

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 30 November 2009 — Asociación de Transporte Internacional por Carretera v Administración General del Estado

(Case C-488/09)

(2010/C 63/33)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación de Transporte Internacional por Carretera

Defendant: Administración General del Estado

Questions referred

1. If, after a Member State has detected an irregularity in the customs treatment of a TIR transport operation and has made a claim for payment of the amount corresponding to the assessment issued to the local guaranteeing association, the place where the infringement was actually committed is determined, is it compatible with Article 454(3) and Article 455 of Commission Regulation (EEC) No 2454/93 ⁽¹⁾ of 2 July 1993 for the Member State where the infringement was committed to initiate new proceedings to recover the duties owed by the persons principally liable and by the guaranteeing association of the place where the infringement was actually committed, up to the limit of its liability, where the place where the infringement was committed is determined after the expiry of the time-limit laid down in the Community legislation?

If the answer is in the affirmative:

2. May the guaranteeing association of the Member State in which the irregularity was actually committed claim, under Articles 454(3) and 455 of Regulation (EEC) No 2454/93 or Article 221(3) of the Community Customs Code, that the right to recover the amount of the guaranteed liability is time-barred because the prescribed time-limit has expired and it had no knowledge of the facts before the expiry of that time-limit?
3. Does the claim for payment made against the guaranteeing association of the State which detected the irregularity by the customs authorities of that State under Article 11(2) of

the TIR Convention have suspensory effect with respect to the proceedings initiated against the guaranteeing association of the place where the infringement was committed?

4. Can the last sentence of Article 11(2) of the TIR Convention be interpreted as meaning that the time-limit which it establishes is applicable to the State of the place of infringement even where the State which detected the irregularity did not suspend the demand for payment against the guaranteeing association, despite the existence of criminal proceedings relating to the same acts found to have been committed?

⁽¹⁾ Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1).

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Finanzamt Burgdorf v Manfred Bog

(Case C-497/09)

(2010/C 63/34)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Finanzamt Burgdorf

Defendant: Manfred Bog

Questions referred

1. Does the sale of dishes or meals prepared for immediate consumption constitute a supply of goods within the meaning of Article 5 of Sixth Council Directive 77/388/EEC ⁽¹⁾ of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?
2. Does the answer to Question 1 depend on whether additional service elements are supplied (the provision of facilities for consumption)?

3. In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(¹) OJ 1977 L 145, p. 1.

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Hans-Joachim Flebbe Filmtheater GmbH & Co. KG v Finanzamt Hamburg-Barmbek-Uhlenhorst

(Case C-499/09)

(2010/C 63/35)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hans-Joachim Flebbe Filmtheater GmbH & Co. KG

Defendant: Finanzamt Hamburg-Barmbek-Uhlenhorst

Questions referred

1. Does the sale of dishes or meals prepared for immediate consumption constitute a supply of goods within the meaning of Article 5 of Sixth Council Directive 77/388/EEC (¹) of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes?
2. Does the answer to Question 1 depend on whether additional service elements are supplied (the provision, for use, of tables, chairs and other facilities for consumption, the experience of a visit to the cinema)?
3. In the event that Question 1 is answered in the affirmative: is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of

17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes to be interpreted as covering only 'take away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?

(¹) OJ 1977 L 145, p. 1

Reference for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 3 December 2009 — Lothar Lohmeyer v Finanzamt Minden

(Case C-501/09)

(2010/C 63/36)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Lothar Lohmeyer

Defendant: Finanzamt Minden

Questions referred

1. Is the term 'foodstuffs for human consumption' in Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes (¹) to be interpreted as covering only 'take-away' foodstuffs as typically sold in the grocery business, or does it also cover dishes and meals which have been prepared by boiling, grilling, roasting, baking or other means for immediate consumption?
2. In the event that 'foodstuffs for human consumption' within the meaning of Category 1 of Annex H to Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes also covers dishes or meals for immediate consumption: