JUDGMENT OF THE COURT (Sixth Chamber)
27 November 1991 *

In Case C-273/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Hessisches Finanzgericht for a preliminary ruling in the proceedings pending before that court between

Meico-Fell

and

Hauptzollamt Darmstadt

on the interpretation of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979 L 197, p. 1),

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, P. J. G. Kapteyn, G. F. Mancini, C. N. Kakouris and M. Díez de Velasco, Judges,

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

* Language of the case: German.

— the firm Meico-Fell, by Wolfgang Wirth, Rechtsanwalt, Frankfurt,

— the Commission of the European Communities, by René Barents, a member of its Legal Service, acting as Agent, assisted by Roberto Hayder, an official of the Federal Ministry for Economic Affairs of the Federal Republic of Germany, seconded to the Legal Service of the Commission under an exchange scheme for national officials,

having regard to the Report for the Hearing,

after hearing oral argument presented on behalf of the Commission at the hearing on 20 June 1991,

after hearing the Opinion of the Advocate General at the sitting on 26 September 1991,

gives the following

Judgment

1 By order of 28 August 1990, which was received at the Court on 11 September 1990, the Hessisches Finanzgericht (Finance Court, Hesse) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979 L 197, p. 1).

2 That question was raised in an action brought by the firm Meico-Fell of Tröse/Weinheim, Federal Republic of Germany (hereinafter referred to as 'Meico-Fell'), against a notice for the post-clearance recovery of duties payable in respect of the importation in 1990 by that firm of dressed racoon skins.

3 In the summer of 1983 it was discovered during an inspection carried out by the customs authorities of the Hauptzollamt (Principal Customs Office) Darmstadt at the premises of Meico-Fell that the firm had sent raw racoon skins to a firm in Canada for dressing and had then re-imported them free of duty in December 1990, declaring them as 'raw skins of other animals'. As a result, the total amount of customs duties paid was lower than that which ought to have been paid and on 24 May 1984 the customs authorities issued a notice for the post-clearance recovery of the difference.

4 Following an unsuccessful administrative appeal, Meico-Fell brought proceedings before the Hessisches Finanzgericht. It submitted that, according to Article 2 of Regulation No 1697/79, the right to collect the duties in question became time-barred upon the expiry of a three-year period and that Article 3 of that regulation, which excludes limitation in the event of an act that could give rise to criminal court proceedings, is not applicable to it because the negligent declaring of goods for customs duties purposes attributable to Meico-Fell or its representative does not constitute such an act.

5 Considering that an interpretation of Article 3 was necessary in order for it to resolve the dispute the Hessisches Finanzgericht stayed the proceedings and referred the following question to the Court for a preliminary ruling:

'Is Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979 L 197, p. 1) to be interpreted as meaning that "an act that could give rise to criminal court proceedings" refers only to an act specifically covered by the criminal law of the Member State concerned, or does it extend to any infringement of tax provisions carrying a longer period of limitation?'

6 According to the grounds of the order for reference, in German law tax evasion constitutes an act liable to criminal court proceedings whilst a failure to take care

in making declarations for customs duty or tax purposes (*leichtfertige Steuerverkürzung*) constitutes only an administrative irregularity (*Ordnungswidrigkeit*), but both are subject to a lengthy limitation period.

7 Reference is made to the Report for the Hearing for a fuller account of the facts of the case and the legal background to the main proceedings, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

8 Article 3 of Regulation No 1697/79 provides that

'When the competent authorities find that it is following an act that could give rise to criminal court proceedings that the competent authorities were unable to determine the exact amount of the import duties or export duties legally due on the goods in question, the period laid down in Article 2 shall not apply.

Under these circumstances, the competent authorities shall take action for recovery in accordance with the provisions in force in this respect in the Member States.'

9 It appears from the context in which that provision was adopted that the expression 'an act that could give rise to criminal court proceedings' means acts which, under the legal system of the Member States whose competent authorities are seeking the post-clearance recovery of duties, may be classified as offences under national criminal law.

10 That interpretation is confirmed by an examination of the other language versions, which have a clear meaning.

11 The meaning thus given to the expression 'an act that could give rise to criminal court proceedings' meets the requirements of legal certainty. The punishment of specific conduct by a criminal sanction constitutes a clear criterion which ensures that the application of the provision in question will be clear, both for the economic agent accused of such conduct and for the authorities which must take recovery action. That requirement for legal certainty is particularly important when, as in this case, rules are involved which entail financial consequences for economic agents.

12 It is true that the application of this criterion may, owing to the substantive provisions of the criminal law of the Member States, lead to different results. However, this situation arises from the fact that in the present state of Community law the classification of a certain kind of conduct for the purposes of criminal law is not harmonized and is therefore governed by national law.

13 The reply to be given to the question submitted by the Hessisches Finanzgericht must therefore be that Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties is to be interpreted as meaning that 'an act that could give rise to criminal court proceedings' refers only to acts which, under the legal system of the Member State whose competent authorities are seeking the post-clearance recovery of duties, are classified as offences under national criminal law.

Costs

14 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the question referred to it by the Hessisches Finanzgericht, by order of 28 August 1990, hereby rules:

Article 3 of Council Regulation (EEC) No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties is to be interpreted as meaning that 'an act that could give rise to criminal court proceedings' refers only to acts which, under the legal system of the Member State whose competent authorities are seeking the post-clearance recovery of duties, are classified as offences under national criminal law.

Schockweiler Kapteyn

Mancini Kakouris Díez de Velasco

Delivered in open court in Luxembourg on 27 November 1991.

J.-G. Giraud
Registrar

F. A. Schockweiler
President of the Sixth Chamber