JUDGMENT OF THE COURT (Fifth Chamber)

23 March 2000 *

In Joined Cases C-310/98 and C-406/98,

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

Hauptzollamt Neubrandenburg

and

Leszęk Labis, trading as 'Przedsiebiorstwo Transportowo-Handlowe ("Met-Trans")' (C-310/98),

Sagpol SC Transport Miedzynarodowy i Spedycja (C-406/98),

on the interpretation of Articles 454 and 455 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),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: L. Sevón, President of the First Chamber, acting as President of the Fifth Chamber, P.J.G. Kapteyn, P. Jann (Rapporteur), H. Ragnemalm and M. Wathelet, Judges,

Advocate General: J. Mischo,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Labis (C-310/98), by P. Galuszka, Rechtsanwalt, Engelskirchen,

— Sagpol SC Transport Miedzynarodowy i Spedycja (C-406/98), by M. Leis, Rechtsanwalt, Greifswald,

— the French Government (C-406/98), by K. Rispal-Bellanger, Head of Subdirectorate at the Foreign Affairs Directorate of the Ministry of Foreign Affairs, and C. Vasak, Assistant Secretary for Foreign Affairs in that directorate, acting as Agents,

— the Netherlands Government (C-310/98), by M. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Finnish Government (C-406/98), by T. Pynnä, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

— the Swedish Government (C-310/98 and C-406/98), by A. Kruse, Departementsråd in the Ministry of Foreign Affairs, acting as Agent,

— the Commission of the European Communities (C-310/98 and C-406/98), in Case C-310/98, by R. Tricot, of its Legal Service, and K. Schreyer, a national civil servant on secondment to its Legal Service, and, in Case C-406/98, by R.B. Wainwright, Principal Legal Adviser, and J.C. Schieferer, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Labis, represented by P. Galuszka, of Sagpol SC Transport Miedzynarodowy i Spedycja, represented by M. Leis, of the Danish Government, represented by J. Molde, Head of Division at the Ministry of Foreign Affairs, acting as Agent, of the French Government, represented by C. Vasak, of the Netherlands Government, represented by M. Fierstra, of the Finnish Government, represented by T. Pynnä, of the Swedish Government, represented by A. Kruse, and of the Commission, represented by R. Tricot and J.C. Schieferer, at the hearing on 14 October 1999,

after hearing the Opinion of the Advocate General at the sitting on 9 December 1999,

gives the following

Judgment

1 By orders of 7 July 1998 (C-310/98) and 6 October 1998 (C-406/98), received at the Court on 10 August 1998 and 16 November 1998 respectively, the Bundesfinanzhof (Federal Finance Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) five questions on the interpretation of Articles 454 and 455 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).

2 Those questions were raised in proceedings in two cases between a German customs authority, the Hauptzollamt (Principal Customs Office) Neubrandenburg (hereinafter 'the Hauptzollamt'), and two Polish transport firms, Mr Labis, trading as 'Przedsiebiorstwo Transportowo-Handlowe ("Met-Trans")' (hereinafter 'Met-Trans') (C-310/98), on the one hand, and Sagpol SC Transport Miedzynarodowy i Spedycja (hereinafter 'Sagpol') (C-406/98) on the other, relating to the recovery of import customs duties owing to offences committed in the course of international transport operations carried out under cover of TIR carnets relating to goods falling within the Community external transit regime.

Legal Background

3 The Customs Convention on the international transport of goods under cover of TIR carnets of 14 November 1975 at Geneva (hereinafter 'the TIR Convention') was approved on behalf of the European Economic Community by Council Regulation (EEC) No 2112/78 of 25 July 1978 (OJ 1978 L 252, p. 1).

4 In order for an external transit operation under cover of a TIR carnet to be properly accomplished, the goods in question must be produced at the office where they leave the Community or at the office of destination in the Community, that is to say the office of destination, which must notify the office of departure, that is the office of entry into the Community, accordingly.

5 Article 454(2) and (3) of Regulation No 2454/93 provides as follows:

'2. Where it is found that, in the course of or in connection with a transport operation carried out under cover of a TIR carnet or a transit operation carried out under cover of an ATA carnet, an offence or irregularity has been committed in a particular Member State, the recovery of duties and other charges which may be payable shall be effected by that Member State ...

3. Where it is not possible to determine in which territory the offence or irregularity was committed, such offence or irregularity shall be deemed to have been committed in the Member State where it was detected unless, within the period laid down in Article 455(1), proof of the regularity of the operation or of the place where the offence or irregularity was actually committed is furnished to the satisfaction of the customs authorities.

Where no such proof is furnished and the said offence or irregularity is thus deemed to have been committed in the Member State in which it was detected, the duties and other charges relating to the goods concerned shall be levied by that Member State in accordance with Community or national provisions.

If the Member State where the said offence or irregularity was actually committed is subsequently determined, the duties and other charges (apart from those levied, pursuant to the second subparagraph, as own resources of the Community) to which the goods are liable in that Member State shall be returned to it by the Member State which had originally recovered them. In that case, any overpayment shall be repaid to the person who had originally paid the charges.

Where the amount of the duties and other charges originally levied and returned by the Member State which had recovered them is smaller than that of the duties and other charges due in the Member State where the offence or irregularity was actually committed, that Member State shall levy the difference in accordance with Community or national provisions.

...'

6 Under Article 455 of Regulation No 2454/93:

'1. [W]here an offence or irregularity is found to have been committed in the course of or in connection with a transport operation carried out under cover of a TIR carnet or a transit operation carried out under cover of an ATA carnet, the customs authorities shall notify the holder of the TIR carnet or ATA carnet and the guaranteeing association within the period prescribed in Article 11(1) of the TIR Convention or Article 6(4) of the ATA Convention, as the case may be.

2. [P]roof of the regularity of the operation carried out under cover of a TIR carnet or an ATA carnet within the meaning of the first subparagraph of

Article 454(3) shall be furnished within the period prescribed in Article 11(2) of the TIR Convention or Article 7(1) and (2) of the ATA Convention, as the case may be.

3. Such proof may be furnished to the satisfaction of the customs authorities *inter alia:*

(a) by production of a document certified by the customs authorities establishing that the goods in question have been presented at the office of destination. This document must include information enabling the goods to be identified;

or

(b) by the production of a customs document issued in a third country showing release for home use, or a copy or photocopy thereof; such copy or photocopy must be certified as a true copy either by the body which endorsed the original document, or by the authorities of the third country concerned, or by the authorities of one of the Member States. This document must include information enabling the goods in question to be identified;

or

(c) for the purposes of the ATA Convention, by the evidence referred to in Article 8 of that Convention.'

7 The words *'inter alia'* in the first sentence of Article 455(3) of Regulation No 2454/93 were removed by an amendment in Commission Regulation (EC) No 12/97 of 18 December 1996 (OJ 1997 L 9, p. 1). The new version was not yet in force at the material time in the case in the main proceedings.

8 Articles 11(1) and (2) of the TIR Convention provide:

'1. Where a TIR carnet has not been discharged or has been discharged conditionally, the competent authorities shall not have the right to claim payment of the sums mentioned in Article 8(1) and (2) from the guaranteeing association unless, within a period of one year from the date of acceptance of the TIR carnet by those authorities, they have notified the association in writing of the non-discharge or conditional discharge. The same provision shall apply where the certificate of discharge was obtained in an improper or fraudulent manner, save that the period shall be two years.

2. The claim for payment of the sums referred to in Article 8(1) and (2) shall be made to the guaranteeing association at the earliest three months after the date on which the association was informed that the carnet had not been discharged or had been discharged conditionally or that the certificate of discharge had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the abovementioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.'

The main proceedings

9 On 9 August 1994 Met-Trans, as a TIR carnet holder, placed a consignment of white sugar from Poland bound for Portugal under the Community external transit regime at a German customs office (the office of departure). The last date laid down for presenting the goods at the office of destination (Porto customs office) was 16 August 1994.

10 When the Hauptzollamt subsequently examined the TIR carnet, which was returned to it bearing the signature and stamp of a Portuguese customs office dated 16 August 1994, it found that the stamp and the signature had clearly been forged. According to information provided by the Portuguese customs authorities, the goods were never actually produced to them.

11 The Hauptzollamt therefore informed Met-Trans that the goods transported to the office of destination had not been produced and that, since the Hauptzollamt was unable to determine where the offence was committed, it would, pursuant to Article 454(2) and (3) of Regulation No 2454/93, be presumed to have been committed in Germany, unless proof be forthcoming within three months either that the transit operation was lawful or as to where the offence was actually committed.

12 Met-Trans then claimed that the offence had been committed in Portugal. As evidence of that allegation it sent the Hauptzollamt, *inter alia*, a statement by its driver indicating that the goods had been unloaded in the free area of the commercial port of Porto and that a person posing as a customs officer had carried out the customs formalities.

13 The Hauptzollamt, taking the view that those factors were not sufficient to prove to its satisfaction where the offence was actually committed and to rebut the

presumption that it was committed in Germany, the Member State where it was detected, decided that it had the power to recover the import duties and other charges. It therefore required Met-Trans, as the entity responsible for the customs debt, to pay DEM 24 724.11. The complaint brought against the recovery notice by Met-Trans was rejected.

14 The Finanzgericht (Finance Court) Mecklenburg-Vorpommern, before which Met-Trans brought an action, found that the Hauptzollamt did not have the power to recover the duties and charges in question and annulled the recovery notice. The Hauptzollamt brought an appeal on a point of law ('Revision') against that decision before the Bundesfinanzhof.

15 On 2 June 1994 Sagpol, as a TIR carnet holder, placed a consignment of butter from Poland bound for Spain under the Community external transit regime at the German Customs Office of Pomellen, the office of departure. The last date laid down for presenting the consignment to the customs office of destination, Madrid, was 9 June 1994.

16 Having received no information by way of reply from the office of destination, the Hauptzollamt sent that office a request for information as to the whereabouts of the goods. That request went unanswered.

17 By letter of 23 December 1994 the Hauptzollamt informed Sagpol that the goods had not been produced at the office of destination and that it was not possible to determine where the offence had been committed. It allowed Sagpol a three-

month period to produce evidence either that the transaction was lawful or as to where the offence was committed, failing which the offence would, at the end of that period, be deemed to have been committed in Germany.

18 Since it did not receive the evidence requested within the period prescribed, on 18 May 1995 the Hauptzollamt sent Sagpol a notice of recovery of the import duties and other taxes in the amount of DEM 162 251.69.

19 On 8 August 1995 the Hauptzollamt was informed by the Spanish customs authorities that it had ultimately transpired that the stamp on the TIR carnet was forged.

20 In the context of its complaint in respect of the notice of recovery before the Hauptzollamt, Sagpol, by letter of 31 August 1995, produced the consignment note bearing an acknowledgement of receipt by a Spanish company. Under cover of a letter of 21 December 1995, Sagpol also produced a written statement by the lorry driver who performed the transportation operation at issue, indicating that the goods had indeed been delivered to Madrid. Finally Sagpol claimed that, whilst criminal proceedings had been initiated in Poland for smuggling, it was not the defendant to those proceedings. The Hauptzollamt rejected Sagpol's complaint.

21 On application by Sagpol, the Finanzgericht Mecklenburg-Vorpommern held that the Hauptzollamt did not have the power to recover the duties and charges in question because Sagpol had, within the time-limit, provided satisfactory

evidence that the actual place where the offence was committed was Madrid. Accordingly it annulled the notice of recovery. The Hauptzollamt appealed on a point of law (by way of 'Revision') against that decision to the Bundesfinanzhof.

22 The Bundesfinanzhof decided to stay proceedings in both cases in order to refer the following questions to the Court for a preliminary ruling:

In Case C-310/98:

'1. What should the requirements be for furnishing proof of the place where an irregularity or offence was actually committed in the course of a transport operation carried out under cover of a TIR carnet (First subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93 of 2 July 1993, OJ 1993 L 253, p. 1)? Is a statement from the carnet holder and the testimony of the lorry driver who has effected the transport for the carnet holder sufficient or must the proof comprise documents which unambiguously show that the competent authorities in the other Member State reached the conclusion that the irregularity or offence was committed on their territory?

2. If the Court of Justice takes the view that the actual place where the irregularity or offence was committed can be proved on the basis of statements of the carnet holder and the testimony of the lorry driver who effected the transport operation, are the third and fourth subparagraphs of Article 454(3) of Regulation (EEC) No 2454/93 to be interpreted as meaning that they also apply in cases where the charges were recovered in the Member State where the irregularity or offence was detected, even though it has been proved that the irregularity or offence was actually committed in another Member State?'

In Case C-406/98:

'1. (a) Is it compatible with the first subparagraph of Article 454(3) and with Article 455(1) 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) if, where a consignment which has been cleared for the external transit procedure under a TIR carnet is not produced at the destination, the customs authorities of the Member State of dispatch set the carnet holder a preclusive period of three months in which to provide satisfactory proof of the actual place where the offence or irregularity was committed, with the consequence that proof which is produced later leaves unaffected the competence of the Member State of dispatch to recover the duties?

(b) If the above question is answered in the negative: Within what period may the carnet holder prove the actual place where the offence or irregularity has been committed?

2. If the answer to the questions at (1) above leads to the conclusion that the carnet holder has not failed to comply with the time-limit for proving the actual place where the offence or irregularity was committed:

What are the requirements for furnishing satisfactory proof of the place where the offence or irregularity was actually committed in the course of a transport operation carried out under cover of a TIR carnet (first subparagraph of Article 454(3) of Commission Regulation (EEC) No 2454/93)? May a statement by the carnet holder and the testimony of the lorry driver who has effected the transport for the carnet holder be sufficient proof, or can proof only be provided by documents which unambiguously show that the competent authorities of the other Member State have found that the offence or irregularity was committed on their territory?

3. If the Court of Justice considers that proof of the actual place where the offence or irregularity was committed was provided in due time, and considers it permissible to adduce such proof in the manner described:

Are the third and fourth subparagraphs of Article 454(3) of Regulation (EEC) No 2454/93 to be interpreted as meaning that they also apply in cases where the duties were recovered in the Member State where the offence or irregularity was detected, even though it has been proved within the period prescribed by the first subparagraph of Article 454(3) and by Article 455(1) of Regulation No 2454/93 that the offence or irregularity was actually committed in another Member State?'

23 By order of the President of the Court of Justice of 30 April 1999, the two cases were joined for the purposes of the oral procedure and judgment.

The first question in Case C-310/98 and the second question in Case C-406/98

24 By its first question in Case C-310/98 and its second question in Case C-406/98, which relate to the same issue, the national court is essentially asking whether the first subparagraph of Article 454(3) of Regulation No 2454/93 must be interpreted as meaning that proof of the place where an offence or irregularity was committed which is required by the customs authorities of the Member State where the offence or irregularity has been detected can only be produced in the form of documents showing that the competent authorities in another Member State have established that the offence or irregularity was actually committed in that State.

25 According to Met-Trans, Sagpol and the Danish and Swedish Governments, the answer to that question is clear simply on the wording of the first subparagraph of Article 454(3) of Regulation No 2454/93. Since Article 454(3) does not refer to any specific type of proof, all the usual types of evidence, including statements, are admissible. A restrictive interpretation limiting the types of admissible evidence to official documents is therefore contrary to Regulation No 2454/93. The details as to rules of evidence and the required standard of proof are governed by national law, which, in the absence of more explicit Community legislation in the matter, finds full application.

26 The French, Netherlands and Finnish governments and the Commission, on the other hand, essentially concur with the view of the national court that it would be desirable to have objective proof of the place where the offence or irregularity was actually committed, in the form of documents showing clearly that the competent authorities of another Member State have established that the offence or irregularity was in fact committed in that State. In particular, testimony from a person who might have been a party to the irregularity is not reliable. There is also a danger that reliance on that type of evidence might in many cases result in the right to recover the taxes being time-barred before the question as to which authority is competent to enforce the right can be resolved. That would have the effect of compromising the purpose of Regulation No 2454/93, which is to ensure collection of the Community's own resources and certain resources of the Member State where the goods were illegally put into circulation.

27 Furthermore, an analogy must be drawn between the first subparagraph of Article 454(3) and Article 455(3) of Regulation No 2454/93. Since the 1997 amendment by Regulation No 12/97, Article 455(3) — in relation to a similar question to that regulated by Article 454 of Regulation No 2454/93, namely the propriety of transactions carried out under cover of a TIR carnet — has limited admissible evidence to documents issued by the customs authorities.

28 In that connection, it must be observed that it is clear from the wording of the first subparagraph of Article 454(3) of Regulation No 2454/93 that, contrary to the position under Article 455(3), as amended by Regulation No 12/97, there is no limit on the types of evidence admissible to prove where the offence was committed.

29 It follows that, given that there is no legislation at Community level governing the concept of proof, any type of evidence admissible under the procedural law of the Member States in similar proceedings is in principle admissible.

30 Consequently, in a situation such as that at issue in the main proceedings, it is for the national authorities to determine, according to the principles of their national law on evidence, whether, in the specific case before them, and in the light of all the circumstances, the place where the offence or irregularity was committed has been proved to their satisfaction; for example, it is for them to determine whether, for instance, particular testimony is to be admitted or not, and whether it should be considered to have probative force. In particular, it is for the national authorities to assess the reliability of a witness who participated in the transportation operation affected by the irregularity at issue.

31 The wording of Article 455(3) of Regulation No 2454/93, in the version of that provision resulting from Regulation No 12/97, cannot lead to a different conclusion. As the Advocate General has pointed out at points 96 to 101 of his Opinion, Article 455(3) relates to a different matter, namely proof of the offence or irregularity as such. It cannot be assumed that because, as from 1997, the Community legislature limited the types of admissible evidence for establishing the regularity of transit operations, it intended, by implication, to do the same in relation to the question of establishing where an offence or irregularity was committed.

32 Whatever the reasons which might be put forward for requiring, as the French, Netherlands and Finnish Governments and the Commission have done, objective proof of the place where an offence was committed, the Court is not entitled to assume the role of the Community legislature and interpret a provision in a manner contrary to its express wording. It is for the Commission to submit proposals for appropriate legislative amendments to that end.

33 The reply to the first question in Case C-310/98 and the second question in Case C-406/98 must therefore be that the first subparagraph of Article 454(3) of Regulation No 2454/93 must be interpreted as meaning that proof of the place where an offence or irregularity was committed, which is required by the customs authorities of the Member State where that offence or irregularity was detected, does not have to be adduced solely by means of documentary evidence showing that the competent authorities of another Member State have established that the offence or irregularity was committed in that State.

The second question in Case C-310/98 and the third question in Case C-406/98

34 By its second question in Case C-310/98 and its third question in Case C-406/98, the national court is essentially asking whether the third and fourth subparagraphs of Article 454(3) of Regulation No 2454/93 must be interpreted as meaning that the compensation mechanism provided for by that regulation also applies in cases where the duties and other charges have been levied by the Member State where the offence was detected even though it had been

satisfactorily proved that the offence was actually committed in another Member State.

35 Met-Trans and Sagpol argue that it is clear from the provisions at issue that the compensation mechanism instituted by those provisions only applies to recovery effected by the Member State initially competent by virtue of the presumption of competence laid down in the first subparagraph of Article 454(3) of Regulation No 2454/93 before further findings of fact reveal the identity of the Member State where the offence was committed, and not to a recovery that is unlawful because effected by a Member State lacking competence from the outset. In the second case, the authorities which committed the error must repay the sums wrongly levied, while the authorities of the Member State where the offence was actually committed may proceed to recover the duties and other charges without the compensation mechanism being brought into play in that connection.

36 The Danish, French, Netherlands and Finnish Governments and the Commission, for their part, contend that it is also appropriate to apply the compensation mechanism in a case such as that envisaged by the national court where the customs authorities which recovered the duties and other charges only lacked competence because the proof initially furnished was subsequently found to be adequate. If the compensation mechanism were not permitted to operate, there would be a serious risk of duties being time-barred wherever the proof furnished is only accepted as sufficient at a later stage.

37 In that connection, it must be observed that the compensation regime provided for in the third and fourth subparagraphs of Article 454(3) of Regulation No 2454/93 institutes a mechanism for simplifying the administrative aspect and recovering duties and other charges in cases where uncertainty as to the place where the offences or irregularities *vis-à-vis* the customs provisions were committed might result in the sums owed being lost altogether. With that

situation in mind, it is provided that, where the Member State in which the offence was committed cannot be determined with certainty, a provisional presumption arises that the Member State in which the offence or irregularity was detected has competence. Where it is subsequently established that the first State did have competence, the presumption in favour of the second State is rebutted and a compensation mechanism comes into operation between the two Member States, thus preventing the first State from being barred through lapse of time from recovering the duties and other charges.

38 That mechanism therefore reflects the idea, on the one hand, that the Member States constitute a single customs zone *vis-à-vis* third countries concerned by operations under the Community external transit regime and, on the other hand, that the question as to which Member State has competence to recover the customs duty is a problem internal to the Community, such that if a different Member State becomes the competent State, that does not affect the debtor's liability to pay the customs duties.

39 If the compensation mechanism comes into operation where a Member State has recovered duties even though, under the rule of principle in Article 454(2) of Regulation No 2454/93, it did not have competence to do so because the place where the offence was committed, determined later, is not located in that State, it must also come into operation in the situation, which is essentially no different, where the Member State which recovered the duties did not have competence under the same rule of principle but wrongly took the view initially that the evidence adduced to establish where the offence was committed was insufficient.

40 Accordingly, the reply to the second question in Case C-310/98 and the third question in Case C-406/98 must be that the third and fourth subparagraphs of Article 454(3) of Regulation No 2454/93 must be interpreted as meaning that the compensation mechanism provided for in that regulation also applies where the duties and other charges were levied by the Member State where the offence was detected even though satisfactory proof had been furnished that the place where the offence was actually committed was located in another Member State.

The first question in Case C-406/98

41 By its first question in Case C-406/98, the national court is essentially asking whether the first subparagraph of Article 454(3) and Article 455(1) of Regulation No 2454/93 must be interpreted as meaning that the customs authorities of the Member State where the offence or irregularity was detected are entitled to impose on the TIR carnet holder a time-limit of three months to furnish satisfactory proof of the place where the offence or irregularity was actually committed, such that any evidence produced after expiry of that time-limit no longer affects that State's competence to recover the duties and charges. If the answer is in the negative, the national court is asking how long is the period prescribed by the first subparagraph of Article 454(3) of Regulation No 2454/93 for proving where the offence or irregularity was committed.

42 Sagpol argues that it is clear from the wording of the provisions in question that the time-limit within which the TIR carnet holder may furnish proof of the place where the offence was committed must be one year and not three months. The first subparagraph of Article 454(3) of Regulation No 2454/93 refers, as regards the time allowed to furnish the proof required, to Article 455(1) of that regulation, which itself unambiguously refers to Article 11(1) of the TIR Convention, which only mentions one time-limit of one year. Apart from the fact that a time-limit of three months would therefore be unlawful, it would in practice make it impossible to prove where the offence was committed.

43 The Danish, French and Finnish Governments and the Commission, however, argue that the provisions at issue are ambiguous and that there is a legal lacuna or oversight, given that the period specified in Article 11(1) of the TIR Convention, to which reference is made, runs against the customs authorities and not the TIR carnet holder and furthermore that the point at which the time begins to run is when the TIR carnet is taken over by the customs authorities, which has no connection with any offence or irregularity. Those Governments and the Commission argue that the legal lacuna which exists as the provisions currently

stand was made good by an administrative agreement between the Member States which provided that the time-limit for producing evidence as to where an offence or irregularity was committed should be three months. The content of that agreement is also in line with the provisions of Articles 378 and 379 of Regulation No 2454/93 governing the Community external transit procedure and with the principle of the effectiveness of rules of Community law in general, since any longer period would constitute a barrier to levying customs duties for reasons to do with lapse of time.

44 In that connection, it need merely be observed that the first subparagraph of Article 454(3) of Regulation No 2454/93 unambiguously refers, as regards the length of the period in question, to Article 455(1) of that regulation. Article 455(1) in turn refers, as regards the time-limit it lays down, to Article 11(1) of the TIR Convention. Article 11(1) of the TIR Convention mentions only one time-limit, namely a period of one year.

45 That being so, there is no lacuna in the law. In particular, it is clear from the provisions just mentioned that the reference is purely to the length of the period, and takes no account of the circumstances addressed by the various provisions.

46 Although it is true, as the Advocate General notes in points 31 to 42 of his Opinion, that, when comparing Articles 454 and 455 of Regulation No 2454/93, it may be presumed from certain factors that the legislature intended to regulate the position in regard to the time-limit differently, such a presumption is not sufficient to form the basis for an interpretation along the lines suggested by the Danish, French and Finnish Governments and the Commission. Even if a three-month time-limit were more favourable to the customs authorities, that interpretation is too far removed from the wording of the provision in question which, by express and clear references, allows the persons concerned a period of one year to furnish proof of the place where an offence or irregularity was committed.

47 Should it transpire that the legislation in this area is less than coherent and is inappropriate for the purposes of surveillance and the campaign against fraud, it is for the Community legislature to take steps in that regard and adopt suitable measures.

48 Furthermore, since the wording of the legislation lays down a period of one year, that legislation cannot be set aside by means of an administrative agreement between Member States prescribing a shorter time-limit, which has no legal authority.

49 The answer to the first question in Case C-406/98 must therefore be that the first subparagraph of Article 454(3) and Article 455(1) of Regulation No 2454/93 must be interpreted as meaning that the customs authorities of the Member State where the offence or irregularity was detected cannot impose on a TIR carnet holder a time-limit of three months for furnishing satisfactory proof of the place where the offence or irregularity was actually committed. The time-limit laid down in the first subparagraph of Article 454(3) of Regulation No 2454/93 for furnishing proof of the place where the offence or irregularity was committed is one year.

Costs

50 The costs incurred by the Danish, French, Netherlands, Finnish and Swedish Governments and by 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 proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Bundesfinanzhof by orders of 7 July 1998 (C-310/98) and 6 October 1998 (C-406/98), hereby rules:

1. **The first subparagraph of Article 454(3) 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 must be interpreted as meaning that proof of the place where an offence or irregularity was committed, which is required by the customs authorities of the Member State where that offence or irregularity was detected, does not have to be adduced solely by means of documentary evidence showing that the competent authorities of another Member State have established that the offence or irregularity was committed in that State.**

2. **The third and fourth subparagraphs of Article 454(3) of Regulation No 2454/93 must be interpreted as meaning that the compensation mechanism provided for in that regulation also applies where the duties and other charges were levied by the Member State where the offence was detected even though satisfactory proof had been furnished that the place where the offence was actually committed was located in another Member State.**

3. **The first subparagraph of Article 454(3) and Article 455(1) of Regulation No 2454/93 must be interpreted as meaning that the customs authorities of the Member State where the offence or irregularity was detected cannot impose on a TIR carnet holder a time-limit of three months for furnishing satisfactory proof of the place where the offence or irregularity was actually committed. The time-limit laid down in the first subparagraph of Article 454(3) of Regulation No 2454/93 for furnishing proof of the place where the offence or irregularity was committed is one year.**

Sevón Kapteyn Jann

Ragnemalm Wathelet

Delivered in open court in Luxembourg on 23 March 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber