EU Court of Justice ruling: The confiscation of sums which were not declared to the customs authorities at the Romanian border is contrary to EU law

Țuca Zbârcea & Asociații obtained a request for a preliminary ruling by the European Court of Justice in front of the Ilfov Tribunal regarding the interpretation of Article No. 9 para. (1) of Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community.

On the 19th of December 2019 the European Court made a decision in Case C-679/19 ruling that:
"Articles 63 and 65 TFUE must be interpreted as precluding national legislation which, in order to sanction the omission to declare important sums of money when entering or leaving this state, provides for, in addition to applying an administrative fine, the confiscation of the undeclared sum exceeding EUR 10,000 in the benefit of the state".

The national provisions which were submitted for analysis to the European Court are found in Government Decision No. 707 of the 7th of June 2006 for approving the Regulation for the application of Romania's Customs Code.

According to Article No. 653 para. (1) letter i) of this Decision, the persons crossing the Romanian border who fail to fulfil their obligation provided for by Article 3 from Regulation (EC) No 1889/2005 consisting of declaring in writing to the customs agency the cash in foreign or national currency equal or greater than the limit established by this Regulation, which they carry on them, or in means of transportation, or in attended or unattended luggage, as well as in packages, constitutes a contravention and is subject to a fine between LEI 3,000 and 8,000 (approx. EUR 633-1,685). This provision specifies that the undeclared cash which exceeds the limit established by Regulation (EC) No 1889/2005 is confiscated.

The effect of the Court's Ordinance is that the national legislation found to lack conformity is removed from application.

It is clear that in the future the authorities can no longer issue minutes for finding and sanctioning contraventions which contain the complementary penalty of confiscating the sums exceeding EUR 10,000 which have not been declared at the customs.

Also, the judgement given by the EU court will also take effect in pending cases consisting of a complaint against the decisions given for the application of the above-mentioned national provisions.

Regarding the administrative acts who have been analysed by the judiciary prior to the Court's Ordinance, it is

difficult to ascertain if they could be subject to an administrative or court revision as remedies for breaching EU law.

The administrative revision is not a concept known to national law – with the exception of re-checking in fiscal matters – although EU case law surmises that the principle of cooperation which results from the Treaty mandates that an administrative authority petitioned with such a request must, in certain conditions, re-examine a definitive administrative decision to account for the interpretation of the relevant provision that has been given by the EU Court of Justice.

Starting with the decision given in Case C-453/00 (Kühne & Heitz NV vs. Produktschap voor Pluimvee en Eieren) the evolving case law of the EU Court has given nuance to the conditions for reopening administrative procedures in so far as to consider that these conditions should not prohibit the administrative revision when the measure imposed by the administrative act is manifestly contrary to EU Law (Case C-249/11 Hristo Byankov vs. Glaven sekretar na Ministerstvo na vatreshnite raboti).

In another case C-2/06 (Willy Kempter KG vs Hauptzollamt Hamburg-Jonas) the Court ruled that EU law does not impose the condition that re-examining an administrative decision is to be preceded by invoking this right in front of the court of last instance which ruled on the appeal against the administrative decision whose re-examination is requested, and does not provide for a time limit for filing such a claim for re-examining a final administrative decision.

Revising court judgements for breaching the priority of EU law, although provided for nationally by Article No. 21 of Law No. 554/2004 of the administrative dispute, seems to be inaccessible if the party has exceeded the one-month term from the communication of the decision to be revised.

The revision procedure was recently analysed from the perspective of the equivalence and effectivity principles in Case C-676/17, Oana Madalina Calin vs. Direcția Regionala a Finanțelor Publice Ploiești – Administrația Județeana a Finanțelor Publice Dâmbovița. The EU Court of Justice ruled that the one month term fulfills the requirements for conformity.

Also, at paragraphs 39-41 of the decision, the Court held that the equivalence principle must be analysed by the domestic courts and that the EU Court cannot rule on the lack of an appeal procedure similar to that provided for by Article No. 509 para. (1) pt. 11 of the Romanian Civil Procedure Code in the case of a Constitutional Court's decision through which a relevant national provision has been found to be unconstitutional.

In other words, the one-month term is applicable in the case of EU Court of Justice decisions which are prior to the ruling in a case through the decision pending revision. In the case of EU Court of Justice decisions given after a final decision has been given in the case, the national court most admit, in light of the principle of equivalence, the revision of final domestic decisions and apply EU law with priority.

Moreover, the EU Court of Justice mentions at paragraph 41 of this previously analysed decision that the "aforementioned court maintains the possibility to present a new request for a preliminary ruling when it can provide the Court all the elements which allow it to give a ruling on upholding the principle of equivalence".
To conclude, in principle, it should be possible to undergo an administrative revision procedure, or a judicial revision procedure for court decisions given prior to the EU Court of Justice's Ordinance in Case C – 679/19 based on Article No. 509 of the Romanian Civil Procedure Code interpreted according to the principle of equivalence which provides that national rules and procedures which apply to the rights given to the parties according to national law should also apply to the rights resulting from EU law.

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