

Case C-233/08

Milan Kyrian

v

Celní úřad Tábor

(Reference for a preliminary ruling
from the Nejvyšší správní soud)

(Mutual assistance for the recovery of claims — Directive 76/308/EEC — Jurisdiction to review of the courts of the Member State in which the requested authority is situated — Enforceability of an instrument permitting enforcement — Lawfulness of notification of the instrument to the debtor — Notification in a language not understood by the addressee)

Opinion of Advocate General Mazák delivered on 15 September 2009	I - 180
Judgment of the Court (First Chamber), 14 January 2010	I - 193

Summary of the Judgment

- 1. Approximation of laws — Mutual assistance for the recovery of claims of duty — Directive 76/308*
(Council Directive 76/308, as amended by Directive 2001/44, Art. 12(3))

2. *Approximation of laws — Mutual assistance for the recovery of claims of duty — Directive 76/308*
 (Council Directive 76/308, as amended by Directive 2001/44)

1. Article 12(3) of Directive 76/308 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Directive 2001/44, must be interpreted as meaning that the courts of the Member States where the requested authority is situated do not, in principle, have jurisdiction to review the enforceability of an instrument permitting enforcement. Conversely, where a court of that Member State hears a claim against the validity or correctness of the enforcement measures, such as the notification of the instrument permitting enforcement, that court has the power to review whether those measures were correctly effected in accordance with the laws and regulations of that Member State.

Although it falls, in principle, within the exclusive jurisdiction of the bodies of the Member State in which the applicant authority is situated to hear any disputes concerning the validity of the claim or the instrument permitting enforcement, it cannot be ruled out that, exceptionally, the bodies of the Member State in which the requested authority is situated will be authorised to review whether the enforcement of the instrument is liable, in particular, to be contrary to the public

policy of that last mentioned State and, where appropriate, to refuse to grant assistance in whole or in part or to make it subject to fulfilling certain conditions.

(see paras 42, 50, operative part 1)

2. In the framework of the mutual assistance introduced pursuant to Directive 76/308 on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures, as amended by Directive 2001/44, in order for the addressee of an instrument permitting enforcement to be placed in a position to enforce his rights, he must receive the notification of that instrument in an official language of the Member State in which the requested authority is situated. In order to ensure compliance with that right, it is for the national court to apply national law while taking care to ensure the full effectiveness of Community law.

In the absence of express Community provisions, it is for the domestic legal system of each Member State to determine

the procedural conditions governing actions at law intended to ensure the protection of directly effective Community law rights, it being held that those conditions may not be less favourable than those relating to rights originating in the domestic legal order (principle of equivalence) and may not make it impossible or excessively difficult in practice to exercise

rights conferred by the Community legal order (principle of effectiveness).

(see paras 62-63, operative part 2)