; and

(c) at the time of import, export or re-export:
(i) are carried, transported or included in personal luggage; or
(ii) are part of a removal.

…

3. Agrees that the Parties:

…
(b) do not require an export or import permit or a re-export certificate for personal or household effects which are dead specimens, parts or derivatives, of species listed in Annex II except:

…
(iv) the following specimens, if the quantity exceeds the specified limits:

– sturgeon caviar (*Acipenseriformes* spp.) – up to 125 grams per person, in a container labelled in accordance with Resolution Conf. 12.7 (Rev. CoP17),

…'

6 Annex 1 to this resolution, entitled 'Guidelines for the interpretation of personal and household effects', provides:

'…

Definition of "personal and household effects"

8. Specimens must be held or possessed personally for non-commercial purposes, which excludes any use for commercial gain or sale, any display for commercial purposes, any holding and transport for sale and any offering for sale.

…'

European Union law

Regulation No 338/97

7 Recital 12 of Regulation No 338/97 reads:

'Whereas, to ensure effective controls and to facilitate customs procedures, customs offices should be designated, with trained personnel responsible for carrying out the necessary formalities and corresponding checks where specimens are introduced into the [Union], in order to assign them a customs-approved treatment or use within the meaning of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [(OJ 1992 L 302, p. 1)], or where they are exported or re-exported from the [Union]; whereas there should also be facilities guaranteeing that live specimens are adequately housed and cared for'.

8 Article 1 of Regulation No 338/97 states:

'The object of this Regulation is to protect species of wild fauna and flora and to guarantee their conservation by regulating trade therein in accordance with the following Articles.

This Regulation shall apply in compliance with the objectives, principles and provisions of the Convention defined in Article 2.'

9 Article 2 of that regulation provides:

'For the purposes of this Regulation:

…

(j) "personal or household effects" shall mean dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels;

…

(t) "specimen" shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods, as well as any other goods which appear from an accompanying document, the packaging or a mark or label, or from any other circumstances, to be or to contain parts or derivatives of animals or plants of those species, unless such parts or derivatives are specifically exempted from the provisions of this Regulation or from the provisions relating to the Annex in which the species concerned is listed by means of an indication to that effect in the Annexes concerned.

…'

10 Under the first paragraph of Article 4(2) of the regulation:

'The introduction into the [Union] of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.'

11 Article 7 of the same Regulation, in its paragraph 3, entitled "Personal and household effects", provides that:

'By way of derogation from Articles 4 and 5, the provisions therein shall not apply to dead specimens, parts and derivatives of species listed in Annexes A to D which are personal or household effects being introduced into the [Union], or exported or re-exported therefrom, in compliance with provisions that shall be specified by the Commission …'

12 Article 16(2) of Regulation No 338/97 states that the appropriate measures that the Member States take to penalise infringements of the provisions of that regulation, including the introduction into the Union of specimens without the appropriate permit or certificate, are 'appropriate to the nature and gravity of the infringement and shall include provisions relating to the seizure and, where appropriate, confiscation of specimens'.

13 In Annex B to that regulation, the '*Acipenseriformes* spp. (II) [polyodon, sturgeon] (except for the species included in Annex A)'.

Regulation No 865/2006

14 Recitals 1, 2 and 6 of Regulation No 865/2006 state:

'(1) Provisions are required to implement Regulation (EC) No 338/97 and to ensure full compliance with the provisions of [CITES] …

(2) In order to ensure the uniform implementation of Regulation (EC) No 338/97, it is necessary to lay down detailed conditions and criteria for the consideration of permit and certificate applications and for the issue, validity and use of such documents. It is therefore appropriate to lay down models to which those documents must correspond.

…

(6) It is necessary to establish procedures for the marking of certain specimens of species in order to facilitate their identification and ensure enforcement of the provisions of Regulation (EC) No 338/97.'

15 Under Article 9 of Regulation No 865/2006:

'Without prejudice to Articles 31, 38, 44b, 44i and 44p, a separate import permit, import notification, export permit or re-export certificate shall be issued for each shipment of specimens shipped together as part of one load.'

16 Article 57 of that Regulation, entitled 'Introduction and reintroduction of personal or household effects into [the Union]', states:

'1. The derogation from Article 4 of Regulation (EC) No 338/97 for personal or household effects, provided for in Article 7(3) of that Regulation, shall not apply to specimens used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.

…

3. The first introduction into the [Union] of personal or household effects, including hunting trophies, by a person normally residing in the [Union] and involving specimens of species listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that the original of a (re-)export document and a copy thereof are presented.

…

4. The reintroduction into the [Union], by a person normally residing in the Community, of personal or household effects, including hunting trophies, that are specimens of species listed in Annex A or B to Regulation (EC) No 338/97 shall not require the presentation to customs of an import permit, provided that one of the following is presented:

(a) the customs-endorsed "copy for the holder" (form 2) of a previously used Community import or export permit;

(b) the copy of the (re-)export document referred to in paragraph 3;

(c) proof that the specimens were acquired within the [Union].

5. By way of derogation from paragraphs 3 and 4, the introduction or reintroduction into the Community of the following items listed in Annex B to Regulation (EC) No 338/97 shall not require the presentation of a (re-)export document or an import permit:

(a) caviar of sturgeon species (*Acipenseriformes* spp.), up to a maximum of 125 grams per person, in containers individually marked …

…'

German law

17 Under Paragraph 51(2), first sentence, of the Bundesnaturschutzgesetz (Federal Nature Conservation Law), if it is found during a customs inspection that animals or plants are being imported or exported without the permit or other documents required for this purpose, the customs authority is to confiscate the animals or plants concerned.

The dispute in the main proceedings and the questions referred for a preliminary ruling

18 In December 2015, XY entered the customs territory of the Union, via Düsseldorf airport (Germany), in possession of six tins of sturgeon caviar weighing 50 g each, without being in possession of the import permit referred to in Paragraph 51(2) of the Federal Nature Conservation Law.

19 Following the confiscation of those boxes by the Hauptzollamt B, XY brought an action before the Finanzgericht Düsseldorf (Finance Court, Düsseldorf, Germany). That court upheld that action, holding that, although sturgeon eggs are listed in Annex B to Regulation No 338/97 and that their import is, therefore subject to an import permit, that confiscation was unlawful, since the Principal Customs Office B should have left XY two of the six tins of caviar concerned, corresponding to a quantity not exceeding 125 g, which XY did not intend to use for commercial purposes, since she intended to offer them to her children or to consume them herself.

20 The Principal Customs Office B brought an appeal on a point of law before the national court on the ground that, if the limit of 125 g referred to in Article 57(5)(a) of Regulation No 865/2006 was exceeded, the entire quantity of sturgeon caviar transported, and not just the excess quantity, was to be confiscated. Furthermore, it challenges the fact that the tins of sturgeon caviar imported by XY in this way can be classified as 'personal or household effects' within the meaning of Article 2(j) of Regulation No 338/97, given that those tins were intended to be offered to a third party.

21 The referring court asks, in that context, whether Article 57(5)(a) of Regulation No 865/2006 must be interpreted, in so far as, apart from the fact that that provision is not subject to uniform interpretation and application in the Member States, the purpose pursued by that regulation and by Regulation No 338/97 and CITES, namely the protection of species of fauna and flora, would favour a strict interpretation of that provision, according to which, if the 125 g limit is exceeded, the entire quantity of imported sturgeon caviar must be confiscated by the competent customs authority. However, both the lack of a punitive nature of the same provision and the reading, by

analogy, of Article 23(2) and Article 27 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ 2009 L 324, p. 23), providing respectively for values and quantities up to which goods covered by that regulation would be admitted free of import duties, would justify a less strict interpretation, according to which only the excess quantity of imported sturgeon caviar should be subject to confiscation.

22 Moreover, the national court has doubts as to whether Article 2(j) of Regulation No 338/97 can be interpreted as excluding the tins of sturgeon caviar imported by XY from being classified as 'personal or household effects', on the ground that XY has stated that she intends to offer them as a present to a third party. In that regard, the referring court notes that there is nothing in the wording of that provision and Article 57(5)(a) of Regulation No 865/2006 that the concept of 'personal or household effects' is relevant only where the importer of the specimen in question uses or consumes it himself or herself and that, in the main proceedings, there is no evidence to show that XY was holding those boxes for commercial purposes. It also points out that it might be difficult in practice for customs authorities to reliably verify the importer's intentions. Furthermore, to allow the import of a specimen when it will actually be consumed by the importer and to prohibit it when it will be consumed by a third party would lack any logic.

23 In those circumstances, the Bundesfinanzhof (Federal Finance Court, Germany) decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 57(5)(a) of Regulation No 865/2006 … to be interpreted as meaning that an importer carrying a total of more than 125 g of caviar of sturgeon species (*Acipenseriformes* spp.) in individually marked containers, for which he or she presents neither a (re-)export document nor an import permit, is to be allowed to keep up to 125 g of caviar, provided that the import is not for any of the purposes listed in the first subparagraph of Article 57(1) of Regulation No 865/2006?

(2) If the answer to that question is in the affirmative:

Do specimens introduced into the customs territory of the European Union also qualify as personal and household effects within the meaning of Article 7(3) of Regulation (EC) No 338/97 where the importer declares at the time of introduction that he or she intends to present the imported items as a gift to other persons?'

Consideration of the questions referred

The second question

24 By its second question, which it is appropriate to examine first, the national court asks, in substance, whether Article 7(3) of Regulation No 338/97 must be interpreted as meaning that sturgeon caviar, when introduced into the customs territory of the Union, may be regarded as a 'personal or household item' within the meaning of that provision where it is intended to be offered as a gift to a third party, and may thus benefit from the derogation, provided for in that provision, from the obligation on the importer to present an import permit.

25 According to settled case-law, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 2 July 2020, *Magistrat der Stadt Wien (Grand hamster)*, C-477/19, EU:C:2020:517, paragraph 23 and the case-law cited).

26 In that regard, it should be noted, first, that, under Article 7(3) of Regulation No 338/97, the introduction into the customs territory of the Union of dead specimens, parts and derivatives of specimens of species listed in Annexes A to D to that regulation is not subject to the requirement to present an import permit for that purpose, where they are personal or household effects.

27 According to the definition laid down in Article 2(j) of Regulation No 338/97, dead specimens, parts and derivatives thereof, that are the belongings of a private individual and that form, or are intended to form, part of his normal goods and chattels fall within the concept of 'personal or household effects'.

28 Thus, it must be observed that the wording of that provision does not make it possible to determine unequivocally whether the applicability of the concept of 'personal or household effects' necessarily requires use or consumption, by the importer himself or herself of those dead specimens, parts of specimens or products derived therefrom.

29 It is conceivable that such items, held or possessed personally, may subsequently be transferred free of charge by the importer to a third party as a gift, instead of being retained by the importer for strictly individual use.

30 Secondly, as regards the context of which Regulation No 338/97 forms part, it must be recalled that, according to the second paragraph of Article 1, that regulation applies in accordance with the objectives, principles and provisions of CITES, to which the Union has acceded, so that the Court cannot disregard them in so far as their consideration is necessary for the interpretation of the provisions of that regulation (see, to that effect, judgment of 23 October 2003, *Nilsson*, C-154/02, EU:C:2003:590, paragraph 39).

31 Resolution 13.7 of the Conference of the Parties to CITES, which helps to clarify the interpretation of the provisions of that convention, referred to in the preceding paragraph, specifies, in paragraph 1 thereof, that the concept of 'personal or household effects' applies to specimens that are held or possessed in a personal capacity, for non-commercial purposes, have been legally acquired and are carried, transported or included in personal luggage or are part of a removal.

32 Furthermore, it must be observed that Article 57(1) of Regulation (EC) No 865/2006 provides that the derogation laid down in Article 7(3) of Regulation No 338/97 does not apply to specimens that are used for commercial gain, sold, displayed for commercial purposes, kept for sale, offered for sale or transported for sale.

33 Thus, it is clear both from the wording of Article 57(1) and from that of Resolution 13.7 of the Conference of the Parties to CITES, that the absence of a commercial purpose for the imported specimen constitutes a decisive criterion for the purposes of its classification as 'personal or household effects', an interpretation which is also supported by the objectives pursued by Regulation No 338/97.

34 In that connection, third, it must be recalled that the protection regime established for specimens of species listed in Annexes A and B to that regulation is to ensure the fullest possible protection for species of wild fauna and flora through controls on trade in such species, in compliance with the objectives, principles and provisions of CITES (judgment of 4 September 2014, *Sofia Zoo*, C-532/13, EU:C:2014:2140, paragraph 34 and the case-law cited).

35 Resolution 13.7 of the Conference of the Parties to CITES states in its preamble that specimens of species listed in Appendix I of that Convention, including sturgeons, must not be used for primarily commercial purposes in the country of import.

36 Therefore, it follows both from the context of Regulation No 338/97 and from the objectives pursued by that regulation that a dead specimen, part of a specimen or a product derived therefrom, such as sturgeon caviar, cannot be classified as a 'personal or household item' within the meaning of Article 7(3) of that regulation, where the importer is pursuing a commercial purpose. However, such a classification is allowed if that caviar is held or possessed on a personal basis and for non-commercial purposes, and that regardless of whether or not it is intended to be offered as a present to a third party.

37 Having regard to the foregoing considerations, the answer to the second question is that Article 7(3) of Regulation No 338/97 must be interpreted as meaning that sturgeon caviar, when brought into the customs territory of the Union, may be regarded as a 'personal or household item' within the meaning of that provision, when it is intended to be offered as a gift to a third party, provided that there is no evidence of a commercial purpose, and may thus benefit from the derogation provided for in that provision from the obligation on the importer to present an import permit.

The first question

38 By its first question, the national court asks, in essence, whether Article 57(5)(a) of Regulation No 865/2006 is to be interpreted as meaning that only the quantity of sturgeon caviar imported in excess of the limit of 125 g per person is to be confiscated by the customs authority, on the ground that the importer is not in possession of a permit issued for the purpose of the import carried out, and not the entire quantity brought into the customs territory of the Union.

39 According to the settled case-law, cited in paragraph 25 of the present judgment, the interpretation of a provision of EU law requires that account be taken not only of its wording, but also of its context and of the objectives pursued by the rules of which it is part.

40 In that regard, it is important, first of all, to recall that, pursuant to Article 57(5)(a) of Regulation No 865/2006, the introduction into the customs territory of the Union of sturgeon caviar up to a limit of 125 g per person is not subject to the obligation for the importer to present an import permit to the competent customs authority.

41 Thus, it must be held that the wording of that provision does not, as such, make it possible to determine the consequences of exceeding that 125 g limit for the determination of the quantity of sturgeon caviar to be confiscated by the competent customs authority.

42 Next, as to the context of that provision, it must be observed that Article 4(2) of Regulation No 338/97 lays down the principle that the introduction of specimens of species listed in Annex B is subject to the presentation of an import permit issued by a management authority of the Member State of destination.

43 It follows that Article 57(5)(a) of Regulation No 865/2006, by exempting the importer of sturgeon caviar from the obligation to present an import permit when the maximum limit of 125 g per person is respected, constitutes a derogation from the principle laid down in Article 4(2) of Regulation No 338/97 and must therefore be interpreted strictly (see, to that effect, judgment of 17 January 2013, *Commission* v *Spain*, C-360/11, EU:C:2013:17, paragraph 18 and the case-law cited).

44 Finally, as regards the objectives pursued by Regulation No 338/97, it must be recalled that, in accordance with Article 1 thereof and as mentioned in paragraph 34 of the present judgment, it seeks to ensure the fullest possible protection of species of wild fauna and flora by controlling trade in them.

45 However, such protection can only be guaranteed if the derogation provided for in Article 57(5)(a) of Regulation No 865/2006 is limited to imports of small quantities of sturgeon caviar and, therefore, only if the confiscation by the competent customs authority covers the entire quantity of sturgeon caviar brought into the customs territory of the Union.

46 A contrary interpretation, to the effect, in the context of that derogation, that only the quantity of sturgeon caviar exceeding the limit of 125 g per person should be confiscated by the competent customs authority, would, moreover, as the Czech Government pointed out in its written observations encourage the import of such products derived from specimens of species listed in Annex B to Regulation No 338/97 without an import permit, and disregard the objective, set out in recital 12 of that regulation and in recitals 2 and 6 of Regulation No 865/2006, of facilitating customs procedures and ensuring effective controls.

47 In that connection, it is apparent from the reference for a preliminary ruling that the Finanzgericht Düsseldorf (Finance Court, Düsseldorf) held that two tins of sturgeon caviar weighing 50 g each, that is to say, a total quantity of 100 g per person, should have been returned to the applicant by the Principal Customs Office B. However, that assessment, apart from depriving XY of the benefit of a further 25 g of sturgeon caviar which, in view of the limit of 125 g per person, she was authorised to import without submitting an import permit for that purpose, shows the complexity of the procedures with which the customs authorities might be confronted if only the excess quantity of sturgeon caviar were to be confiscated.

48 It follows from all the foregoing considerations that the answer to the first question must be that Article 57(5)(a) of Regulation No 865/2006 must be interpreted as meaning that where the quantity of sturgeon caviar brought into the customs territory of the Union exceeds the limit of 125 g per person and the importer is not in possession of a permit issued for the purpose of the importation effected, the entire quantity of sturgeon caviar so imported must be confiscated by the competent customs authority.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Seventh Chamber) hereby rules:

1. **Article 7(3) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as amended by Commission Regulation (EU) No 1320/2014 of 1 December 2014, must be interpreted as meaning that sturgeon caviar, when brought into the customs territory of the European Union, may be regarded as a 'personal or household item' within the meaning of that provision, when it is intended to be offered as a gift to a third party, provided that there is no evidence of a commercial purpose, and may thus benefit from the derogation provided for in that provision from the obligation on the importer to present an import permit.**

2. **Article 57(5)(a) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules for the implementation of Council Regulation No 338/97, as amended by Commission Regulation (EU) 2015/870 of 5 June 2015 must be interpreted as meaning that, where the quantity of sturgeon caviar brought into the customs territory of the European Union exceeds the limit of 125 grams per person and the importer is not in possession of a permit issued for the purpose of the import, the entire quantity of sturgeon caviar so imported is to be confiscated by the competent customs authority.**

[Signatures]