

Reference for a preliminary ruling by the Hoge Raad der Nederlanden by judgment of that court of 21 November 2000 in the criminal proceedings against G. Cuomo

(Case C-434/00)

(2001/C 28/42)

Reference has been made to the Court of Justice of the European Communities by judgment of the Hoge Raad der Nederlanden (Supreme Court of the Netherlands) of 21 November 2000, received at the Court Registry on 27 November 2000, for a preliminary ruling in the criminal proceedings against G. Cuomo on the following questions:

1. What is to be understood by 'leaves' or 'ceases to be covered' (onttrekken) the external transit procedure within the meaning of the third subparagraph of Article 5(1) of the Directive on products subject to excise duty⁽¹⁾ and of Article 7(3) of the Sixth Directive⁽²⁾, where such leaving or cessation is irregular — that is to say, it occurs otherwise than by declaring the goods for release for free circulation:
 - (a) is it the first action in relation to the goods which contravenes a provision connected with that procedure, and is the presence of an intention to place the goods — partly by that action — on the Community market in breach of that provision relevant; or
 - (b) does it occur (only) when the goods — in this case after breaking the seal — are unloaded from the vehicle without satisfying the requirement to produce the goods together with the relevant document at the office of destination in accordance with Article 22(1) of Regulation (EEC) No 2726/90 (OJ 1990 L 262, p. 1), and is the presence of an intention to place the goods — partly by that action — on the Community market in breach of Community law relevant; or
 - (c) must 'leaves' or 'ceases to be covered' be taken to refer to all the actions (taken together) resulting in the goods being placed unlawfully on the Community market?
2. If the answer to the first question is as indicated in (c), where does the 'leaving' or 'cessation of coverage' occur: where the first unlawful action is performed or where a subsequent action is performed, in particular where the goods — in this case after breaking the seal — are unloaded from the vehicle?

3. For the purposes of the application of criminal law, may 'leaves' or 'ceases to be covered' also be taken to refer to the mere placing and transport of goods under a Community customs procedure where a third country, as referred to in the directive, is entered as the destination of that transport operation in the accompanying documents but the intention of placing the goods on the market in another Member State was present at the start of the transport operation?

⁽¹⁾ Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

⁽²⁾ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

Action brought on 28 November 2000 by the Commission of the European Communities against the French Republic

(Case C-439/00)

(2001/C 28/43)

An action against the French Republic was brought before the Court of Justice on 28 November 2000 by the Commission of the European Communities, represented by Michel Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to adopt all the laws, regulations and administrative measures necessary in order to comply with Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors⁽¹⁾, or at all events by failing to communicate the same to the Commission, the French Republic has failed to comply with its obligations under that directive;
- order the French Republic to pay the costs.