



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

13 March 2014*

(Reference for a preliminary ruling — Community Customs Code — Articles 243 and 245 — Regulation (EEC) No 2454/93 — Article 181a — Decision amenable to review — Admissibility of legal proceedings where a prior administrative complaint has not been made — Principle of respect for the rights of defence)

In Joined Cases C-29/13 and C-30/13,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Administrativen sad Sofia-grad (Bulgaria), made by decisions of 4 January 2013, received at the Court on 21 January 2013, in the proceedings

Global Trans Lodzhistik OOD

v

Nachalnik na Mitnitsa Stolichna,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, A. Borg Barthet (Rapporteur), E. Levits, S. Rodin and F. Biltgen, Judges,

Advocate General: M. Wathelet,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Global Trans Lodzhistik OOD, by M. Aydarova, advokat,
- the Nachalnik na Mitnitsa Stolichna, by S. Zlatkov, acting as Agent,
- the Bulgarian Government, by E. Petranova and D. Drambozova, acting as Agents,
- the Spanish Government, by M. García-Valdecasas Dorrego, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and G. Albenzio, avvocato dello Stato,
- the European Commission, by L. Keppenne, S. Petrova and B.-R. Killmann, acting as Agents,

* Language of the case: Bulgarian.

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

Judgment

- 1 These requests for a preliminary ruling concern the interpretation of Articles 243 and 245 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1), as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996 (OJ 1997 L 17, p. 1), ('the Customs Code') and Article 181a(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation No 2913/92 (OJ 1993 L 253, p. 1), as amended by Commission Regulation (EC) No 3254/94 of 19 December 1994 (OJ 1994 L 346, p. 1) ('Regulation No 2454/93').
- 2 The requests have been made in proceedings between Global Trans Lodzhistik OOD ('Global Trans Lodzhistik') and the Nachalnik na Minitisa Stolichna (Director of the Customs Office for Sofia) concerning actions brought by Global Trans Lodzhistik seeking annulment of two decisions rectifying the customs value of goods imported by that company and imposing on it a tax adjustment in respect of value added tax (VAT).

Legal context

European Union law

- 3 Article 4(5) of the Customs Code is worded as follows:

'For the purposes of this Code, the following definitions shall apply:

...

- (5) "Decision" means any official act by the customs authorities pertaining to customs rules giving a ruling on a particular case, such act having legal effects on one or more specific or identifiable persons; this term covers, inter alia, binding information within the meaning of Article 12.'

- 4 Under Article 6(3) of the Customs Code:

'Decisions adopted by the customs authorities in writing which either reject requests or are detrimental to the persons to whom they are addressed shall set out the grounds on which they are based. They shall refer to the right of appeal provided for in Article 243.'

- 5 According to Article 243 of the Customs Code:

'1. Any person shall have the right to appeal against decisions taken by the customs authorities which relate to the application of customs legislation, and which concern him directly and individually.

...

2. The right of appeal may be exercised:

- (a) initially, before the customs authorities designated for that purpose by the Member States;

(b) subsequently, before an independent body, which may be a judicial authority or an equivalent specialised body, according to the provisions in force in the Member States.'

6 Article 245 of the Customs Code states:

'The provisions for the implementation of the appeals procedure shall be determined by the Member States.'

7 Article 181a of Regulation No 2454/93 provides:

'1. The customs authorities need not determine the customs valuation of imported goods on the basis of the transaction value method if, in accordance with the procedure set out in paragraph 2, they are not satisfied, on the basis of reasonable doubts, that the declared value represents the total amount paid or payable as referred to in Article 29 of the Code.

2. Where the customs authorities have the doubts described in paragraph 1 they may ask for additional information in accordance with Article 178(4). If those doubts continue, the customs authorities must, before reaching a final decision, notify the person concerned, in writing if requested, of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor shall be communicated in writing to the person concerned.'

Bulgarian law

8 Article 211a of the Law on customs (Zakon na mitnitsite, DV No 15, 6 February 1998, 'the ZM') provides as follows:

'Decisions to enforce recovery of public debts of the State are individual administrative acts issued by the director of customs within whose geographical jurisdiction the debt not paid within the prescribed period was incurred; those acts establish that customs debts and other public debts have become due.'

9 In accordance with Article 211f of the ZM, a decision for enforced recovery may be appealed against to the director of customs within 14 days of notification of the decision.

10 Article 220(1) of the ZM provides the following:

'Any person may lodge an appeal against the decisions of the customs authorities which affect him, in accordance with the provisions of the Code of Administrative Procedure.'

11 Article 148 of the Code of Administrative Procedure (Administrativnoprotsesualen kodeks, DV No 30, 11 April 2006) provides:

'Any administrative act may be challenged before a court, even if the possibility of administrative review has not been exhausted, unless this code or a special law provides otherwise.'

The disputes in the main proceedings and the questions referred for a preliminary ruling

12 On 15 September (Case C-30/13) and 23 September (Case C-29/13) 2010, Global Trans Lodzhistik filed two customs declarations for goods imported from Turkey under the customs procedure of release for consumption with release for free circulation.

- 13 The Bulgarian customs authorities checked the documents and examined the goods in accordance with Article 68 of the Customs Code. Due to doubts as to whether the declared value represented the price actually paid or to be paid, the customs authorities took samples of the goods and requested additional information from Global Trans Lodzhistik, pursuant to Articles 178(4) and 181a(2) of Regulation No 2454/93. On 15 September (Case C-30/13) and 23 September (Case C-29/13) 2010, Global Trans Lodzhistik replied that it was not in a position to provide the information requested and stated that the international contract of sale made provision for deferred payment of the goods.
- 14 By Decision No 9600-0561/01.10.2010 (Case C-29/13) and Decision No 9600-541/24.09.2010 (Case C-30/13), the Nachalnik na Minitsa Stolichna set a new customs value for part of the goods, which was determined pursuant to Article 30(2)(b) of the Customs Code. On the basis of that reassessment of the customs value, the decisions ordered tax adjustments of 3 083,38 Bulgarian leva (BGN) and BGN 2 192,13 respectively in relation to the additional VAT due ('the decisions at issue').
- 15 The decisions at issue expressly stated that, in accordance with Article 221 of the Customs Code, Global Trans Lodzhistik was notified of the amount of the customs debts.
- 16 Global Trans Lodzhistik challenged the decisions at issue directly before the referring court, the Administrativen sad Sofia-grad (Administrative Court, Sofia), without making use of the possibility of a prior administrative review before the Nachalnik na Minitsa Stolichna. Global Trans Lodzhistik claimed that the customs value was not determined correctly and that procedural defects were committed in that its right to be heard and to raise objections before the final decision was adopted, as provided for under Article 181a(2) of Regulation No 2454/93, was not observed.
- 17 The referring court rejected both applications as inadmissible.
- 18 In each of the inadmissibility orders, the referring court found that prior administrative review was mandatory, since Article 243 of the Customs Code makes provision for an appeal procedure in two stages. It therefore ordered both cases to be referred to the Nachalnik na Minitsa Stolichna.
- 19 The Varhoven administrativen sad (Supreme Administrative Court) set aside the two orders of the referring court and referred the two cases back to it on the ground that an administrative appeal was not mandatory in this case as Article 243(2) of the Customs Code was not applicable.
- 20 The referring court, relying on national case-law which shows that the decisions at issue cannot be regarded as definitive acts, but form part of the procedure for adopting the decision to enforce recovery of public debts of the State, again dismissed as inadmissible the actions brought against those decisions and classified them as preparatory acts, regarding them as 'communications' for the purposes of Article 221 of the Customs Code.
- 21 The Varhoven administrativen sad set aside the inadmissibility orders of the referring court on the ground that, in that they set a new customs value, the decisions at issue constitute decisions for the purposes of Article 4(5) of the Customs Code and may be challenged before a court under Article 243(1) of that code. The Varhoven administrativen sad also stated that the case-law cited by the referring court applies only in a situation where the act in question constitutes a communication, for the purposes of Article 206 of the ZM, which forms part of the procedure for adopting the decision to enforce recovery of public debts of the State.
- 22 The referring court, to which both cases were once again referred by the Varhoven administrativen sad, is uncertain as to the scope of Articles 243 and 245 of the Customs Code. It considers that the admissibility of those actions and the mandatory nature of the prior administrative appeal are not clear from the wording of Article 243 of the Customs Code. The definition of an act which may be challenged in a procedure to establish and recover a customs debt depends on the extent of the procedural autonomy left to the Member States under Article 245 of that code.

- 23 In that respect, the referring court considers that it should be clarified whether the decisions at issue must be regarded as final for the purposes of Article 181a(2) of Regulation No 2454/93, so that they constitute acts which may be challenged under European Union law, or whether those decisions are acts governed by national law, which must be classified as ‘measures’ for the purposes of Article 232(1)(a) of the Customs Code.
- 24 In those circumstances, the Administrativen sad Sofia-grad decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- ‘(1) Does Article 243(1) of the [Customs Code], read in conjunction with Article 245 of that code, and having regard to the principles of respect for the rights of defence and *res judicata*, permit a national provision such as Article 220 and Article 211a of the [ZM] under which more than one decision of a customs authority which fixes an additional customs debt with a view to its subsequent recovery may be challenged, even where, under the circumstances of the main proceedings, a final decision within the meaning of Article 181a(2) of [Regulation No 2454/93] could be adopted in order to fix that customs debt?
 - (2) Is Article 243(2) of the [Customs Code] on the right of appeal to be interpreted as meaning that it does not provide that a final decision within the meaning of Article 181a(2) of Regulation No 2454/93 must first be the subject of an administrative appeal in order for judicial proceedings to be permitted?
 - (3) Is Article 181a(2) of Regulation No 2454/93 to be interpreted, under the circumstances of the main proceedings, as meaning that, if the procedure laid down in that provision in relation to the right to be heard and the right to raise objections was not observed, the decision of the customs authority adopted in contravention of those rules does not constitute a final decision within the meaning of that provision, but is merely part of the procedure for the adoption of the final decision? In the alternative, is that provision to be interpreted, under the circumstances of the main proceedings, as meaning that the decision adopted in breach of the abovementioned procedural provisions is directly subject to judicial proceedings before a court which must give judgment on the merits of the action?
 - (4) Is Article 181a(2) of Regulation No 2454/93 to be interpreted, under the circumstances of the main proceedings and having regard to the principle of legality, as meaning that, if the procedure laid down in that provision in relation to the right to be heard and the right to raise objections was not observed, the decision of the customs authority adopted in contravention of those rules is null and void on account of a material procedural defect which is comparable to an infringement of an essential procedural requirement, non-compliance with which results in the nullity of the act irrespective of the actual consequences of the infringement, with the result that the court is required to rule on an action brought against that act, without being able to consider referring the matter back to the administrative authority for it to make a final decision on the basis of the applicable rules?’
- 25 By order of the President of the Court of 8 March 2013, Cases C-29/13 and C-30/13 were joined for the purposes of the written procedure and the judgment.

Consideration of the questions referred

The first question

- 26 By its first question, the referring court asks in essence, first, whether a decision, such as one of those at issue in the main proceedings, rectifying, on the basis of Article 30(2)(b) of the Customs Code, the customs value of goods with the consequence that the declarant is served with a tax adjustment in respect of VAT constitutes a challengeable act for the purposes of Article 243 of the Customs Code. Secondly, the referring court asks whether, having regard to the general principles of respect for the rights of defence and *res judicata*, Article 245 of that code precludes national legislation, such as that at issue in the main proceedings, which makes provision for two separate appeal procedures for challenging decisions of the customs authorities.
- 27 Concerning first the issue whether a decision such as one of those at issue in the main proceedings constitutes a challengeable act for the purposes of Article 243 of the Customs Code, it is clear from a reading of Article 243(1) in conjunction with Article 4(5) of the Customs Code that any person has the right to appeal against any decision taken by the customs authorities which relates to the application of customs legislation and concerns him directly and individually.
- 28 The decisions at issue were adopted by the *Nachalnik na Minitisa Stolichna* in order to rectify, on the basis of Article 30(2)(b) of the Customs Code, the customs value of goods initially declared by *Global Trans Lodzhistik*, with the consequence that the declarant was served with a tax adjustment in respect of VAT.
- 29 Consequently, the decisions at issue relate to the application of customs legislation and have direct legal effects on *Global Trans Lodzhistik*, in that they make that company liable for a debt in favour of the Bulgarian State in respect of VAT.
- 30 Furthermore, it is apparent from Article 6(3) of the Customs Code that decisions relating to the application of customs legislation which are detrimental to the persons to whom they are addressed must refer to the right of appeal provided for in Article 243 of that code.
- 31 It follows that the decisions at issue are acts which may be challenged for the purposes of Article 243 of the Customs Code.
- 32 Secondly, concerning the issue whether, having regard to the general principles of respect for the rights of defence and *res judicata*, Article 245 of the Customs Code precludes national legislation, such as the ZM, which makes provision for two separate appeal procedures for challenging the decisions of the customs authorities, it must be noted that under Article 245 of that code the provisions for implementing the appeal procedure are to be determined by the Member States.
- 33 According to settled case-law of the Court, in the absence of European Union rules in this area, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which litigants derive from European Union law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by European Union law (principle of effectiveness) (see, *inter alia*, Case C-262/09 *Meilicke and Others* [2011] ECR I-5669, paragraph 55, and Case C-603/10 *Pelati* [2012] ECR, paragraph 23).
- 34 As regards the principle of equivalence, it should be noted that, in relation to the main proceedings, there is nothing before the Court that is capable of raising any doubts as to the consistency of legislation such as that at issue in those proceedings with that principle.

- 35 Concerning the principle of effectiveness, it is clear from the documents placed before the Court that, first, in accordance with Article 220(1) of the ZM, read in conjunction with Article 148 of the Code of Administrative Procedure, a party liable for public debts can challenge a decision of the customs authorities before a court, even if the administrative remedies have not been exhausted, unless the Code of Administrative Procedure or a special law provides otherwise.
- 36 Secondly, in accordance with Article 211f of the ZM, a party liable for public debts may also challenge a decision for enforced recovery of a public debt, adopted on the basis of Article 211a of the ZM, before the director of customs within 14 days of notification of that decision.
- 37 It follows that a party liable for public debts may enforce his own rights of defence in two separate stages of the customs procedure. The existence of these two appeal procedures for challenging the acts of customs authorities does not render impossible or excessively difficult the application of European Union law.
- 38 Moreover, as regards respect for the principle of *res judicata*, the rules implementing that principle must also comply with the principles of equivalence and effectiveness (see, to that effect, Case C-2/08 *Fallimento Olimpiclub* [2009] ECR I-7501, paragraph 24).
- 39 As regards the disputes in the main proceedings, first, the principle of equivalence has been respected since the two appeal procedures referred to in paragraphs 35 and 36 above apply regardless of whether the subject-matter of the proceedings derives from European Union law or national law. Secondly, respect for the principle of effectiveness is ensured, as the two appeal procedures concern two administrative acts adopted at different stages in the customs procedure which are distinct in terms of their subject-matter and legal basis.
- 40 In view of the above considerations, the answer to the first question is, first, that a decision, such as one of those at issue in the main proceedings, rectifying, on the basis of Article 30(2)(b) of the Customs Code, the customs value of goods with the consequence that the declarant is served with a tax adjustment in respect of VAT constitutes a challengeable act for the purposes of Article 243 of the Customs Code. Secondly, having regard to the general principles of respect for the rights of the defence and *res judicata*, Article 245 of the Customs Code does not preclude national legislation, such as that at issue in the main proceedings, which makes provision for two separate appeal procedures for challenging decisions of the customs authorities, where that legislation does not run counter to either the principle of equivalence or the principle of effectiveness.

The second question

- 41 By its second question, the referring court asks in essence whether Article 243 of the Customs Code provides that the admissibility of judicial proceedings against decisions adopted on the basis of Article 181a(2) of Regulation No 2454/93 is subject to the condition that the administrative remedies available to challenge those decisions have been exhausted beforehand.
- 42 Under Article 243(2) of the Customs Code, the right of appeal may be exercised initially before the customs authority, and subsequently before an independent body which may be a judicial authority.
- 43 As the Court has previously held in Case C-1/99 *Kofisa Italia* [2001] ECR I-207, paragraph 36, there is nothing in the wording of that provision to indicate that the appeal before the customs authority is a mandatory stage prior to lodging an appeal before the independent body.

- 44 In the same judgment, the Court also stated that Article 243 of the Customs Code is to be interpreted as meaning that it is for national law to determine whether an operator must initially bring an appeal before the customs authority or whether he may appeal directly to the judicial authority (*Kofisa Italia*, paragraph 43).
- 45 Consequently, the answer to the second question is that Article 243 of the Customs Code does not provide that the admissibility of judicial proceedings against decisions adopted on the basis of Article 181a(2) of Regulation No 2454/93 is subject to the condition that the administrative remedies available to challenge those decisions have been exhausted beforehand.

The third question

- 46 By its third question, the referring court asks in essence whether Article 181a(2) of Regulation No 2454/93 must be interpreted as meaning that, in the event of an infringement of right of the person concerned to be heard and to raise objections, a decision adopted under that article may be regarded as final, and whether, in that case, that procedural defect confers on that person a right to bring a direct action before the judicial authority against that decision.
- 47 Article 181a(2) of Regulation No 2454/93 provides that, if the doubts of the customs authorities regarding the determination of the customs value of the goods continue, the customs authorities must, before reaching a final decision, notify the person concerned of the grounds for those doubts and provide him with a reasonable opportunity to respond. A final decision and the grounds therefor must be communicated in writing to the person concerned.
- 48 Although that article requires the customs authorities, before reaching a final decision, to notify the person concerned of the grounds for those doubts and to provide him with a reasonable opportunity to make his views known, an infringement of that obligation by the customs authorities cannot however affect the definitive nature of that decision or the classification of the act adopted under Article 181a(2) of Regulation No 2454/93 as a decision. In any event, the act adopted by the customs authorities produces legal effects with regard to its addressee, in that it leads to the determination of a new customs value for the goods, and thus constitutes a decision for the purposes of Article 4(5) of the Customs Code.
- 49 On the other hand, an infringement of the right of the person concerned to be heard renders that decision unlawful so that it may be challenged by way of a direct action before an independent judicial authority, as is clear from paragraph 45 above.
- 50 In the light of the above considerations, the answer to the third question is that Article 181a(2) of Regulation No 2454/93 must be interpreted as meaning that a decision adopted under that article must be regarded as final and capable of being challenged by way of a direct action before an independent judicial authority, even where it was adopted in breach of the right of the person concerned to be heard and to raise objections.

The fourth question

- 51 By its fourth question, the referring court asks in essence whether the infringement of the right of the person concerned to be heard and to raise objections under Article 181a(2) of Regulation No 2454/93, leading to the nullity of the decision adopted under that article, obliges the court hearing an appeal against that decision to make a ruling in that action without being able to consider referring the matter back to the administrative authority.

Admissibility

- 52 The *Nachalnik na Minitsa Stolichna* considers that the issue of the potential nullity of the decisions at issue is hypothetical, since the merits of the disputes in the main proceedings have not been examined. On that basis, the question is inadmissible.
- 53 In this respect, it must be observed that, according to the settled case-law of the Court, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see Case C-545/07 *Apis-Hristovich* [2009] ECR I-1627, paragraph 28 and the case-law cited).
- 54 Consequently, where the questions submitted concern the interpretation of European Union law, the Court of Justice is in principle bound to give a ruling (see *Apis-Hristovich*, paragraph 29 and the case-law cited).
- 55 In the present case, the Court of Justice has been asked to provide the referring court with criteria for interpreting Article 181a(2) of Regulation No 2454/93 so as to enable it to determine, in accordance with European Union law, the consequences of the annulment of a decision as a result of a breach of the principle of respect for the rights of the defence.
- 56 It follows that the question referred for a preliminary ruling is admissible.

Substance

- 57 It must be noted that observance of the rights of the defence is a general principle of European Union law which applies where the authorities are minded to adopt a measure which will adversely affect an individual (Case C-349/07 *Sopropé* [2008] ECR I-10369, point 36). In accordance with that principle, expressly set out in Article 181a(2) of Regulation No 2454/93, the addressees of decisions which significantly affect their interests must therefore be placed in a position in which they can effectively make known their views as regards the information on which the authorities intend to base their decision. Therefore they must be given a sufficient period of time in which to do so (*Sopropé*, paragraph 37 and the case-law cited).
- 58 It is apparent from the documents submitted to the Court, first, that the *Nachalnik na Minitsa Stolichna* did not allow *Global Trans Lodzhistik* the opportunity to be heard or to make its observations known before the decisions at issue were adopted. Those decisions are therefore liable to be annulled.
- 59 Secondly, the Customs Code does not contain any provision regarding the consequences of the annulment of a ‘final decision’, within the meaning of Article 181a(2) of Regulation No 2454/93, as a result of a failure to observe the principle of respect for the rights of the defence.
- 60 In those circumstances, having regard to the procedural autonomy left to the Member States under Article 245 of the Customs Code, it is for the national court to determine those consequences having regard to the particular circumstances of the case, and provided first that the rules adopted to that effect are the same as those to which individuals or undertakings in comparable situations under national law are subject, and secondly that they do not make it impossible in practice or excessively difficult to exercise the rights of the defence conferred by the European Union legal order.

61 It follows from the above considerations that the answer to the fourth question is that, in the event of a breach of the right of the person concerned to be heard and to raise objections under Article 181a(2) of Regulation No 2454/93, it is for the national court to determine, having regard to the particular circumstances of the case before it and in the light of the principles of equivalence and effectiveness, whether, where the decision which was adopted in breach of the principle of respect for the rights of the defence must be annulled on that ground, it must give a ruling in the action brought against that decision or whether it can consider referring the matter back to the competent administrative authority.

Costs

62 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 (First Chamber) hereby rules:

1. **First, a decision, such as one of those at issue in the main proceedings, rectifying, on the basis of Article 30(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, the customs value of goods with the consequence that the declarant is served with a tax adjustment in respect of value added tax, constitutes a challengeable act for the purposes of Article 243 of Regulation No 2913/92. Secondly, having regard to the general principles of respect for the rights of the defence and *res judicata*, Article 245 of Regulation No 2913/92 does not preclude national legislation, such as that at issue in the main proceedings, which makes provision for two separate appeal procedures for challenging decisions of the customs authorities, where that legislation does not run counter to either the principle of equivalence or the principle of effectiveness.**
2. **Article 243 of Regulation No 2913/92 does not provide that the admissibility of judicial proceedings against decisions adopted on the basis of Article 181a(2) of Regulation No 2454/93, as amended by Regulation No 3254/94, is subject to the condition that the administrative remedies available to challenge those decisions have been exhausted beforehand.**
3. **Article 181a(2) of Regulation No 2454/93, as amended by Regulation No 3254/94, must be interpreted as meaning that a decision adopted under that article must be regarded as final and capable of being challenged by way of a direct action before an independent judicial authority, even where it was adopted in breach of the right of the person concerned to be heard and to raise objections.**
4. **In the event of a breach of the right of the person concerned to be heard and to raise objections under Article 181a(2) of Regulation No 2454/93, as amended by Regulation No 3254/94, it is for the national court to determine, having regard to the particular circumstances of the case before it and in the light of the principles of equivalence and effectiveness, whether, where the decision which was adopted in breach of the principle of respect for the rights of the defence must be annulled on that ground, it must give a ruling in the action brought against that decision or whether it can consider referring the matter back to the competent administrative authority.**

[Signatures]