JUDGMENT OF THE COURT

4 June 2002 *

In Case C-99/00,

REFERENCE to the Court under Article 234 EC by the Hovrätt för Västra Sverige (Sweden) for a preliminary ruling in the criminal proceedings pending before that court against

Kenny Roland Lyckeskog,

on the interpretation of the third paragraph of Article 234 EC and of Article 45(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Council Regulation (EC) No 355/94 of 14 February 1994 (OJ 1994 L 46, p. 5),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric, and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet (Rapporteur), M. Wathelet, V. Skouris, J.N. Cunha Rodrigues and A. Rosas, Judges,

* Language of the case: Swedish.

Advocate General: A. Tizzano,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Swedish Government, by L. Nordling, acting as Agent,

— the Danish Government, by J. Molde, acting as Agent,

— the Finnish Government, by E. Bygglin, acting as Agent,

— the United Kingdom Government, by J.E. Collins, acting as Agent, and M. Hoskins, Barrister,

— the Commission of the European Communities, by L. Ström, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 21 February 2002,

gives the following

Judgment

1 By decision of 10 March 2000, received at the Court on 16 March 2000, the Hovrätt för Västra Sverige (Court of Appeal for Western Sweden) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of the third paragraph of Article 234 EC and of Article 45(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1), as amended by Council Regulation (EC) No 355/94 of 14 February 1994 (OJ 1994 L 46, p. 5) ('Regulation No 918/83').

2 Those questions have arisen in proceedings brought against Mr Lyckeskog on the ground that he had attempted to smuggle into Sweden 500 kg of rice from Norway without declaring that importation.

Community law

3 With regard to the obligations devolving on the court or tribunal making a reference, the third paragraph of Article 234 EC provides:

'Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice.'

4 The provisions of Community law applicable to the dispute in the main proceedings are Articles 45 and 47 of Regulation No 918/83, which provide:

'Article 45

1. Subject to Articles 46 to 49, goods contained in the personal luggage of travellers coming from a third country shall be admitted free of import duties, provided such imports are of a non-commercial nature.

2. For the purposes of paragraph 1:

...

(b) "imports of a non-commercial nature" means imports which:

— are of an occasional nature, and

— consist exclusively of goods for the personal use of the travellers or their families, or of goods intended as presents; the nature and quantity of such goods should not be such as might indicate that they are being imported for commercial reasons.

...

Article 47

The relief referred to in Article 45 shall be granted up to a total value of ECU 175 per traveller to goods other than those listed in Article 46.

However, Member States may reduce this amount to ECU 90 for travellers under 15 years of age.'

National legislation

5 The Swedish hovrätter deliver judgments which may be the subject of appeal to the Högsta domstol (Supreme Court) (Sweden). Such an appeal will always be examined if it is brought by the Public Prosecutor in cases involving the exercise of public authority. In other cases, an appeal will be examined as to its substance only if the Högsta domstol has declared it admissible.

6 Paragraph 10 of Chapter 54 of the Rättegångsbalk (Code of Procedure) provides that the Högsta domstol may declare an appeal admissible only if:

'1. it is important for guidance in the application of the law that the appeal be examined by the Högsta domstol, or

2. there are special grounds for examination of the appeal, such as the existence of grounds of review on a point of law, formal defect, or where the outcome of the case before the hovrätt is manifestly attributable to negligence or serious error.'

The dispute in the main proceedings and the questions submitted for preliminary ruling

7 Mr Lyckeskog was found guilty of attempted smuggling by the Strömstads tingsrätt (District Court, Strömstad) on the ground that he had attempted, in 1998, to import 500 kg of rice from Norway into Sweden. The tingsrätt, basing itself on the fact that Mr Lyckeskog had exceeded the quantity of 20 kg authorised by decision of the customs administration for the duty-free importation of rice, held that the importation by Mr Lyckeskog was of a commercial nature within the meaning of Regulation No 918/83.

8 Mr Lyckeskog appealed against that decision to the Hovrätt för Västra Sverige, which, although taking the view that it could rule on the merits of the case given that there was no difficulty in interpreting the applicable provisions of Community law, expressed uncertainty as to whether it was to be regarded as

a court ruling at last instance and for that reason obliged under the third paragraph of Article 234 EC to refer a question for a preliminary ruling to the Court to enable it to interpret the relevant provisions of Regulation No 918/83, as the conditions laid down in the judgment in Case 283/81 *CILFIT* [1982] ECR 3415 did not appear to be satisfied.

9 It was in those circumstances that the Hovrätt för Västra Sverige referred the following questions to the Court for a preliminary ruling:

'1. Is a national court or tribunal which in practice is the last instance in a case, because a declaration of admissibility 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 EC?

2. May a court or tribunal within the meaning of the third paragraph of Article 234 EC 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 Hovrätt also wishes to have an answer to the following questions:

3. Under Article 45(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, goods contained in the personal luggage of travellers coming from a third country are, subject to Articles 46 to 49 of that regulation, 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 lifestyle and habits?

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?'

The first question

10 The essence of the first question referred by the Hovrätt för Västra Sverige is whether a national court or tribunal whose decisions will be examined by the national supreme court, before which they are challenged, only if that supreme court declares the appeal to be admissible is to be regarded as a court or tribunal against whose decisions there is no judicial remedy under national law within the meaning of the third paragraph of Article 234 EC.

11 The Danish Government submits that any court or tribunal whose decisions may be the subject of appeal only after a declaration of admissibility has been issued must be considered to be a court or tribunal of the type referred to in the third

paragraph of Article 234 EC. It bases its reasoning on, first, the judgment in Case 6/64 *Costa* [1964] ECR 585, in which the Court pointed out that, under the actual wording of that provision, national courts against whose decisions, as in the main proceedings in that case, there was no judicial remedy, had to refer the matter to the Court so that a preliminary ruling could be given on the interpretation of Community law, and, second, the judgment in Case 107/76 *Hoffmann-La Roche* [1977] ECR 957, in which the Court ruled that the underlying purpose of Article 234 EC is to ensure that Community law is interpreted and applied in a uniform manner in all the Member States, the particular objective of the third paragraph being to prevent a body of national case-law not in accordance with the rules of Community law from coming into existence in any Member State. The requirement of a declaration of admissibility would thus constitute an obstacle to the uniform interpretation of Community law if the supreme court alone were covered by the obligation arising under the third paragraph of Article 234 EC.

12 The judgment in *Costa*, cited above, is also cited by the Swedish and Finnish Governments in their observations submitted to the Court, but in support of an analysis contrary to that of the Danish Government. Thus, they contend that the mere fact that the decisions of the hovrätter may be subject to appeal suffices to justify the conclusion that those courts are not covered by the third paragraph of Article 234 EC. The mechanism of a declaration of admissibility, they argue, does no more than limit the prospects of an applicant having his appeal examined. It does not, as the United Kingdom Government points out, remove the possibility of lodging an appeal against judgments of the hovrätter. The United Kingdom further submits that, at the stage of considering the admissibility of an appeal, a supreme court can make a reference for a preliminary ruling on a question as to the interpretation of a rule of Community law. The referring court, questioned on this point by the Court, accepts that this is so as regards the Högsta domstol. The Swedish Government points out, moreover, that, in the exceptional cases in which there is no ordinary avenue of appeal against judgments of the hovrätter and those courts therefore, from the formal point of view, rule at final instance, they come within the scope of the third paragraph of Article 234 EC.

13 The Commission takes the same position, basing its reasoning on the fact that, where a court ruling on admissibility at last instance considers that an issue of Community law has not been correctly dealt with, that court is required to refer a

question to the Court for a preliminary ruling pursuant to the third paragraph of Article 234 EC, or rely on one of the limits on the obligation to refer defined in the judgment in *CILFIT*, cited above, or remit the case to a lower court. Thus, the possibility of referring a question for a preliminary ruling will always be preserved and the risk of interference with the uniform interpretation of Community law consequently avoided.

14 The obligation on national courts against whose decisions there is no judicial remedy to refer a question to the Court for a preliminary ruling has its basis in the cooperation established, in order to ensure the proper application and uniform interpretation of Community law in all the Member States, between national courts, as courts responsible for applying Community law, and the Court. That obligation is in particular designed to prevent a body of national case-law that is not in accordance with the rules of Community law from coming into existence in any Member State (see, *inter alia*, *Hoffmann-La Roche*, cited above, paragraph 5, and Case C-337/95 *Parfums Christian Dior* [1997] ECR I-6013, paragraph 25).

15 That objective is secured when, subject to the limits accepted by the Court of Justice (*CILFIT*), supreme courts are bound by this obligation to refer (*Parfums Christian Dior*, cited above) as is any other national court or tribunal against whose decisions there is no judicial remedy under national law (Joined Cases 28/62, 29/62 and 30/62 *Da Costa en Schaake* [1963] ECR 31).

16 Decisions of a national appellate court which can be challenged by the parties before a supreme court are not decisions of a 'court or tribunal of a Member State against whose decisions there is no judicial remedy under national law' within the meaning of Article 234 EC. The fact that examination of the merits of such appeals is subject to a prior declaration of admissibility by the supreme court does not have the effect of depriving the parties of a judicial remedy.

17 That is so under the Swedish system. The parties always have the right to appeal to the Högsta domstol against the judgment of a hovrätt, which cannot therefore be classified as a court delivering a decision against which there is no judicial remedy. Under Paragraph 10 of Chapter 54 of the Rättegångsbalk, the Högsta domstol may issue a declaration of admissibility if it is important for guidance as to the application of the law that the appeal be examined by that court. Thus, uncertainty as to the interpretation of the law applicable, including Community law, may give rise to review, at last instance, by the supreme court.

18 If a question arises as to the interpretation or validity of a rule of Community law, the supreme court will be under an obligation, pursuant to the third paragraph of Article 234 EC, to refer a question to the Court of Justice for a preliminary ruling either at the stage of the examination of admissibility or at a later stage.

19 The answer to the first question must therefore be that, where the decisions of a national court or tribunal can be appealed to the supreme court under conditions such as those that apply to decisions of the referring court in the present case, that court or tribunal is not under the obligation referred to in the third paragraph of Article 234 EC.

The second question

20 The essence of the second question referred by the Hovrätt för Västra Sverige is whether, in the event that a hovrätt is to be regarded as a court or tribunal within the meaning of the third paragraph of Article 234 EC, it is obliged to refer the matter to the Court even though interpretation of the rule of Community law applicable to the dispute in the main proceedings does not present any difficulty but the conditions required by the judgment in *CILFIT* for application of the *acte clair* doctrine are not met.

21 In view of the answer to the first question and to the fact that, under Swedish legislation, the Högsta domstol may, on appeal to it against a decision by a hovrätt, refer a question to the Court for a preliminary ruling, it is unnecessary to reply to the second question.

The third question

22 The Hovrätt för Västra Sverige is asking the Court, essentially, to specify the criteria for determining whether the importation of goods contained in the personal luggage of a person travelling from a non-member country is entirely non-commercial within the meaning of Article 45(1) of Regulation No 918/83, and in particular whether that assessment must take into account the lifestyle and habits of the individual concerned.

23 According to the Finnish Government, when, by reason of their nature or the fact that they are of significant quantity, goods seized from the personal luggage of a traveller appear to have been imported for commercial purposes, the lifestyle and habits of the person concerned must be examined. If, at the conclusion of such an examination, it does not appear that the goods are intended solely for personal or family use, the customs authorities are entitled to take the view that the importation is commercial in nature and for that reason to refuse duty-free status. The Commission agrees with that approach, which requires a case-by-case consideration of whether it is appropriate to grant duty-free status.

24 The Swedish Government also maintains that, in order to determine whether the importation of goods seized from a traveller's personal luggage is commercial in nature, account must be taken of the nature and quantity of the goods, but adds that the economic and personal circumstances of the traveller, whose wife, in the main proceedings in the present case, comes from Asia, must also be taken into account. The Swedish Government bases itself on the position taken by the Court

in Case C-208/88 *Commission* v *Denmark* [1990] ECR I-4445, according to which Article 45 of Regulation No 918/83 does not allow Member States to presume, without allowing proof to the contrary, that an importation must be commercial in nature where the imported goods found in the personal luggage of a traveller exceed a certain quantity.

25 According to the relevant provisions of Regulation No 918/83, imports of a non-commercial nature are imports which consist exclusively of goods for the personal use of travellers or their families, or of goods intended as presents, where the nature or quantity of the goods is not such as to indicate that they are being imported for commercial reasons.

26 Personal use, by definition, varies from one person to another, and from one culture to another, and the designation, for reference purposes, of a typical use would for that reason be unsatisfactory. It is therefore essential, for the proper application of Regulation No 918/83, that a case-by-case assessment be made as to whether importation is commercial in character, account being taken, where appropriate, of the lifestyle and habits of each traveller. While the nature and quantity of the goods under consideration are among the indicators to be taken into account, customs authorities cannot confine themselves to those indicators in assessing whether or not the importation is commercial.

27 The answer to the third question must therefore be that the question whether an importation of goods is non-commercial, within the meaning of Article 45(2)(b) of Regulation No 918/83, must be examined case by case on the basis of an overall assessment of the circumstances, taking into account the nature of the importation and the quantity of goods involved, the frequency with which those goods are imported by the traveller concerned, but also, where appropriate, taking account of that traveller's lifestyle and habits or of his family environment.

The fourth question

28 By its fourth question, the Hovrätt för Västra Sverige is asking, essentially, whether Regulation No 918/83 is compatible with national administrative provisions fixing the quantity of goods to which that regulation applies and which may be imported free from customs duty.

29 The Finnish Government points out the purpose of Regulation No 918/83, which is to establish, throughout Community territory, a uniform system of relief from customs duties.

30 Like the Swedish Government and the Commission, the Finnish Government contends that that regulation does not entitle Member States to impose more stringent quantitative restrictions for certain products unless such restrictions are justified on moral or public-policy grounds. Nor does it enable Member States to decide whether importation is or is not commercial solely by reference to the quantity of goods imported. National provisions of that kind are incompatible with Regulation No 918/83.

31 On the other hand, the parties which have submitted observations contend that Community law does not preclude non-binding instructions drawn up by the customs authorities indicating, for a particular product, the maximum quantity below which a traveller is not required to provide other evidence that the importation is non-commercial.

32 Such an analysis of Regulation No 918/83 is in accordance with the reply given to the third question. If Member States were entitled to impose quantitative restrictions on grounds other than morality or public policy, the uniform nature of the system of relief from customs duties throughout Community territory would be jeopardised. However, instructions drawn up by the customs authorities, as long as they are not an indirect way of introducing an irrebuttable presumption that imports are commercial, but are simply a non-binding criterion designed to facilitate customs procedures, are not incompatible with the system established by Regulation No 918/83.

33 The answer to the fourth question must therefore be that Article 45 of Regulation No 918/83 precludes national administrative instructions or practices which impose binding quantitative limits on relief from customs duties or which would have the effect of creating an irrebuttable presumption that the importation concerned is commercial by reason of the quantity of goods imported.

Costs

34 The costs incurred by the Swedish, Danish, Finnish and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Hovrätt för Västra Sverige by decision of 10 March 2000, hereby rules:

1. Where the decisions of a national court or tribunal can be appealed to the supreme court under conditions such as those that apply to decisions of the referring court in the present case, that court or tribunal is not under the obligation referred to in the third paragraph of Article 234 EC.

2. The question whether an importation of goods is non-commercial, within the meaning of Article 45(2)(b) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty, as amended by Council Regulation (EC) No 355/94 of 14 February 1994, must be examined case by case on the basis of an overall assessment of the circumstances, taking into account the nature of the importation and the quantity of goods involved, the frequency with which those goods are imported by the traveller concerned, but also, where appropriate, taking account of that traveller's lifestyle and habits or of his family environment.

3. Article 45 of Regulation No 918/83, as amended by Regulation No 355/94, precludes national administrative instructions or practices which impose binding quantitative limits on relief from customs duties or which would have the effect of creating an irrebuttable presumption that the importation concerned is commercial by reason of the quantity of goods imported.

Rodríguez Iglesias Jann Macken

Colneric von Bahr Gulmann

Edward La Pergola Puissochet

Wathelet Skouris

Cunha Rodrigues Rosas

Delivered in open court in Luxembourg on 4 June 2002.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President