

Reference for a preliminary ruling by the Verwaltungsgerichtshof by order of that Court of 6 November 2002 in the case of Spedition Ulustrans, Uluslararası Nakliyat ve Tic. A.S. Istanbul against Finanzlandesdirektion Oberösterreich

(Case C-414/02)

(2003/C 19/27)

Reference has been made to the Court of Justice of the European Communities by order of the Verwaltungsgerichtshof (Administrative Court) of 6 November 2002, received at the Court Registry on 19 November 2002, for a preliminary ruling in the case of Spedition Ulustrans, Uluslararası Nakliyat ve Tic. A.S. Istanbul against Finanzlandesdirektion Oberösterreich (Regional Finance Directorate for Upper Austria) on the following questions:

Does Paragraph 79(2) of the Zollrechtsdurchführungsgesetz (Act to implement customs law, under which an employer or undertaking incurs liability for a customs debt at the same time as the employee or other person contracted by the undertaking incurs liability for the debt, if that person has, in the discharge of his employer's or the undertaking's affairs, acted unlawfully with regard to customs obligations), widen the meaning of the term 'customs debtor' in a manner that is contrary to Article 202(3) of the Customs Code and therefore incompatible with Community law?

Action brought on 19 November 2002 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-415/02)

(2003/C 19/28)

An action against the Kingdom of Belgium was brought before the Court of Justice of the European Communities on 19 November 2002 by the Commission of the European Communities, represented by R. Lyal and Ch. Giolito, acting as Agents, with an address for service in Luxembourg.

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

— Rule that:

by imposing the 'tax on stock-exchange transactions' on applications made in Belgium for new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or during a loan issue;

by imposing the 'tax on the delivery of securities to the holder' on the substantive issue to the holder of securities relating to Belgian or foreign public funds, in the case of

new securities issued when a company or investment fund is being set up or following the completion of an increase in capital or during a loan issue,

the Kingdom of Belgium has failed to fulfil its obligations under Article 11 of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital ⁽¹⁾;

— Order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The taxes referred to in the forms of order sought are at variance with Article 11 of the Directive in so far as they are imposed on the delivery to the subscriber and/or the issue of new securities. In those cases, the derogation provided for in Article 12(1)(a) of the Directive, which allows Member States to charge duties on the transfer of securities, is not applicable because such a 'transfer' presupposes the existence of a previous owner of the securities in question.

⁽¹⁾ OJ English Special Edition 1969(II), p. 412.

Action brought on 19 November 2002 by the Commission of the European Communities against the Hellenic Republic

(Case C-417/02)

(2003/C 19/29)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 19 November 2002 by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser in its Legal Service.

The Commission claims that the Court should:

(a) declare that,

— by enacting and retaining in force Article 3(1)(c) and (2) of Presidential Decree 107/93, and