

JUDGMENT OF THE COURT (Third Chamber)

1 July 2004<sup>\*</sup>

In Joined Cases C-361/02 and C-362/02,

REFERENCES to the Court under Article 234 EC by the Diikitiko Efetio Piraeus (Greece) for a preliminary ruling in the proceedings pending before that court between

**Elliniko Dimosio**

and

**Nikolaos Tsapalos** (C-361/02),

**Konstantinos Diamantakis** (C-362/02),

on the interpretation of Article 1 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties, and in respect of value added tax and certain excise duties (OJ 1976 L 73, p. 18), as amended by the Act

<sup>\*</sup> Language of the case: Greek.

concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustment to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21),

THE COURT (Third Chamber),

composed of: A. Rosas, President of the Chamber, R. Schintgen (Rapporteur) and N. Colneric, Judges,

Advocate General: J. Kokott,

Registrar: M. Múgica Arzamendi, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Tsapalos, by V.K. Koutoulakos, dikigoros,

— Mr Diamantakis, by C. Kara-Sepetzoglou, dikigoros,

— the Greek Government, by S. Spyropoulos, D. Kalogiros and P. Mylonopoulos, acting as Agents,

— the Commission of the European Communities, by X. Lewis and M. Konstantinidis, acting as Agents,

having regard to the Report for the Hearing,

having heard the oral observations of the Greek Government, represented by S. Spyropoulos and M. Apeessos, acting as Agent, and of the Commission, represented by X. Lewis and M. Konstantinidis, at the hearing of 11 February 2004,

after hearing the Opinion of the Advocate General at the sitting of 19 February 2004,

gives the following

### **Judgment**

- <sup>1</sup> By judgments of 28 June 2002, received at the Court Registry on 8 October 2002, the Diikitiko Efetio Piraeus (Administrative Appeal Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 1 of Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing

the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties, and in respect of value added tax and certain excise duties (OJ 1976 L 73, p. 18), as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21) (hereinafter 'the Directive').

- 2 That question was raised in two sets of proceedings between the Elliniko Dimosio (Greek State), on the one hand, and Mr Tsapalos, first, and Mr Diamantakis, second, on the other, as regards the recovery by the Italian Republic of customs claims which arose prior to the adoption of the Directive and its entry into force in Greece.

## Legal framework

### *Community legislation*

- 3 The purpose of the Directive is to eliminate obstacles to the establishment and functioning of the common market resulting from the territorial limitation of the scope of application of national provisions relating to recovery, inter alia of customs duties. That situation, as emerges from the second recital in the preamble to the Directive, facilitates 'fraudulent operations'.

- 4 To that effect, the Directive lays down common rules on mutual assistance for recovery. Thus, under the first and second paragraphs of Article 8 thereof:

‘The instrument permitting enforcement of the claim shall, where appropriate, and in accordance with the provisions in force in the Member State in which the requested authority is situated, be accepted, recognised, supplemented or replaced by an instrument authorising enforcement in the territory of that Member State.

Such acceptance, recognition, supplementing or replacement must take place as soon as possible following the date of receipt of the request for recovery. They may not be refused if the instrument permitting enforcement in the Member State in which the applicant authority is situated is properly drawn up.’

- 5 Article 2(c) and (f) of the Directive states that it applies *inter alia* to claims relating to customs duties within the meaning, in particular, of Article 2(b) of Council Decision 70/243/ECSC, EEC, Euratom of 21 April 1970 on the replacement of financial contributions from Member States by the Communities’ own resources (OJ, English Special Edition 1970 (I), p. 224), as well as to the interest and costs incidental to the claims referred to in that article.
- 6 In addition, under Article 2 of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (OJ 1979 L 291, p. 17) (hereinafter ‘the Act of accession’), the acts adopted by the institutions of the Communities are to be binding on the Hellenic Republic and are to apply in that State from the date of accession, namely 1 January 1981.

7 Article 145 of the Act of accession states:

'The Hellenic Republic shall put into effect the measures necessary for it to comply from the date of accession with the provisions of directives ... within the meaning of Article 189 of the EEC Treaty ... unless a time-limit is provided for in the list in Annex XII or in any other provisions of this Act.'

8 The Act of accession did not provide for such a time-limit as regards the Directive.

### *National legislation*

9 The Directive was transposed into Greek law by Articles 86 to 98 (Chapter 1.A, 'Mutual assistance for the recovery of claims') of Law No 1402/1983 on the adjustment of customs legislation to the law of the European Communities (EEC) (FEK A' 167, Part I) (hereinafter 'Law No 1402/1983') and by Order No 1243/319 of the Finance Minister of 26 March 1984 laying down detailed rules for the implementation between Member States of the system of mutual assistance for the recovery of claims (FEK A' 179, Part I) (hereinafter 'the Ministerial order').

10 Article 103 of Law No 1402/1983 provides that 'unless provided otherwise by the present Law, it shall enter into force on 1 January 1981'.

- 11 In addition, Article 21(1) of the Ministerial order states:

‘Any request concerning a claim for recovery or the adoption of interim measures made by an applicant authority of another Member State shall be examined by the competent customs or State authorities in the same way as a request arising in Greece and the provisions of national legislation shall be applicable to its collection, in particular those of the “Code for the recovery of public claims” ...’.

### **Main proceedings and the question referred for a preliminary ruling**

- 12 By judgment of 8 October 1970 of the Corte d’appello di Catania (Court of Appeal of Catania) (Italy), the crew members of the *Ster*, a vessel sailing under the Panamanian flag, including the defendants in the main proceedings, were sentenced to imprisonment and ordered to pay customs duties and other charges for having illegally imported tobacco into Italy. By judgment of 31 January 1972, the Corte suprema di cassazione (Supreme Court of Cassation) (Italy) dismissed the appeal brought against that judgment.
- 13 The Italian authorities sent a request for recovery of the claims in question, for a total amount of ITL 1 787 485 050 including interest and other costs, to the Greek competent authorities (namely, the special department for customs investigations in the Directorate General for customs), which stated by decisions of 6 February 1996 adopted under the Directive and under Law No 1402/1983 and the Ministerial order that the Italian instrument permitting recovery of those claims was enforceable in Greece.

- 14 Mr Tsapalos and Mr Diamantakis challenged those decisions before the Diikitiko Protodikio Piraeus, which set them aside in so far as they concerned the defendants in the main proceedings, on the ground that mutual assistance between the Hellenic Republic and other Member States for the recovery of claims related only to those arising after the entry into force of Law No 1402/1983. The contested claim by the Italian State arose in 1968, the year in which the offence of smuggling was established, and was confirmed by the aforementioned judgments of the Corte d'appello di Catania of 1970 and of the Corte suprema di Cassazione of 1972.
- 15 The Elliniko Dimosio lodged an appeal against that judgment before the Diikitiko Efetio Piraeus, claiming that the provisions of Law No 1402/1983 were to be interpreted in the light of the purpose of the Directive, Article 1 of which refers to the recovery of claims which arise in another Member State, so that claims which arose before the entry into force of those provisions would also fall within their scope.
- 16 In those circumstances, the Diikitiko Efetio Piraeus decided to stay proceedings and to refer to the Court of Justice for a preliminary ruling the following question, which is drafted in identical terms in both cases:

'Is Article 1 of the Directive ... to be interpreted as meaning that the provisions of the Directive also cover claims which arose in a Member State before entry into force of the Directive under a document whose issuance by the competent authorities of that State also predated entry into force of the Directive, such as the document issued by the Italian authorities in the present case, and that, accordingly, following the entry into force of the Directive, the end of the relevant transitional period and compliance by the other Member States with the duty to enact the provisions required for application of the Directive, those pending claims for which recovery had not hitherto been available in the other Member State may henceforth be recovered, on request to the "requested authority" by the "applicant authority" as mentioned in Article 3 of the Directive?'



- 17 By order of the President of the Court of 9 December 2002, the two cases were joined for the purposes of the written procedure, the oral procedure and the judgment.

### **Question referred for a preliminary ruling**

- 18 By its question, the national court asks, in essence, whether the Directive must be interpreted as applying to customs claims which arose in one Member State under an instrument issued by that State before the Directive entered into force in the other Member State, where the requested authority is situated.
- 19 It must be recalled that, according to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying to situations existing before their entry into force (see, in particular, Joined Cases 212/80 to 217/80 *Salumi and Others* [1981] ECR 2735, paragraph 9; Joined Cases C-121/91 and C-122/91 *CT Control (Rotterdam) and JCT Benelux v Commission* [1993] ECR I-3873, paragraph 22; and Case C-61/98 *De Haan* [1999] ECR I-5003, paragraph 13).
- 20 As the Greek Government and the Commission have rightly observed, since the Directive governs only the recognition and enforcement of certain categories of claims which arise in another Member State, without setting out rules relating to their accrual or their scope, the provisions of the Directive must be considered procedural rules.

- 21 In addition, no provision of the Directive makes it possible to consider that the Community legislature intended to limit the application of the procedural rules solely to claims which arose after the entry into force of that directive in the Member State where the requested authority is situated.
- 22 On the contrary, the purpose of the Directive, which is, according to the second and third recitals in the preamble, to eliminate obstacles to the functioning of the common market arising from problems related to the cross-border recovery of the claims referred to and to prevent fraudulent operations, argues for the Directive applying to claims existing at the time it entered into force in the Member State where the requested authority is situated.
- 23 Under those conditions, the answer to the question referred must be that the Directive is to be interpreted as applying to customs claims which arose in one Member State under an instrument issued by that State before that directive entered into force in the other Member State, where the requested authority is situated.

## Costs

- 24 The costs incurred by the Greek Government and by the Commission, which 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 (Third Chamber),

in answer to the question referred to it by the Diikitiko Efetio Piraeus by judgments of 28 June 2002, hereby rules:

**Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties, and in respect of value added tax and certain excise duties as amended by the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, is to be interpreted as applying to customs claims which arose in one Member State under an instrument issued by that State before that directive entered into force in the other Member State, where the requested authority is situated.**

Rosas

Schintgen

Colneric

Delivered in open court in Luxembourg on 1 July 2004.

R. Grass

A Rosas

Registrar

President of the Third Chamber