



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 November 2023*

(Reference for a preliminary ruling – Customs union – Regulation (EU) No 952/2013 – Article 42(1) – Obligation on the Member States to provide for effective, proportionate and dissuasive penalties for failure to comply with the customs legislation – Incorrect declaration of the country of origin of the imported goods – National legislation providing for a fine corresponding to 50% of the shortfall in customs duties – Principle of proportionality)

In Case C-653/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi Törvényszék (Budapest-Capital Court, Hungary), made by decision of 10 October 2022, received at the Court on 18 October 2022, in the proceedings

J.P. Mali Kerékpárgyártó és Forgalmazó Kft.

v

Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Hungarian Government, by M.Z. Fehér and K. Szíjjártó, acting as Agents,
- the European Commission, by V. Bottka and F. Moro, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

* Language of the case: Hungarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 42(1) of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ 2013 L 269, p. 1).
- 2 The request has been made in proceedings between J.P. Mali Kerékpárgyártó és Forgalmazó Kft. ('J.P. Mali') and the Nemzeti Adó- és Vámhivatal Fellebbviteli Igazgatósága (Appeals Directorate of the National Tax and Customs Administration, Hungary) ('the Appeals Directorate'), concerning a fine imposed on J.P. Mali on account of an incorrect declaration relating to the country of origin of imported goods.

Legal context

European Union law

- 3 Recitals 9 and 38 of Regulation No 952/2013 state:

'(9) The [European] Union is based upon a customs union. It is advisable, in the interests both of economic operators and of the customs authorities in the Union, to assemble current customs legislation in a code. Based on the concept of an internal market, that code should contain the general rules and procedures which ensure the implementation of the tariff and other common policy measures introduced at Union level in connection with trade in goods between the Union and countries or territories outside the customs territory of the Union ...

...

(38) It is appropriate to take account of the good faith of the person concerned in cases where a customs debt is incurred through non-compliance with the customs legislation and to minimise the impact of negligence on the part of the debtor.'
- 4 Article 15 of that regulation, entitled 'Provision of information to the customs authorities', lays down:

'1. Any person directly or indirectly involved in the accomplishment of customs formalities or in customs controls shall, at the request of the customs authorities and within any time limit specified, provide those authorities with all the requisite documents and information, in an appropriate form, and all the assistance necessary for the completion of those formalities or controls.

2. The lodging of a customs declaration ... shall render the person concerned responsible for all of the following:

 - (a) the accuracy and completeness of the information given in the declaration ...;
 - (b) the authenticity, accuracy and validity of any document supporting the declaration ...;

...

Where the declaration ... is lodged ... by a customs representative of the person concerned, ... that customs representative shall also be bound by the obligations set out in the first subparagraph of this paragraph.'

5 Article 42 of that regulation, entitled 'Application of penalties', provides in paragraph 1 thereof:

'Each Member State shall provide for penalties for failure to comply with the customs legislation. Such penalties shall be effective, proportionate and dissuasive.'

6 Article 79 of that regulation, entitled 'Customs debt incurred through non-compliance', states:

'1. For goods liable to import duty, a customs debt on import shall be incurred through non-compliance with any of the following:

(a) one of the obligations laid down in the customs legislation concerning the introduction of non-Union goods into the customs territory of the Union, ...

...

3. In cases referred to under points (a) and (b) of paragraph 1, the debtor shall be any of the following:

(a) any person who was required to fulfil the obligations concerned;

...'

7 Article 124 of Regulation No 952/2013, entitled 'Extinguishment', provides:

'1. Without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished in any of the following ways:

...

(b) by payment of the amount of import or export duty;

...

(h) where the customs debt was incurred pursuant to Article 79 or 82 and where the following conditions are fulfilled:

(i) the failure which led to the incurrance of a customs debt had no significant effect on the correct operation of the customs procedure concerned and did not constitute an attempt at deception;

(ii) all of the formalities necessary to regularise the situation of the goods are subsequently carried out;

...

(k) where, subject to paragraph 6, the customs debt was incurred pursuant to Article 79 and evidence is provided to the satisfaction of the customs authorities that the goods have not been used or consumed and have been taken out of the customs territory of the Union.

...

6. In the case referred to in point (k) of paragraph 1, the customs debt shall not be extinguished in respect of any person or persons who attempted deception.

...'

Hungarian law

8 Point 6 of Article 2 of the az uniós vámjog vegerehajtásáról szóló 2017. évi CLII. törvény (Vámtörvény) (Law No CLII of 2017 on the implementation of EU customs law), in the version in force at the time of the adoption of the administrative decision at issue in the main proceedings ('the Law on customs'), defined the concept of 'shortfall in customs duties' as follows:

'the difference between the amount of the duties and other charges which have arisen and the lower amount of the duties and other notified charges, as well as the amount of the duties and other charges which have arisen but not been notified, except where this is due to an infringement of the law or to an incorrect assessment of the information available by the customs authorities, save for admission without checks; ...'

9 That definition was amended as follows with effect from 28 July 2022:

'the difference between the amount of the duties and other charges which have arisen and the lower amount of the duties and other notified charges, as well as the amount of the duties and other charges which have arisen but not been notified, except where this is due to an infringement of the law or to an incorrect assessment of the information available by the customs authorities, save for admission without checks, it being specified that ... a customs debt which has been extinguished under Article 124(1)(h) or (k) of [Regulation No 952/2013] or a customs debt of less than EUR 10 which has arisen as a result of an infringement relating to customs supervision or a customs authorities case does not constitute a shortfall in customs duties'

10 Under Article 84 of the Law on customs:

'1. ...

(a) The competent customs authority shall impose an administrative fine for infringements relating to the lodging of goods declarations, the accuracy of information given in a goods declaration, ...

...

2. ...

(a) (aa) The infringement referred to in paragraph 1(a) shall be deemed to have been committed, in particular where, at the time the customs declaration is lodged ..., the declarant fails to ensure the accuracy and completeness of the information given in the declaration...

...

8. If the infringements referred to in paragraph 1, or a related failure to comply, give rise to a shortfall in customs duties, it is appropriate – subject to the provisions of paragraphs 12 and 13, Article 85(1), (3) and (4) and Article 86 – to fix a customs fine in an amount corresponding to 50% of that shortfall in customs duties.

...

10. If the infringements referred to in paragraph 1, or a related failure to comply, do not give rise to a shortfall in customs duties, it is appropriate – subject to the provisions of paragraphs 12 and 13, Article 85(1), (3) and (4) and Article 86 – to fix a customs administrative fine in an amount corresponding to:

(a) in the case of an offence such as that referred to in paragraph 1(a), 100 000 [Hungarian forints (HUF) (approximately EUR 270)] for a natural person and HUF 500 000 [(approximately EUR 1 350)] for any other person,

...'

11 Article 85 of that law provides:

'1. If the customs authority establishes that:

- (a) the infringement or related omission was not committed by forgery or destruction of supporting documents, books or registers,
- (b) no shortfall in customs duties arose as a result of the offence or omission, or the resulting customs debt does not exceed HUF 30 000 [(approximately EUR 80)] in the case of a natural person, or HUF 150 000 [(approximately EUR 400)] in the case of a legal person, and
- (c) the person concerned has committed an infringement or omission among those defined in Article 84(1) for the first time in the course of the year preceding the finding of the infringement or omission in question,

the customs authority shall, instead of imposing a fine, issue a warning to the person concerned.

...

3. With the exception of the provisions of paragraph 4, no administrative customs fine may be imposed, in the context of the lodging of a goods declaration, in connection with the accuracy of the particulars contained in the goods declaration, if the declarant requests that the goods declaration be amended

4. Where ... the declarant requests that the goods customs declaration be amended after the customs authority has begun its post-release control, but before the report containing the conclusions of the post-release control has been issued, on the basis of information concerning the duties and other charges given in respect of the extent of the control, 50% of the amount of the fine which may be determined in accordance with Article 84(8), (10) and (13) shall be

imposed in the form of an administrative customs fine, with the exception of the provisions of paragraph 1 and Article 86.’

12 Article 86 of that law provides:

‘Where the infringement or omission is committed by the falsification or destruction of documents, books and registers and, consequently, an obligation to pay duties and other charges arises, the amount of the administrative fine shall be of 200% of the obligation to pay the duties and other charges incurred. ...’

The dispute in the main proceedings and the question referred for a preliminary ruling

- 13 In 2017 and 2018, J.P. Mali, a company incorporated under Hungarian law, imported bicycles and bicycle parts purchased from companies established in Taiwan. Its customs representative ZeMeX Kereskedelmi és Szállítmányozó Kft., for the purpose of the release for free circulation of those goods, lodged customs declarations, stating that those goods originated in Taiwan.
- 14 The Nemzeti Adó- és Vámhivatal Baranya Megyei Adó- és Vámigazgatósága (Tax and Customs Directorate for the Baranya County under the responsibility of the National Tax and Customs Authority, Hungary) (‘the first-tier customs authority’) found that the imported bicycles and bicycle parts actually came from China, so that their import should have given rise to the levying of an anti-dumping duty. Therefore, by decisions of 10 December 2020, which became final on 29 December 2020, that authority claimed from J.P. Mali the payment of HUF 26 077 000 (approximately EUR 70 000), in respect of its customs debt, which was paid by that company’s customs representative.
- 15 On the basis of information collected during a post-release control of J.P. Mali, the first-tier customs authority took the view that that company, as a contracting party to the transaction, should have information on the circumstances of the acquisition of the goods concerned. Its control report was based, in particular, on a report of the European Anti-Fraud Office (OLAF) from which it was apparent that the company established in Taiwan listed as exporter of those goods was involved in false declarations as to the origin of Chinese bicycle parts.
- 16 Taking the view that J.P. Mali had committed the infringement referred to in Article 84(1)(a) and (2)(a)(aa) of the Law on customs, the first-instance customs authority imposed on it, in accordance with Article 84(8) of that law, an administrative fine in the amount of HUF 13 039 000 (approximately EUR 35 000).
- 17 J.P. Mali brought an appeal against that customs authority’s decision before the Appeals Directorate. The latter dismissed that appeal by decision of 22 April 2021, on the ground that it was for J.P. Mali to declare correctly the origin of the goods and that, as a distributor of bicycles, it had to have knowledge of the provisions applicable to its activities, including those relating to anti-dumping duties, and choose its contractual partners, including exporters in third countries, with the caution necessary. The inaccuracy of customs declarations forms part of the commercial risk normally borne by the person liable to pay the customs duties.
- 18 Moreover, in that decision, the Appeals Directorate took the view that the fine imposed on J.P. Mali was based on a correct application of the Law on customs and did not infringe EU law.

- 19 In that regard, it found that, because of the inaccurate indication of the country of origin, the customs value of the goods concerned had been fixed at a significantly lower amount than the actual value of those goods, which resulted in a shortfall in customs duties. It took the view that, pursuant to point 6 of Article 2 and Article 84(8) of the Law on customs, that shortfall gave rise to the imposition of a fine at the rate of 50%, calculated on the basis of the total amount of the obligation established by the customs authorities, without there being any need to examine whether the infringement of the customs legislation was attributable to J.P. Mali. There is no need to waive that fine, since the conditions laid down for that purpose by the Law on customs are not met, or to reduce the amount of that fine, in the absence of regularisation of J.P. Mali's situation between the commencement of the post-release control and the notification of the report on that control.
- 20 J.P. Mali challenged the decision of the Appeals Directorate before the Fővárosi Törvényszék (Budapest High Court, Hungary). It claims that the fine, which corresponds to a flat rate of 50% of the shortfall in customs duties, is not proportionate to the seriousness of the offence.
- 21 J.P. Mali observes that importers have only limited information on the production and origin of goods and that they rely, in that regard, on the data provided by exporters. It states that, in the present case, an independent public body, the Taiwan Chamber of Commerce, issued it with certificates confirming the information provided by the exporters as to the origin of the goods concerned. It considers that Hungarian legislation, in so far as it does not allow such circumstances to be taken into account and, in the event of infringement of customs legislation, imposes a heavy fine on the importer even though that infringement is not attributable to him or her, is contrary to EU law, in particular the provisions of Regulation No 952/3013 on penalties.
- 22 According to the Appeals Directorate, the defendant in the main proceedings, the line of argument put forward by J.P. Mali is unfounded. The Law on customs makes a relevant distinction which depends on the nature of the infringements to customs legislation and their consequences. That law lays down different penalties according to whether or not it resulted in a shortfall in customs duties. Furthermore, under Articles 85 and 86 of that law, even in the event of an infringement giving rise to a shortfall in customs duties, the penalty is adjusted according to certain weighting factors.
- 23 The Fővárosi Törvényszék (Budapest High Court) considers that there is doubt as to the compatibility of the penalty provided for in Article 84(8) of the Law on customs with the requirement of proportionality laid down in Article 42(1) of Regulation No 952/2013.
- 24 That court considers that that provision of the Law on customs does not make it possible to ascertain whether there is conduct attributable to the operator concerned and thus prevents an examination of whether that operator took all the appropriate measures which could be expected of it in order to avoid the offence which gave rise to the shortfall in customs duties.
- 25 However, the referring court points out that the Hungarian legislature amended, with effect from 28 July 2022, the concept of 'shortfall in customs duties' in point 6 of Article 2 of the Law on customs, adding that 'a customs debt which has been extinguished under Article 124(1)(h) or (k) of [Regulation No 952/2013] or a customs debt of less than EUR 10 which has arisen as a result of an infringement relating to customs supervision or a customs authorities case does not constitute a shortfall in customs duties'. By that amendment, which is immediately applicable to pending cases falling within those situations, the legislature recognised that, for the purposes of

determining the level of the fine, conduct resulting in an infringement of the obligation to present the goods to customs or their removal from customs supervision cannot be assessed in the same way as less serious failures to comply with customs obligations.

26 According to the referring court, it is necessary to determine whether the penalty provided for in Article 84(8) of the Law on customs is proportionate, bearing in mind that, in the present case, the exporters and the Taiwan Chamber of Commerce had indicated that the goods concerned came from Taiwan, and that the true origin of the goods was revealed only by an OLAF report received after the customs declaration.

27 In those circumstances, the Fővárosi Törvényszék (Budapest High Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Must Regulation [No 952/2013] be interpreted as meaning that the requirement of proportionality laid down in Article 42(1) thereof is satisfied by Article 84(8) of [the Law on customs] which, in the case of the customs administrative fine which has to be imposed where a [shortfall in customs duties has arisen] as a result of an offence relating to the correctness of information in the customs declaration, does not allow the customs authorities to assess all the circumstances of the case or the conduct attributable to the trader who lodged the customs declaration, but requires, as a mandatory rule, the imposition of a customs administrative fine equal to 50% of the established [shortfall in customs duties], irrespective of the seriousness of the offence committed and the examination and assessment of the liability attributable to that trader?’

Consideration of the question referred

28 It should be noted at the outset that Article 15 of Regulation No 952/2013 places any person directly or indirectly involved in the accomplishment of customs formalities under an obligation to provide accurate and complete information in the customs declaration.

29 Failure to comply with that obligation constitutes a ‘failure to comply with the customs legislation’ within the meaning of Article 42(1) of that regulation. That concept does not cover only fraudulent activities, but includes any failure to comply with EU customs legislation, irrespective of whether the non-compliance was intentional or negligent or, even, in the absence of any wrongful conduct on the part of the operator concerned (see, to that effect, judgments of 4 March 2020, *Schenker*, C-655/18, EU:C:2020:157, paragraphs 30 to 32 and 45, and of 8 June 2023, *ZES Zollner Electronic*, C-640/21, EU:C:2023:457, paragraph 59).

30 As regards the consequences of such a failure, it is for each Member State to provide, in accordance with Article 42(1) of that regulation, for effective, proportionate and dissuasive penalties, inter alia, for the provision of incorrect information in a customs declaration, including in situations – within which the main proceedings fall, according to the referring court – characterised by the good faith of the importer who has relied on official certificates issued in a country or territory outside the customs territory of the European Union.

31 A penalty such as that at issue in the main proceedings, consisting in an administrative fine corresponding to 50% of the shortfall in customs duties caused by the incorrect information provided, may be regarded as effective and dissuasive, within the meaning of Article 42(1) of Regulation No 952/2013. Such a penalty is likely to encourage EU economic operators to take all necessary measures to ensure that they have correct information relating to the goods they import

and that the information which they provide in the customs declarations is correct and complete. It thus contributes to achieving the objective, set out in recital 9 of that regulation, of ensuring the implementation of tariff measures and other common policy measures relating to trade in goods between the European Union and countries or territories outside its customs territory.

- 32 As regards the proportionality of the penalty at issue, it must be borne in mind that, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by the rules imposed by such legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality. In accordance with that principle, the administrative measures or the measures imposing penalties must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation or be disproportionate to those objectives (judgment of 8 June 2023, *ZES Zollner Electronic*, C-640/21, EU:C:2023:457, paragraphs 60 and 61 and the case-law cited).
- 33 Member States are required to comply with that principle not only as regards the determination of factors constituting an infringement and the determination of the rules concerning the severity of fines, but also as regards the assessment of the factors which may be taken into account in the fixing of a fine (judgment of 22 March 2017, *Euro-Team and Spirál-Gép*, C-497/15 and C-498/15, EU:C:2017:229, paragraph 43 and the case-law cited).
- 34 In the present case, it is apparent from the information supplied by the referring court that the Hungarian legislature introduced a system of penalties in the event of infringement of the customs legislation which provides for an administrative fine, the amount of which is directly proportionate to the amount of the shortfall in customs duties caused by the infringement.
- 35 Since the administrative fine provided for by that system is, in principle, equal to 50% of that shortfall, the amount of the fine is all the more greater where that shortfall, which stems for example from the inaccurate indication of the country or territory of origin of the goods, is important. Conversely, the amount of the fine is all the more reduced where that shortfall is small. In addition, where that the shortfall is negligible, an exemption may be possible.
- 36 Moreover, that rate of 50% does not appear excessive in the light of the importance of the objective of EU customs legislation, referred to in paragraph 31 of the present judgment.
- 37 In addition, legislation such as that at issue allows account to be taken, significantly, of the conduct of the operator concerned, in particular, by increasing the rate of the fine to 200% of the obligation to pay duties and other charges in the event of fraudulent activity and by reducing the rate of the fine to 25% of the shortfall in customs duties if that operator is acting in good faith and requests, between the commencement of the post-release control and the issue of the report containing the conclusions of that control, the customs declaration to be amended by supplying the correct information.
- 38 In the field of customs duties, such rules make it possible to ensure compliance with the principle of proportionality. In particular, in accordance with recital 38 of Regulation No 952/2013, they sufficiently distinguish cases in which the operator concerned has acted in good faith from those in which it has not.

- 39 In the light of the foregoing, the answer to the question referred is that Article 42(1) of Regulation No 952/2013 must be interpreted as not precluding national legislation which provides, in the event of a shortfall in customs duties caused by the supply of incorrect information in a customs declaration relating to goods imported into the European Union, for an administrative fine which corresponds, in principle, to 50% of that shortfall and which is imposed notwithstanding the good faith of and precautions taken by the operator concerned, since that rate of 50% is significantly lower than that provided for in the case of bad faith on the part of that operator and is, moreover, considerably reduced in certain situations specified in that legislation, including the situation in which the operator acting in good faith corrects its customs declaration before the post-clearance control has been completed.

Costs

- 40 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 42(1) of Regulation No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code

must be interpreted as not precluding national legislation which provides, in the event of a shortfall in customs duties caused by the supply of incorrect information in a customs declaration relating to goods imported into the European Union, for an administrative fine which corresponds, in principle, to 50% of that shortfall and which is imposed notwithstanding the good faith of and precautions taken by the operator concerned, since that rate of 50% is significantly lower than that provided for in the case of bad faith on the part of that operator and is, moreover, considerably reduced in certain situations specified in that legislation, including the situation in which the operator acting in good faith corrects its customs declaration before the post-clearance control has been completed.

[Signatures]