

**Reference for a preliminary ruling by the Hovrätten för Västra Sverige by order of 10 March 2000 in the case of Kenny Roland Lyckeskog against Public Prosecutor's Office, Uddevalla**

**(Case C-99/00)**

(2000/C 149/47)

Reference has been made to the Court of Justice of the European Communities by order of 10 March 2000 by the Hovrätten för Västra Sverige, which was received at the Court Registry on 16 March 2000, for a preliminary ruling on the following questions:

1. Is a national court or tribunal which in practice is the last instance in a case, because leave to appeal is needed in order for the case to be reviewed by the country's supreme court, a court or tribunal within the meaning of the third paragraph of Article 234 of the EC Treaty?
2. May a court or tribunal within the meaning of the third paragraph of Article 234 of the EC Treaty decline to request a preliminary ruling where it considers it clear how the questions of Community law in point must be decided, even if those questions are not covered by the doctrine of *acte clair* or *acte éclairé*?

In the event that the Court of Justice answers the first question in the negative, or the first question in the affirmative and the second question in the negative but not otherwise — the Hovrätten also wishes to have an answer to the following questions:

3. Under Article 45 of Council Regulation (EEC) No 918/83<sup>(1)</sup> of 28 March 1983 setting up a Community system of reliefs from customs duty, subject to Articles 46 to 49 of the regulation, goods contained in the personal luggage of travellers coming from a third country are to be admitted free of import duties, provided that such imports are of a non-commercial nature. Does this mean that the nature and quantity of the goods should, on an objective view, not be such as to raise doubts about the nature of the import? Or may regard be had to the individual's life style and customs?
4. What is the legal significance of a national authority's provisions which indicate the duty-free quantity of a certain product — to which Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty is applicable — normally to be admitted?

**Action brought on 16 March 2000 by the Commission of the European Communities against the Italian Republic**

**(Case C-100/00)**

(2000/C 149/48)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 16 March 2000 by the Commission of the European Communities, represented by Richard Wainwright, Principal Legal Adviser, and Giacinto Bisogni, an appeal court judge on secondment to the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- Declare that, by making immersion heaters subject to safety requirements not provided for by Directive 73/23/EEC<sup>(1)</sup> and, consequently, by rejecting, in the case of products manufactured in accordance with Standard EN 60335-2-21, the presumption of conformity with safety requirements, the Italian Republic has failed to fulfil its obligations under Community law;
- Order the Italian Republic to pay the costs of the proceedings.

*Pleas in law and main arguments*

Article 9 of Directive 73/23/EEC embodies the so-called safeguard clause which allows Member States to adopt restrictive measures for reasons of safety even with respect to products manufactured in conformity with a harmonised standard. However, such measures must be justified by factual evidence that the products in question, albeit manufactured in conformity with a harmonised standard, are likely to compromise the safety of users. In the absence of such evidence, or in the absence of a formal communication in accordance with Article 9 of Directive 73/23/EEC, the Commission maintains that immersion heaters which are in conformity with Standard EN 60335-2-21 must be freely released on the market without being made subject to additional requirements.

<sup>(1)</sup> OJ L 105 of 23.4.83, p. 1.

<sup>(1)</sup> OJ L 77 of 26.3.1973, p. 29.