

Action brought on 14 August 2009 — Commission of the European Communities v Republic of Estonia

(Case C-328/09)

(2009/C 297/21)

Language of the case: Estonian

Parties

Applicant: Commission of the European Communities (represented by M. van Beek and K. Saaremäel-Stoilov, acting as Agents)

Defendant: Republic of Estonia

Form of order sought

— declare that, by failing to adopt all the necessary laws, regulations and administrative provisions for fully transposing Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services,⁽¹⁾ or in any event by failing to notify the Commission of the adoption of the necessary provisions for fully transposing the directive, the Republic of Estonia has failed to fulfil its obligations under Article 17 of the directive;

— order the Republic of Estonia to pay the costs.

Pleas in law and main arguments

The period for transposing the directive into national law expired on 21 December 2007.

⁽¹⁾ OJ 2004 L 373, p. 37.

Appeal brought on 7 September 2009 by DSV Road NV against the judgment of the Court of First Instance (Fourth Chamber) of 8 July 2009 in Case T-219/07 DSV Road NV v Commission

(Case C-358/09 P)

(2009/C 297/22)

Language of the case: Dutch

Parties

Appellant: DSV Road NV (represented by: A. Poelmans and G. Preckler, advocaten)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Declare the appellant's appeal admissible and well founded;

— Set aside in full the judgment of the Court of First Instance of 8 July 2008 in Case T-219/07;

— And in so far as, in the event of setting aside the judgment, the Court decides to rule in the case itself.

Annul the Decision of the Commission of the European Communities of 24 April 2007 concerning the request of the Kingdom of Belgium, notified under REC 05/02, C (2007) 1776, which found that the import duties of EUR 168 004,65 which were the subject of the Kingdom of Belgium's request of 12 August 2002 had to be recovered, and that there was no justification for remission of the import duties of EUR 168 004,65 which were the subject of the Kingdom of Belgium's request of 12 August 2002.

Pleas in law and main arguments

1. With regard to Article 220(2)(b) of the Customs Code ⁽¹⁾

First ground of appeal: When applying Article 220(2)(b) of the Customs Code, the Court of First Instance failed to take account of the interpretation of that article by the Court of Justice in its judgment of 9 March 2006, ⁽²⁾ in particular with regard to the substance of the burden of proving that incorrect certificates had been issued because of an incorrect account of the facts by the exporter, a burden which, according to that judgment, is not only unequivocally that of the customs authority seeking recovery but must also be satisfied by means of objective, original documentary evidence.

The Court of First Instance thereby misapplied Article 220(2)(b) of the Customs Code and thus misapplied, and therefore infringed, Community law.

Second ground of appeal: The Court of First Instance, when appraising the evidence submitted to it, misconstrued that evidence in all respects, as that evidence does not satisfy the requirements of Article 220(2)(b) of the Customs Code, as interpreted and clarified by the Court of Justice in its judgment of 9 March 2006. ⁽³⁾

The Court of First Instance thereby erred in law in its characterisation of the evidence and therefore infringed Community law. ⁽⁴⁾