national courts for the purpose of claiming payment of Community revenue constituting own resources'.

Kutscher Donner Pescatore Mertens de Wilmars Sørensen

Mackenzie Stuart O'Keeffe Bosco Touffait

Delivered in open court in Luxembourg on 5 May 1977.

H. J. Eversen
Assistant Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE-GENERAL WARNER DELIVERED ON 27 APRIL 1977

My Lords,

This case comes to the Court by way of a reference for a preliminary ruling by the Pretura of Cento, a small town in the Province of Ferrara. The case is unusual in that there are no parties to it. In order to understand how that has come about, it is necessary to have in mind certain provisions of Italian law relating to criminal procedure.

First, it is, by virtue of Article 1 of the 'Codice di Procedura Penale' (the Code of Criminal Procedure) open to anyone, including a private person, to lay before the judicial authorities an information ('denuncia') stating that there is reason to believe that a particular offence has been committed. The information need not however specify whom the guilty party is alleged to be. In the present case such an information was laid before the Pretura of Cento by a certain Professor Antonio Grassani disclosing that offences of meat smuggling may have been committed within the jurisdiction of that Court, but without saying by whom. Professor Grassani is the Director of the 'Centro Nazionale di Studi Doganali' (National Centre for Customs Studies) of Genoa and also the Secretary of the Italian Committee for the study of customs and commercial problems at the University of Bologna — but, so far as the law is concerned, nothing turns on that.

Secondly, it appears that the competent Italian Court may, upon receipt of such an information, declare criminal proceedings open against a person or persons unknown, and ask the 'Polizia Guidiziaria' (a police force which, as I understand it, is answerable to the judicial authorities themselves) to investigate the case so as to establish, in particular, the identity of the guilty, if any. That is what the Pretore did in the present case.

Thirdly, by the combined effect of Articles 22 and 185 of the Codice di Procedura Penale, anyone claiming to have suffered damage by reason of an offence is entitled to intervene in any criminal proceedings relating to it in order to claim reparation from the accused. By virtue of Article 304 (as re-enacted by Statute No 773 of 15 December 1972) the Judge in charge of preliminary enquiries into a case (the 'Giudice Istruttore') is bound to give notice of the proceedings to anyone who might have an interest in so intervening.

The smuggling offences mentioned in the information laid by Professor Grassani would, if proved, involve evasion of customs duties imposed under the Common Customs Tariff on imports from non-Member States. By virtue of Articles 1, 2 (b) and 3 (1) of the Decision of the Council of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (70/243/ ECSC, EEC, Euratom) as modified by Article 130 of the Act of Accession, such customs duties have since 1 January 1971 become progressively part of the Communities' own resources. As Your Lordships know, however, by virtue of Article 6 of the Decision such resources are to be 'collected by the Member States in accordance with national provisions imposed by law, regulation or administrative action' and are to be made available by the Member States to the Commission.

The Pretore of Cento is thus concerned to know to whom he should give notice of the proceedings that are pending before him. With a view to elucidating that, he has, by an Order dated 15 November 1976, referred the following questions to this Court:

'1. Whether, by virtue of the Decision of the Council of the European Communities of 21 April 1970, the injured party, in the case of a smuggling offence, is only the European Economic Community, or whether the EEC may assume the capacity of injured party together with the individual national States to which the levying of customs duties for and on account of the Community has been assigned.
2. Whether, as a result, the national court must, in accordance with its own procedure, notify the Community that criminal proceedings have been instituted in respect of the smuggling offence so as to enable it to apply for recovery of the customs duties payment of which has been evaded.'

At first sight those questions present a difficulty from the point of view of this Court, in that, as formulated, they are not exclusively questions of Community law. In particular the concept of 'the injured party' has in the present context its origin in Italian procedural law, and so must be defined by reference to that law. Moreover, it is not for this Court to say whom 'in accordance with its own procedure' an Italian Court must notify of criminal proceedings pending before it. On a reference for a preliminary ruling, this Court can only state, for the assistance of the national Court, what the relevant Community law is, leaving it to that Court to draw the necessary conclusions as regards the application to the case of its own procedural law.

I think however that the difficulty is more apparent than real.

The Italian Government, in observations that I should like to commend (if I may) both for their brevity and for their lucidity, says that the real problem confronting the Pretore is that of identifying the entity empowered to sue for the recovery of the customs duties that may have been evaded, for it is that entity which, under Italian procedural law, the Pretore must notify of the proceedings pending before him. If that statement stood alone, the Court's difficulty would remain, for the Court

could not, on the mere strength of an assertion even by the Italian Government, accept a particular interpretation of the concept of 'the injured party' referred to by the Pretore. But the Italian Government goes on to submit that the Pretore himself has indicated, by the closing words of his second question, that it is indeed the entity entitled to sue for recovery of those duties that he is concerned to identify and which he means by 'the injured party'. That submission seems to me correct.

On that footing the Italian Government submits, and again I agree, that the answer to the Pretore's questions is afforded by the judgment of this Court in Cases 178, 179 and 180/73 *Belgium and Luxembourg* v *Mertens* [1974] 1 ECR 383, where it was held that, having regard to Article 6 of the Council's Decision of 21 April 1970, it remains the function of individual Member States to take proceedings for the collection of revenue forming part of the Communities' own resources. The Italian Government points out that that conclusion is reinforced by a consideration of certain provisions of Council Regulation (EEC, Euratom, ECSC) No 2/71 of 2 January 1971, implementing the Decision of 21 April 1970. So it is. I do not however think it necessary to take up Your Lordships' time with a detailed review of those provisions.

The Commission for its part accepts the effect of the judgment in *Belgium and Luxembourg* v *Mertens,* but, both in its written observations and in oral submissions at the hearing, urged the Court to distinguish between the narrow question of whose function it is to sue for the recovery of duties forming part of the Communities' own resources and the broader question of whose interests are injured when such duties are evaded. The Commission pointed out that, in such a case, there was injury not only to the interests of the Member State responsible for collection, but also to the interests of the Communities themselves, whose own resources were at stake, and, so long as the transitional provisions contained in Article 4 of the Council's Decision of 21 December 1970 remain in force, to the interests of other Member States who are bound to make up any deficiency in the Communities' own resources by direct contributions to the budget proportionate to their respective gross national products. All that, my Lords, is undoubtedly correct. But, for the reasons I have indicated, I think that it goes beyond the real scope of the questions referred to the Court by the Pretore.

I am therefore of the opinion that, in answer to those questions, Your Lordships should say that, under the Decision of the Council of the European Communities of 21 April 1970, it remains the exclusive function of the individual Member States responsible for the collection of customs duties leviable under the Common Customs Tariff to sue for the recovery of any such duties that may have been evaded by reason of a smuggling offence.