JUDGMENT OF THE COURT (Sixth Chamber)

3 February 2000 *

In Case C-228/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Simvoulio tis Epikratias, Greece, for a preliminary ruling in the proceedings pending before that court between

Kharalambos Dounias

and

Ipourgos Ikonomikon (Minister for Economic Affairs)

on the interpretation of Articles 30 and 95 of the EC Treaty (now, after amendment, Articles 28 EC and 90 EC) and the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1),

* Language of the case: Greek.

THE COURT (Sixth Chamber),

composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, G. Hirsch and H. Ragnemalm (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— C. Dounias, by C. Synodinos, of the Athens Bar,

— the Greek Government, by P. Mylonopoulos, Deputy Legal Adviser with the Special Community Legal Service of the Ministry of Foreign Affairs, and M. Apessos, Deputy Legal Adviser to the State Legal Service, acting as Agents,

— the Council of the European Union, by M.C. Giorgi, Legal Adviser, and D. Zachariou, of the Legal Service, acting as Agents,

— the Commission of the European Communities, by D. Gouloussis, Legal Adviser, and E. Traversa, of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of C. Dounias, represented by C. Synodinos; the Greek Government, represented by M. Apessos; the Council, represented by M.C. Giorgi and M. Vitsentzatos, Legal Adviser, acting as Agent; and the Commission, represented by D. Gouloussis, at the hearing on 22 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 23 September 1999,

gives the following

Judgment

1 By decision of 6 April 1998, received at the Court on 26 June 1998, the Simvoulio tis Epikratias (Greek Council of State) referred for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) seven questions on the interpretation of Articles 30 and 95 of the EC Treaty (now, after amendment, Articles 28 EC and 90 EC) and the provisions of Council Regulation (EEC) No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes (OJ 1980 L 134, p. 1).

2 Those questions were raised in proceedings brought by Mr Dounias against the Hellenic Republic for compensation for damage purportedly suffered as a result of the competent Greek authorities having assigned, contrary to Community law, a market value higher than the invoice price to photocopying machines which he had imported.

The Community legislation

3 Article 3(1) of Regulation No 1224/80 provides that, given certain circumstances which are not disputed in the main proceedings:

'The customs value of imported goods determined under this article shall be the transaction value, that is, the price actually paid or payable for the goods when sold for export to the customs territory of the Community, adjusted in accordance with Article 8 ...'.

4 Article 8(1) of that Regulation provides:

'In determining the customs value under Article 3, there shall be added to the price actually paid or payable for the imported goods:

(a) the following, to the extent that they are incurred by the buyer but are not included in the price actually paid or payable for the goods:

(i) commission and brokerage, except buying commissions,

(ii) the cost of containers which are treated as being one for customs purposes with the goods in question,

(iii) the cost of packing, whether for labour or materials;

(b) the value, apportioned as appropriate, of the following goods and services where supplied directly or indirectly by the buyer free of charge or at reduced cost for use in connection with the production and sale for export of the imported goods, to the extent that such value has not been included in the price actually paid or payable:

(i) materials, components, parts and similar items incorporated in the imported goods,

(ii) tools, dies, moulds and similar items used in the production of the imported goods,

(iii) materials consumed in the production of the imported goods,

(iv) engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the Community and necessary for the production of the imported goods;

(c) royalties and licence fees related to the goods being valued that the buyer must pay, either directly or indirectly, as a condition of sale of the goods being valued, to the extent that such royalties and fees are not included in the price actually paid or payable;

(d) the value of any part of the proceeds of any subsequent resale, disposal or use of the imported goods that accrues directly or indirectly to the seller;

(e) (i)

the cost of transport and insurance of the imported goods, and

(ii) loading and handling charges associated with the transport of the imported goods,

to the place of introduction of the goods into the customs territory of the Community.'

5 Article 11 of Regulation No 1224/80 provides:

'If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer shall nevertheless be able to withdraw his goods from customs if, where so required, he provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable.'

The national legislation at issue in the main proceedings

Law No 1477/1984

6 Law No 1477/1984 was introduced following the accession of the Hellenic Republic to the Communities, in order to bring Greek legislation into line with the principles of Article 95 of the Treaty. It provides that in determining the taxable value of a product for the purposes of calculating certain taxes and duties, account must be taken, in the case of an imported product, of its customs value as determined in accordance with the provisions of Regulation No 1224/80. The relevant provisions of national law governing the determination of the taxable value of imports are laid down in Articles 1, 2, 3 and 4 of Law No 1477/84.

7 On the basis of the observations submitted by the Commission and by the Greek Government, the relevant provisions of Law No 1477/1984 may be summarised as described below.

Turnover tax

8 Article 1 of Law No 1477/1984, which refers to Decree-Law No 660/1937 introducing turnover tax, provides that turnover tax is to be applied to both domestic and imported products at rates representing a percentage of the taxable value, itself to be determined as follows.

9 In the case of domestic products, the taxable value for the purposes of calculating turnover tax is determined on the basis of the gross receipts from the sale of goods by industrial undertakings and craftsmen. The final selling price is taken into account by deducting any discounts to the purchaser, turnover tax included in the

selling price, and the value of the raw materials. Included in the gross receipts are interest; accessory costs (for transport, installation, assembly, loading, handling etc.); commissions and brokerage fees; the value of services provided for the sale; and taxes (other than stamp duty), contributions and other general charges.

10 In the case of imported goods, the taxable value is determined on the basis of the customs value calculated in accordance with the provisions of Regulation No 1224/80, to which must be added the cost of sales commissions, packing and transport; insurance to the place of introduction of the goods into the territory; interest on capital; any import or anti-dumping duties; and taxes (other than stamp duty), contributions and other general charges.

Stamp duty

11 Article 2 of Law No 1477/1984 provides that stamp duty on imports and sales within the country is to be calculated by applying the same rates.

12 In the case of sales within the country, the taxable value is determined on the basis of the total selling price, that is to say, the selling price plus interest on credit sales, customs duties, taxes, contributions and general charges for the account of the purchaser.

13 In the case of imports, the taxable value is determined on the basis of the customs value calculated in accordance with the provisions of Regulation No 1224/80, to which must be added the cost of sales commissions, packing and transport;

insurance to the place of introduction of the goods into the territory; interest on capital; any import or anti-dumping duties; and taxes (other than stamp duty), contributions and other general charges, plus turnover tax.

The special consumption tax

14 Article 3 of Law No 1477/1984 provides that a special consumption tax is to be levied at the same rates on both domestic and imported goods.

15 In the case of domestic products, the taxable value is determined on the basis of the selling price charged by the producer, manufacturer or processor of the products, free of other charges, subject to the provision made by Article 5(2) of Law No 1223/1981.

16 In the case of imports, the taxable value is determined on the basis of the customs value calculated in accordance with the provisions of Regulation No 1224/80, to which must be added the cost of sales commissions, packing and transport; insurance to the place of introduction of the goods into the territory; interest on capital; and any import or anti-dumping duties, or regularising tax.

The regularising tax

17 According to the Greek Government, the regularising tax, which is provided for under Article 4 of Law No 1477/1984 and which is applied to imports, is transitional in nature. It was introduced following the accession of the Hellenic

Republic to the Communities. The taxable value is determined on the basis of the customs value calculated in accordance with the provisions of Regulation No 1224/80, to which must be added the cost of sales commissions, packing and transport; insurance to the place of introduction of the goods into the territory; interest on capital; and any import duties actually paid.

18 By virtue of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (OJ 1979 L 291, p. 17), additional charges levied on imports but not domestic products could be maintained for a transitional period which expired on 1 January 1986.

Law No 1642/1986

19 Law No 1642/1986 was intended to implement the provisions of Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1; hereinafter 'the Sixth Directive').

Procedural rules

20 Article 10 of the Code peri Teloniakou Dasmologiou (Codifying Decree of 25/30 July 1920, *FEK*, A, No 170; hereinafter 'the Customs Tariff Code'), as replaced by Article 33 of Law No 1805/1951 and supplemented by Article 3 of Decree-Law No 2680/1953, provides that goods are to be classified by the customs authorities in the relevant category for customs clearance and that, in the event of objections being raised by a consignee of imported goods, any dispute is to be brought before the Commission at First Instance and, on appeal, before the

Higher Commission for Disputes concerning Customs Duties (hereinafter 'the Higher Commission').

21 The national court explains that, at the time when the applicant's case was referred to it, the Higher Commission had final administrative jurisdiction to settle such disputes.

22 Article 16 of the Customs Tariff Code, as replaced by Article 1 of Law No 428/1943, provides that in the event of a dispute or if for any other reason customs deposits are lodged in accordance with the provisions in force, the goods are not to be released to the consignee unless he pays to the Tamion Parakatathikon kai Danion (Deposit and Loan Office) such customs duties as are demanded by the customs authorities, in which case the goods are to be released, provided that three samples are retained.

23 Article 49 of Presidential Decree No 341/1978 provides that parties wishing to lead evidence from witnesses in confirmation of their pleadings are required to provide the *judge rapporteur* with affidavits sworn before a Justice of the Peace or a notary.

24 Article 50 provides that the court may in exceptional cases, and subject to Articles 152 to 157 of the Code of Fiscal Procedure, hear witnesses of its own motion or at the request of one of the parties, unless witness evidence is excluded because of the legal issues or situations concerned.

25 Under Article 4 of Law No 1406/1983, in proceedings where it is sought to establish State liability with a view to obtaining damages, the parties may not adduce witness evidence before the administrative court in accordance with Article 49 of Presidential Decree No 341/1978. In exceptional cases, however, the court may of its own motion or at the request of a party order witnesses to be heard.

Facts

26 In March 1986 Mr Dounias imported 15 second-hand Rank Xerox photocopiers of various models from Germany for re-sale. In October 1986 he imported 165 more photocopiers and 122 photocopier bases.

27 In respect of the first batch of photocopiers imported, the department of the Ministry of Economic Affairs responsible for assigning a value to goods (hereinafter 'the Department') attributed to them a market value higher than the price quoted on the corresponding invoices. In order to recover the goods, Mr Dounias paid the taxes on the basis of the value assigned, but filed a complaint with the Commission of First Instance at Piraeus, then with the Higher Commission. The latter upheld his claim and reduced the value assigned to the goods.

28 In the case of the second batch of goods imported, the Department again assigned to them a market value considerably higher than the price quoted on the invoices. Mr Dounias contested this. On 21 April 1988 the Higher Commission decided that the invoice price was to be accepted.

29 Meanwhile, Mr Dounias had been able to pay only part of the amount of tax demanded in respect of the second batch of goods imported, that is to say, he paid the tax for 80 photocopiers out of a total of 165 machines imported, with the result that he was able to recover only about half the number of photocopiers involved. Following the decision of 21 April 1988, the excess tax demanded — in the amount of GRD 2 160 000 — was refunded to him. However, the national court notes that, in the case of 77 photocopiers and 2 photocopier bases, Mr Dounias failed to recover possession.

30 Mr Dounias brought an action for damages against the State before the Dioikitiko Protodikeio Athinon (Administrative Court of First Instance), Athens, seeking compensation for the damage purportedly suffered, namely:

(a) GRD 2 019 000 representing the cost of storing the photocopiers for the duration of the administrative procedure;

(b) GRD 11 270 000 representing the amount which Mr Dounias would have obtained by selling the machines which he had failed to recover;

(c) GRD 42 000 representing transport costs;

(d) GRD 2 800 000 representing losses suffered;

(e) GRD 1 113 000 representing the cost of psychiatric treatment;

(f) GRD 2 000 000 representing non-material damage;

(g) GRD 5 000 000 representing lost opportunities for business expansion.

31 Mr Dounias also claimed default interest, in the amount of GRD 50 467 and GRD 259 200 respectively, on the supplementary tax which had been claimed from him and later refunded.

32 The Dioikitiko Protodikeio Athinon ruled that the State should pay Mr Dounias GRD 1 346 000 in respect of storage costs incurred as a result of unlawful delay on the part of the Department in determining the value of the imported goods, together with GRD 500 000 by way of compensation for non-material damage. Both Mr Dounias and the Greek State appealed against that decision. The Dioikitiko Efeteio Athinon (Administrative Appeal Court), Athens, dismissed as unfounded Mr Dounias' appeal seeking an order upholding his action in its entirety, and upheld in part the appeal by the State, reducing to GRD 100 000 the amount to be paid by way of compensation for non-material damage.

33 Both Mr Dounias and the Greek State appealed in cassation on points of law. Mr Dounias alleges various breaches of the EC Treaty, claiming that those breaches delayed his recovery of the goods. He maintains that the Greek State had caused him non-material damage in respect of which the judgment under appeal failed to accord due reparation as required by the Treaty.

The questions referred for a preliminary ruling

34 Those are the circumstances in which the Simvoulio tis Epikratias decided to stay proceedings and to refer the following seven questions to the Court for a preliminary ruling:

'1. Is the method set out in Law No 1477/1984, in particular Articles 1(2), 2(3), 3(3) and 4(3) thereof, and Article 16 of Law No 1642/1986 for calculating taxable value for the purposes of the taxes laid down by those Laws contrary to the provisions governing the European Economic Community, in particular Articles 30 and 95 of the Treaty of Rome?

2. Is Council Regulation (EEC) No 1224/80 of 28 May 1980 also directly applicable where a tax provided for under the legislation of a Member State applies to goods imported from another Member State?

3. If the answer to the preceding question is in the affirmative, is Article 11 of that Regulation contrary to the provisions of the Treaty of Rome and in particular Article 30 thereof?

4. If the answer to Question 2 is in the negative, is the reference in the abovementioned provisions of Laws Nos 1477/1984 and 1642/1986 to Council Regulation (EEC) No 1224/80 of 28 May 1980 contrary to the provisions of the Treaty of Rome and in particular Article 30 thereof?

5. If the answer to Question 2 is in the negative, is Article 16 of the Code of Legislation relating to the Customs Tariff (Codifying Decree of 25/30 July 1920), as replaced by Article 1 of Law 428/1943, contrary to the provisions of the Treaty of Rome and in particular Article 30 thereof?

6. Is the administrative procedure for settling disputes provided for in Article 10 of the abovementioned Code of Legislation relating to the Customs Tariff and Article 136 of Presidential Decree No 636/1977 contrary to the provisions of the Treaty of Rome and in particular Article 30 thereof, where a domestic tax is levied on goods imported from another Member State?

7. Are the provisions of Article 50 of Presidential Decree No 341/1978, in conjunction with Article 152 of the Code of Fiscal Procedure and Article 4 of Law No 1406/1983, contrary to the provisions of the Treaty of Rome and in particular Article 30 thereof, where proceedings are brought before an administrative court seeking to establish the liability of the State with a view to obtaining reparation for damage resulting from the infringement of provisions governing the European Economic Community?'

Questions 1 and 4

35 By its first and fourth questions, which should be considered together, the national court is essentially asking whether the method for calculating taxable value prescribed by the legislation at issue in the main proceedings — which provides, in particular, that reference is to be made to Regulation No 1224/80 for the purposes of applying turnover tax, stamp duty, the special consumption tax, the regularising tax and VAT — is in conformity with Community law and, in particular, with Articles 30 and 95 of the Treaty.

36 The first point to note is that, although the Court has no jurisdiction, in proceedings brought under Article 177 of the Treaty, to rule on the question whether provisions of national legislation are compatible with Community law, it may provide the national court with all such criteria for the interpretation of Community law as may enable it to answer that question (see Case 97/83 *Melkunie* [1984] ECR 2367, paragraph 7).

37 Secondly, in so far as VAT was introduced in the Hellenic Republic in accordance with the Sixth Directive with effect from 1 January 1987, that is to say, after the material time for the case before the national court, the provisions relating to VAT have no bearing on the determination of that dispute.

38 The first and fourth questions referred for a preliminary ruling must therefore be construed as asking whether Community law, and in particular Articles 30 and 95 of the Treaty, precludes national legislation such as that at issue in the main proceedings, which prescribes a method of calculating taxable value — comprising *inter alia* reference to Regulation No 1224/80 — for the purposes of applying turnover tax, stamp duty, a special consumption tax and a regularising tax.

39 It should first be recalled that the scope of Article 30 does not extend to the obstacles to trade covered by other specific provisions of the Treaty, and that obstacles of a fiscal nature or having an effect equivalent to customs duties, which are covered by Articles 9 and 12 of the EC Treaty (now, after amendment, Articles 23 EC and 25 EC) and Article 95 of the Treaty, do not fall within the prohibition laid down in Article 30 (see Joined Cases C-78/90 to C-83/90 *Compagnie Commerciale de l'Ouest and Others* v *Receveur Principal des Douanes de La Pallice-Port* [1992] ECR I-1847, paragraph 20).

40 In so far as turnover tax, stamp duty and the special consumption tax are applied to imported products and domestic products alike, they form part of a general scheme of internal taxation of goods which is subject to the provisions of Article 95 of the Treaty. Those three taxes must therefore be considered in the light of that provision.

41 It is settled law that a system of taxation may be considered compatible with Article 95 of the Treaty only if it is so arranged as to exclude any possibility of imported products being taxed more heavily than similar domestic products (see, in particular, Case C-68/96 *Grundig Italiana* v *Ministero delle Finanze* [1998] ECR I-3775, paragraph 12).

42 As regards the existence of similar domestic products, it should be recalled that the goods in question in the main proceedings are second-hand photocopiers. As the Advocate General noted in point 28 of his Opinion, even if there is no production of photocopiers in Greece, that does not mean that there is no market there for used photocopiers. As the Court has already ruled, imported used goods and those bought locally constitute similar or competing products (see Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraph 17).

43 Accordingly, the first point to determine is whether, contrary to the Treaty, the effect of provisions such as those at issue in the main proceedings, including the reference to Regulation No 1224/80, is that imported goods are taxed more heavily than domestic products.

44 In that regard, it first falls to be examined whether the reference to Regulation No 1224/80 for the purposes of determining the taxable value of goods coming from another Member State is compatible with the Treaty.

45 Given the fact that domestic and imported products are marketed differently, it is no easy matter, as the national court observed, to determine the taxable value of imports on the basis of provisions designed to apply to domestic goods. On the other hand, in respect of the transaction to which the taxes in question attach, there is a similarity between products imported from non-member countries and those from Member States. That being so, it can be accepted that a Member State may find it practical to use Regulation No 1224/80 as a yardstick for establishing the basis of assessment for imported products, and that the mere reference to that regulation for the purposes of determining taxable value in order to calculate the various taxes at issue is not in itself contrary to the Treaty.

46 Next, it falls to be determined whether, in the case of each of the three taxes in question — turnover tax, stamp duty and the special consumption tax — the method of calculating the taxable value gives rise to discrimination, contrary to Article 95 of the Treaty.

47 On that point, it is for the national court to satisfy itself as to whether the same price and cost factors are taken into account in determining the taxable value of domestic products and imported products. If the basis of assessment for imported products comprises prices or costs which are not reflected in the taxable value of domestic products, the result will be that imported products are taxed more heavily, that is to say, it will give rise to discrimination contrary to Article 95 of the Treaty.

48 So far as regards turnover tax, it does not appear from the case-file in the main proceedings that, as between domestic and imported products, different prices and costs are taken into account in order to determine the taxable value. On the other hand, in the case of stamp duty and the special consumption tax, it appears from the case-file that differences may exist. In the first case, it is not clear whether, in calculating the taxable value for the purposes of applying stamp duty, turnover is taken into account in the case of both domestic and imported products. Also, with respect to the special consumption tax, it seems that imported products alone are made to bear, as elements of their taxable value,

ancillary costs such as the costs of sales commissions, packing and transport. It is for the national court to ascertain whether these differences exist and to check whether there are other ways in which the calculation of taxable value differs as between domestic and imported products.

49 Lastly, the regularising tax must be examined.

50 Since the regularising tax is levied solely on imported goods, it does not necessarily form part of a system of internal taxation subject to Article 95 of the Treaty. It may constitute a customs duty or a charge having equivalent effect, for the purposes of Articles 9 and 12 of the Treaty. It need merely be noted that, as the Advocate General observed in point 34 of his Opinion, in placing an additional burden solely on imported products, the regularising tax is inherently discriminatory and contrary either to Article 95 of the Treaty, or to Articles 9 and 12 thereof.

51 Having regard to the foregoing considerations, the answer to the first and fourth questions must be:

— Article 95 of the Treaty precludes national legislation, such as that at issue in the main proceedings, which prescribes a method of calculating taxable value for the purposes of turnover tax, stamp duty and a special consumption tax, where that method varies according to whether the taxes are to be levied on domestic products or imported products, with the result that the latter are taxed more heavily. The reference in the national legislation to Regulation No 1224/80, for the purposes of determining the taxable value of products from other Member States, is not in itself contrary to the Treaty;

— Article 95 of the Treaty, or Articles 9 and 12 thereof, precludes national legislation on the application of a tax, such as the regularising tax at issue in the main proceedings, under which that tax is payable on goods from another Member State but not on equivalent goods produced in the national territory.

Questions 2 and 3

52 By its second question, the national court asks whether Regulation No 1224/80 is directly applicable for the purposes of applying a tax to a product coming from another Member State.

53 It is sufficient to note that Regulation No 1224/80, which is based on Article 113 of the EC Treaty (now, after amendment, Article 133 EC), concerns solely trade with non-member countries and does not therefore apply to trade between Member States.

54 The answer to the second question must be that Regulation No 1224/80 does not apply to trade between Member States.

55 Since the third question was predicated upon an affirmative reply to the second question, it need not be answered.

Question 5

56 By its fifth question, the national court is essentially asking whether the Treaty precludes national legislation such as that laid down in Article 16 of the Customs Tariff Code, replaced by Article 1 of Law No 428/1943.

57 That question should be understood as inquiring whether Community law precludes national legislation which requires customs authorities to withhold imported goods in the event of disputes regarding the amount of tax demanded, unless that amount is paid by the person concerned.

58 The Court has consistently held that, in the absence of Community rules governing a matter, it is for the domestic legal system of each Member State to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from the direct effect of Community law. However, such rules must not be less favourable than those governing similar domestic actions; nor may they make it impossible or excessively difficult in practice to exercise rights conferred by Community law (see, in particular, Case C-312/93 *Peterbroeck* v *Belgian State* [1995] ECR I-4599, paragraph 12).

59 It is for the national court to ascertain, first, whether, in disputes concerning the amount of tax levied, there are procedural rules applicable in the case of domestic products which are comparable with the rules for imported products, and, if so, whether more favourable conditions apply to disputes concerning domestic products. If it appears that imported products may be placed on the market only after a customs investigation has been carried out and the person concerned has paid the taxes demanded by the customs authorities (even though the amount may be disputed), whereas domestic products may be placed on the market

immediately, with no delay while the tax authorities investigate or the person concerned files a complaint, it will have to be concluded that the applicable procedure is contrary to Community law.

60 If comparison with a similar domestic procedure does not disclose discrimination against imported products, or if no comparable procedure exists, the national court must ascertain, secondly, whether the applicable procedure makes it virtually impossible or excessively difficult to import products from other Member States; again, if that proves to be the case, it must be concluded that the procedure is contrary to Community law.

61 The answer to the fifth question must therefore be that Community law precludes national legislation which requires the customs authorities to withhold imported goods in the event of disputes concerning the amount of tax demanded, unless the person concerned pays that amount, if that procedure is less favourable than the procedure applicable to similar domestic actions or if, in practice, it makes it virtually impossible or excessively difficult for the person concerned to import goods from other Member States.

Question 6

62 The first point to note is that the sixth question concerns the compatibility with the Treaty of an administrative procedure for the settlement of disputes concerning the levying of a domestic tax on products coming from other Member States. As was mentioned in paragraphs 56 and 57 above, the procedure at issue in the main proceedings entails the adoption of a decision by the administrative authorities liable to have an effect on imported products.

63 The sixth question must therefore be construed as asking whether the Treaty precludes a provision of national law which provides that disputes concerning the levying of taxes on imported products are to be settled by an administrative procedure which may have an effect on the importation of products.

64 As was pointed out in paragraph 58 above, if such an administrative procedure is to be compatible with Community law, it must not be less favourable than the procedure governing similar domestic actions; nor may it make it impossible or excessively difficult in practice to exercise rights conferred by Community law. Moreover, the Court has consistently held that the existence of a judicial remedy against any decision of a national authority refusing the benefit of a fundamental right conferred by the Treaty is essential in order to secure for the individual effective protection for his right (see Case 222/86 *Unectef* v *Heylens and Others* [1987] ECR 4097, paragraph 14, and Case C-18/88 *Régie des Télégraphes et des Téléphones* v *GB-Inno-BM* [1991] ECR I-5941, paragraph 34).

65 In that regard, it should be noted that a procedural rule such as that at issue in the main proceedings, under which a dispute concerning the amount of tax payable on imported products must first be settled by administrative procedure, does not in itself favour domestic products; nor does it make it impossible or excessively difficult to import such goods. Nevertheless, it is for the national court to ascertain whether the national legislation provides for a comparable procedure to apply to disputes concerning domestic products, in order to ensure that there is no discrimination inherent therein in favour of the latter.

66 So far as concerns the availability of a judicial remedy, it is clear from the order for reference that this requirement is satisfied in so far as Mr Dounias could have contested the administrative decision, had he so desired, before the administrative courts.

67 The answer to the sixth question must therefore be that the Treaty does not preclude a provision of national law under which disputes concerning the levying of taxes on imported products are to be settled by administrative procedure, which may have an effect on the importation of products, provided that there is no comparable procedure applicable to disputes concerning domestic products which is predisposed in their favour and that decisions by the administrative authorities refusing or restricting imports are open to judicial review.

Question 7

68 By its seventh question, the national court is essentially asking whether Community law precludes national legislation which provides that, in judicial proceedings seeking to establish State liability with a view to obtaining compensation for damage caused by a breach of Community law, witness evidence is admissible only in exceptional cases.

69 It should be recalled that, under the principle of cooperation laid down in Article 5 of the EC Treaty (now Article 10 EC), it is for the courts of the Member States to ensure the legal protection which individuals derive from the direct effect of Community law (see *Peterbroeck*, cited above, paragraph 12). However, in fulfilling that obligation, Member States must ensure that the rules of evidence applicable to actions relating to a breach of Community law are not less favourable than those applying to similar domestic actions, and that they do not make it impossible or excessively difficult in practice for individuals to exercise rights conferred by Community law (see, to that effect, Case 199/82 *Amministrazione delle Finanze dello Stato* v *San Giorgio* [1983] ECR 3595, paragraph 14).

70 As regards the first requirement, it is clear from the case-file in the main proceedings that the rules of evidence applicable to disputes in which it is sought to establish State liability with a view to obtaining damages do not make any distinction as between liability incurred through the breach of national law and that incurred through non-compliance with Community law. It follows that a rule such as that at issue in the main proceedings is consistent with the principle that the procedural rules governing actions relating to a breach of Community law must not be less favourable than those governing similar domestic actions.

71 As regards the second requirement — that the rules of evidence must not make it impossible or excessively difficult in practice for an individual to exercise rights conferred by Community law, it is for the national court to make certain that an individual such as Mr Dounias is able to benefit from the exceptional procedure permitting witness evidence, failing which he may lead other evidence — documentary evidence, in particular — attesting to the damage suffered.

72 The answer to the seventh question must therefore be that Community law does not preclude a provision of national law under which, in judicial proceedings in which it is sought to establish State liability with a view to obtaining compensation for damage caused by a breach of Community law, witness evidence is admissible only in exceptional cases, provided that such a provision applies also to similar domestic actions and that it does not prevent individuals from asserting rights which they derive from the direct effect of Community law.

Costs

73 The costs incurred by the Greek Government, the Council and the Commission, which have 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 questions referred to it by the Simvoulio tis Epikratias by decision of 6 April 1998, hereby rules:

1. Article 95 of the EC Treaty (now, after amendment, Article 90 EC) precludes national legislation, such as that at issue in the main proceedings, which prescribes a method of calculating taxable value for the purposes of turnover tax, stamp duty and a special consumption tax, where that method varies according to whether the taxes are to be levied on domestic products or imported products, with the result that the latter are taxed more heavily. The reference in the national legislation to Council Regulation (EEC)

No 1224/80 of 28 May 1980 on the valuation of goods for customs purposes, for the purposes of determining the taxable value of products from other Member States, is not in itself contrary to the EC Treaty.

2. Article 95 of the Treaty, or Articles 9 and 12 thereof (now, after amendment, Articles 23 EC and 25 EC), precludes national legislation on the application of a tax, such as the regularising tax at issue in the main proceedings, under which that tax is payable on goods from another Member State but not on equivalent goods produced in the national territory.

3. Regulation No 1224/80 does not apply to trade between Member States.

4. Community law precludes national legislation which requires customs authorities to withhold imported goods in the event of disputes concerning the amount of tax demanded, unless the person concerned pays that amount, if that procedure is less favourable than the procedure applicable to similar domestic actions or if, in practice, it makes it virtually impossible or excessively difficult for the person concerned to import goods from other Member States.

5. The Treaty does not preclude a provision of national law under which disputes concerning the levying of taxes on imported products are to be

settled by administrative procedure, which may have an effect on the importation of products, provided that there is no comparable procedure applicable to disputes concerning domestic products which is predisposed in their favour and that decisions by the administrative authorities refusing or restricting imports are open to judicial review.

6. Community law does not preclude a provision of national law under which, in judicial proceedings in which it is sought to establish State liability with a view to obtaining compensation for damage caused by a breach of Community law, witness evidence is admissible only in exceptional cases, provided that such a provision applies also to similar domestic actions and that it does not prevent individuals from asserting rights which they derive from the direct effect of Community law.

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 3 February 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber