JUDGMENT OF THE COURT (Sixth Chamber)
17 September 1996 *

In Joined Cases C-246/94, C-247/94, C-248/94 and C-249/94,

REFERENCES to the Court under Article 177 of the EC Treaty by the Corte Suprema di Cassazione for a preliminary ruling in the proceedings pending before that court between

Cooperativa Agricola Zootecnica S. Antonio and Others

and

Amministrazione delle Finanze dello Stato

on the interpretation of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (OJ 1979 L 179, p. 31), and Commission Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening (OJ 1977 L 77, p. 18), as amended by Commission Regulation (EEC) No 1384/77 of 27 June 1977 (OJ 1977 L 157, p. 16), and on the validity of Commission Regulation (EEC) No 1121/87 of 23 April 1987 amending Regulations (EEC) No 612/77 and No 1136/79 as regards the release of the security for certain special import arrangements in the beef and veal sector (OJ 1987 L 109, p. 12),

* Language of the case: Italian.

THE COURT (Sixth Chamber),

composed of: C. N. Kakouris (Rapporteur), President of the Chamber, G. Hirsch and G. F. Mancini, Judges,

Advocate General: P. Léger,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Cooperativa Agricola Zootecnica S. Antonio and Cooperativa Lomellina di Cerealicoltori Srl, by Nicola Muscolo, of the Trieste Bar,

— the Italian Government, by Professor Umberto Leanza, Head of the Department for Diplomatic Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo Maria Braguglia, Avvocato dello Stato,

— the Commission of the European Communities, by Eugenio de March, Legal Adviser, and Antonio Aresu, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Bruno Cavicchi, the defendant in Case C-249/94, represented by Giampaolo Gei, of the Trieste Bar, the Italian Government, represented by Danilo del Gaizo, Avvocato dello Stato, and the Commission, represented by Antonio Aresu, at the hearing on 14 December 1995,

after hearing the Opinion of the Advocate General at the sitting on 7 March 1996,

gives the following

Judgment

1 By four orders of 2 May 1994, received at the Court on 12 September 1994, the Corte Suprema di Cassazione (Court of Cassation) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt (OJ 1979 L 179, p. 31), and Commission Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening (OJ 1977 L 77, p. 18), as amended by Commission Regulation (EEC) No 1384/77 of 27 June 1977 (OJ 1977 L 157, p. 16), and on the validity of Commission Regulation (EEC) No 1121/87 of 23 April 1987 amending Regulations (EEC) No 612/77 and No 1136/79 as regards the release of the security for certain special import arrangements in the beef and veal sector (OJ 1987 L 109, p. 12).

2 The questions were raised in proceedings between three Italian agricultural undertakings and the Italian customs authorities with regard to forfeiture of entitlement to suspension of the import levy on young male bovine animals for fattening.

3 Article 13 of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organization of the market in beef and veal (OJ, English Special Edition 1968 (I), p. 187), as amended by Article 3 of Council Regulation (EEC) No 425/77 of 14 February 1977 (OJ 1977 L 61, p. 1), introduced, as special arrangements, the possibility of total or partial suspension of the import levy normally applicable to young male bovine animals for fattening.

4 The rules for the application of these arrangements were laid down in Regulation No 612/77, Article 1 of which provides as follows:

'1. No importer shall be entitled to total or partial suspension of the import levy under Article 13(1) of Regulation (EEC) No 805/68 unless he produces:

(a) a written declaration, at the time of importation, that the young bovine animals are intended for fattening in the importing Member State for a period of 120 days from the day on which they were put into free circulation;

(b) a security in the sum of the amount suspended of the levy applicable on the day of importation;

(c) ...

2. ...

3. Except in the case of *force majeure*, the security shall not be released in whole or in part unless proof is furnished to the competent authorities of the importing Member State that the young bovine animal:

(a) has not been slaughtered before the expiry of the period specified in Article 1(a), or

(b) ...

The security shall be released immediately after such proof has been furnished.

4. If the proof referred to in paragraph 3 is not furnished within 180 days from the day on which the animal is put into free circulation, the security shall be forfeit and retained as a levy.

5. ...'.

5 That provision was amended by Article 7 of Regulation No 1384/77 in order to avert the risk of certain abuses.

6 Article 7 of Regulation No 1384/77 accordingly added a supplementary condition to those listed in Article 1(1) of Regulation No 612/77. It provides that entitlement to total or partial suspension of the levy is conditional upon

'...

(d) a written undertaking, given at the time of importation, to inform the competent authority in the importing Member State within one month following the date of importation, of the production unit or units where the young bovine animals are intended to be fattened'.

7 In addition, Article 7 of Regulation No 1384/77 added a new condition to Article 1(3) of Regulation No 612/77 to the effect that the security is not to be released unless proof is furnished that the young bovine animal 'has been fattened in the production unit or units indicated pursuant to paragraph 1(d)'.

8 Regulation No 1121/87, which introduced a measure of proportionality with regard to the release of the security lodged, provides in Article 1 that the following subparagraph is to be added to Article 1(3) of Regulation No 612/77:

'However, where the time-limit referred to in paragraph 1(d) has not been observed, the amount of the guarantee to be released shall be reduced by

— 15% and by

— 2% of the remaining amount for each day by which it has been exceeded.

The amounts not released shall be forfeit and retained as a levy.'

9 Article 2 of Directive 79/623 provides as follows:

'A customs debt on importation shall be incurred by:

...

(d) the non-fulfilment of one of the obligations arising, in respect of goods liable to import duties, from their temporary storage or from the use of the customs regime under which they are placed, or non-compliance with a condition to which the grant of the regime is subject, unless the competent authorities are satisfied that these failures have no significant effect on the correct operation of the temporary storage procedure or customs regime in question;

...'.

10 That directive was repealed, after the time to which the facts of the main proceedings relate, by Council Regulation (EEC) No 2144/87 of 13 July 1987 on customs debt (OJ 1987 L 201, p. 15), which took over and supplemented its provisions.

11 Three Italian agricultural undertakings, Cooperativa Agricola Zootecnica S. Antonio, Cooperativa Lomellina di Cerealicoltori Srl and Azienda Agricola Cavicchi Bruno e Fratelli imported consignments of bovine animals for fattening into Italy between 1982 and 1985.

12 It appears from the case-file that the special Community arrangements regarding suspension of the levy were complied with, except for one of the conditions laid down therein, namely the obligation set out in Article 1 of Regulation No 612/77, as amended, to notify to the Italian authorities, within one month of the date of importation, the location of the fattening unit. Cooperativa Agricola Zootecnica S. Antonio forwarded that information to the competent customs office a few days late, whilst Cooperativa Lomellina di Cerealicoltori Srl notified it on time, but, by mistake, to the municipalities in whose area the fattening units were located, rather than to the competent customs office, and Azienda Agricola Cavicchi Bruno e Fratelli forgot to inform the competent customs office of the location of the fattening unit. It may also be inferred from the case-file that Cooperativa Lomellina di Cerealicoltori Srl also omitted to furnish, within the time-limit laid down by Article 1(4) of Regulation No 612/77, proof that the imported young bovine animals had not been slaughtered less than 120 days after importation.

13 The Italian customs authorities considered that, in view of those infringements, the agricultural undertakings in question had forfeited entitlement to suspension of the import levy, with the result that they demanded payment of the customs duties due and considered that the security lodged at the time of import had to be entirely forfeit.

14 The three undertakings concerned then brought proceedings against the Amministrazione delle Finanze dello Stato in the Tribunale di Trieste (District Court, Trieste) on the ground that the customs authorities' claim, being based on failure to comply with a secondary, formal obligation, was contrary to Community law, since the primary obligation, consisting of fattening the imported bovine animals for 120 days in a fattening unit, had been complied with.

15 The Corte Suprema di Cassazione, which the proceedings ultimately reached, decided to suspend the proceedings and refer the following questions to the Court for a preliminary ruling:

'Does Article 2(d) of Council Directive 79/623/EEC of 25 June 1979 (not transposed into Italian law) meet the necessary criteria for direct applicability and for conferring rights on individuals which they can rely upon against the Italian State?

If the first question is answered in the affirmative, is the provision in question also applicable where there has been a delay in communicating the location of the production unit in which the bovine animals are intended to be fattened, that is to say, where Commission Regulation (EEC) No 612/77, as amended by Article 7 of Commission Regulation (EEC) No 1384/77, has been infringed? It is necessary therefore to interpret the provisions of Regulation (EEC) No 612/77 establishing special import arrangements in order to establish whether or not the delay in question had a significant effect on the correct application of that regime.

If the preceding question is answered in the negative and hence it is considered that the provision of the directive is not applicable (in this case), a third question will have to be examined concerning the validity of Regulation (EEC) No 1121/87: does the magnitude of the penalty fixed by Article 1(2) of that regulation (by which the whole of the security is to be forfeit following a delay of 50 days in communicating the required information) conflict with the principle of proportionality — upheld by the Court of Justice in the past — with respect to the objective pursued?'

The first question

16 By its first question the national court is essentially asking whether Article 2(d) of Directive 79/623 has direct effect and confers on individuals rights which they may assert against a Member State which has failed to transpose the directive into national law, and which the national courts must safeguard.

17 The Court has consistently held (see, in particular, Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, paragraph 25, and Case 103/88 *Fratelli Costanzo* v *Comune di Milano* [1989] ECR 1839, paragraph 29) that, whenever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon before the national courts by an individual against the State where that State has failed to implement the directive in national law by the end of the period prescribed or where it has failed to implement the directive correctly.

18 A Community provision is unconditional where it sets forth an obligation which is not qualified by any condition, or subject, in its implementation or effects, to the taking of any measure either by the Community institutions or by the Member States (see, in particular, Case 28/67 *Molkerei-Zentrale Westfalen Lippe* v *Hauptzollamt Paderborn* [1968] ECR 143, at 153).

19 Moreover, a provision is sufficiently precise to be relied on by an individual and applied by a national court where it sets out an obligation in unequivocal terms (Case 152/84 *Marshall* [1986] ECR 723 and Case 71/85 *Netherlands* v *Federatie Nederlandse Vakbeweging* [1986] ECR 3855).

20 Article 2(d) of Directive 79/623 has precisely those characteristics.

21 It should be noted in that regard that, according to the fourth recital in its preamble, the aim of Directive 79/623 is to establish common rules for determining the moment when the customs debt is incurred, in order to ensure uniform application of the Community provisions in force on imports and exports.

22 That aim of uniform application as regards both the moment when the customs debt is incurred and the application, as in this case, of a possible customs advantage would be jeopardized if the competent national authorities were to be given a margin of discretion allowing the choice of conditions or formalities other than those laid down by Directive 79/623.

23 In this case, Article 2(d) of Directive 79/623 clearly provides for the possibility of the person concerned to prove that the failures to fulfil obligations which he committed had no significant effect on the correct operation of the customs regime in question, which means that the competent national authorities are under an unconditional, unequivocal obligation to examine offers of proof put forward in that respect.

24 So the phrase '... the competent authorities are satisfied' in Article 2(d) of Directive 79/623, which is in itself superfluous, merely stresses the task of verification which the competent national authorities must carry out in any event, subject to review by the national courts. It is moreover significant in this regard that Article 2(d) of Regulation No 2144/87, which replaced Article 2(d) of Directive 79/623, did not reproduce that phrase.

25 Lastly, it should be recalled that in Joined Cases 186/82 and 187/82 *Esercizio Magazzini Generali and Mellina Agosta* [1983] ECR 2951, the Court held, albeit implicitly, that Article 4 of the directive, a similar provision to the one under consideration, had direct effect.

26 The reply to the first question should therefore be that Article 2(d) of Directive 79/623 has direct effect and confers on individuals rights which they may assert against a Member State which has failed to transpose the directive into national law, and which the national courts must safeguard.

The second question

27 By this question, the national court is essentially asking whether Article 2(d) of Directive 79/623 is also applicable in the event of an infringement of Regulation No 612/77, as amended.

28 The Italian Government submits that failure to comply with the obligations set forth in Regulation No 612/77 is already regarded by the Community legislature itself as an important infringement disturbing the proper operation of the special arrangements in question. Accordingly, in such a case, the customs debt on import arises, without other conditions having to be considered.

29 That reasoning cannot be followed.

30 Directive 79/623, which was later replaced by Regulation No 2144/87 and subsequently by Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), is a text of general application whose aim is to harmonize the rules governing customs debt.

31 Regulation No 612/77, as amended, was adopted by the Commission pursuant to the power conferred on it by the Council with a view to laying down rules for the application of the special arrangements provided for by Article 13 of Regulation No 805/68. Consequently, the provisions of Regulation No 612/77, which were adopted on the basis of a delegated legislative power in a specific field, cannot render inoperative the rules of general application of Directive 79/623, in particular those of Article 2(d), which provide for the right, on the part of the individual concerned, to prove that the infringement of which he is accused had no significant effect on the operation of the customs regime in question.

32 In this case, the seriousness of the irregularities of which the persons concerned are accused differs considerably. It is for the competent national authorities to determine, on a case-by-case basis, subject to review by the national courts, whether the agricultural undertakings in question could have proved that the irregularities in question had no significant effect on the operation of the customs arrangements in question.

33 The reply to the national court's question should therefore be that Article 2(d) of Directive 79/623 is also applicable where Regulation No 612/77, as amended, is infringed.

The third question

34 In view of the reply given to the second question, there is no need to reply to the third.

Costs

35 The costs incurred by the Italian Government and the Commission of the European Communities, 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 Corte Suprema di Cassazione, by orders of 2 May 1994, hereby rules:

1. **Article 2(d) of Council Directive 79/623/EEC of 25 June 1979 on the harmonization of provisions laid down by law, regulation or administrative action relating to customs debt has direct effect and confers on individuals rights which they may assert against a Member State which has failed to transpose the directive into national law, and which the national courts must safeguard.**

2. **Article 2(d) of Directive 79/623 is also applicable where Commission Regulation (EEC) No 612/77 of 24 March 1977 laying down rules for the application of the special import arrangements in respect of certain young male bovine animals for fattening, as amended by Commission Regulation (EEC) No 1384/77 of 27 June 1977, is infringed.**

Kakouris Hirsch Mancini

Delivered in open court in Luxembourg on 17 September 1996.

R. Grass C. N. Kakouris

Registrar President of the Sixth Chamber