



C/2023/42

9.10.2023

Request for a preliminary ruling from the Administrativen sad Haskovo (Bulgaria) lodged on 13 June 2023 — VU v Teritorialna direktsia Mitnitsa Burgas kam Agentsia 'Mitnitsi'

(Case C-372/23, Teritorialna direktsia Mitnitsa Burgas)

(C/2023/42)

Language of the case: Bulgarian

Referring court

Administrativen sad Haskovo

Parties to the main proceedings

Applicant: VU

Defendant: Teritorialna direktsia Mitnitsa Burgas kam Agentsia 'Mitnitsi'

Questions referred

1. Is Article 15 of Regulation (EU) No 952/2013 ⁽¹⁾ of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, read in conjunction with Article 42(1) thereof, to be interpreted as precluding a national rule such as that laid down in Article 233(1) of the Zakon za mitnitsite (Customs Law; 'the ZM'), read in conjunction with Article 7 of the Zakon za administrativnite narushenia i nakazania (Law on administrative offences and administrative penalties; 'the ZANN'), which provides for the imposition of a penalty for smuggling not committed intentionally in cases where a customs offence is committed through a lack of diligence consisting in failure to comply with the prescribed form of declaration of goods transported across the national border? Is a national rule lawful which, in such cases, allows the offence to be classed as customs smuggling committed through negligence, or is intent a necessary constituent of customs smuggling?
2. Is Article 42(1) of Regulation (EU) No 952/2013 to be interpreted as precluding a national rule such as that laid down in Article 233(1) of the ZM, read in conjunction with Article 7 of the ZANN, under which a first offence falling under the heading of 'smuggling', whether committed intentionally or through negligence, is punishable by a penalty of the same nature and the same amount, namely a fine of between 100 % and 200 % of the customs value of the property involved in the offence?
3. Is Article 42(2) of Regulation (EU) No 952/2013 to be interpreted as precluding national legislation, such as that under Article 233(6) of the ZM, which provides, as an additional administrative penalty, for the confiscation (removal for the benefit of the State) of the goods or property which were involved in the offence and the possession of which is not prohibited? Is confiscation of the items involved in the offence lawful in those cases where the confiscated assets belong to someone other than the offender?
4. Is Article 42(1) of Regulation (EU) No 952/2013, read in conjunction with Article 49(3) of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that a national rule such as that of Article 233(6) of the ZM, which, alongside fines, provides for the additional penalty of confiscation (removal for the benefit of the State) of the goods or property which were involved in the offence and the possession of which is not prohibited, is unlawful in the following cases by reason of constituting a disproportionately punitive interference with the right to property which is not commensurate with the legitimate goal being pursued: both generally, in those cases where the confiscated asset, being the item involved in the offence, belongs to the offender and in those cases where it belongs to a third party other than the offender, and particularly in those cases where the offender committed the offence not intentionally but through negligence?

⁽¹⁾ OJ 2013 L 269, p. 1.

5. Is Article 5(3) of Regulation (EU) No 952/2013, read in conjunction with Article 41 of the Charter of Fundamental Rights of the European Union, to be interpreted as meaning that the authorities carrying out customs controls must comply with the provisions of the European Code of Good Administrative Behaviour, in particular Articles 6 to 10 thereof, and that a national rule such as that laid down in Article 233(1) of the ZM, read in conjunction with Article 7(2) of the ZANN, is unlawful which provides that penalties for intentional conduct may be imposed on persons who have committed a formal and negligent infringement of customs law and that confiscation for the benefit of the State of the item involved in the offence belonging to a third party may be ordered under Article 233(6) of the ZM, without the person who acted without due diligence having previously been instructed as to how to conduct him or herself in accordance with the law and how to complete his or her documents for the carriage of goods across an external border of the European Union properly as prescribed by law?
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