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Court of Justice of the European Union

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Judgment in Case C-255/14

Robert Michal Chmielewski v Nemzeti Adó- és Vámhivatal Dél-alföldi
Regionális Vám- és Pénzügyőri Főigazgatósága

By imposing a fine, the amount of which corresponds to 60% of the amount of cash which is undeclared when crossing an external border of the EU, Hungarian law infringes EU law

The amount of that fine is not proportionate to the seriousness of the infringement, which consists in a breach of the obligation to declare possession of a sum of €10 000 or more

For the purpose of preventing unlawful movements of cash, an EU regulation¹ provides that any person crossing an external border of the EU with at least €10 000 in cash must declare that sum to the competent authorities of the Member State where the border is crossed. That declaration must, inter alia, state the provenance of the money and its intended use. Under the regulation, the Member States must provide for effective, proportionate and dissuasive penalties which are appropriate in the event of a breach of the obligation to declare.

In Hungary, the amount of the fines to be imposed in the event of a breach of the obligation to declare depends on the amount of undeclared cash. Hungarian law imposes payment of a fine amounting to 60% of any undeclared sum over €50 000.

On 9 August, 2012, Mr Robert Michal Chmielewski travelled from Serbia to Hungary without declaring the sum of cash he was carrying, a total amount of €147.492, consisting of 249.150 Bulgarian leva (BGN), 30 000 Turkish lira (TRY) and 29 394 Romanian lei (RON). The Hungarian authorities therefore imposed a fine on him amounting to HUF 24 532 000 (approximately €78 000) for having infringed the obligation to declare.

Mr Chmielewski brought an action against the decision of the Hungarian authorities, claiming, inter alia, that the Hungarian legislation imposing the penalty was not compatible with EU law. Ruling on the dispute, the Kecskeméti Közigazgatási és Munkaügyi Bíróság (Administrative and Labour Court, Kecskemét, Hungary) asks the Court of Justice whether the amount of the fine imposed by Hungarian law is compatible with the requirement under the regulation that the penalty imposed for a breach of the obligation to declare be proportionate to the infringement.

By today's judgment, the Court notes first of all that, in the absence of harmonisation at European level of the penalties applicable in the event of a breach of the obligation to declare provided for by the regulation, the Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise that power in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality.

Next, the Court states that a system which makes the amount of penalties dependent on the sum of undeclared cash is not, in principle, disproportionate in itself. Likewise, the requirement that the penalties introduced by the Member States must be proportionate does not oblige the competent authorities to take account of the specific individual circumstances of each case, such as intention or recidivism.

¹ 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 (OJ 2005 L 309, p. 9).

However, in the light of the fact that the infringement at issue consists solely of a breach of the obligation to declare and not participation in fraudulent or unlawful activities, **a fine equivalent to 60% of the amount of undeclared cash, where that amount is more than €50 000, is not proportionate.** Such a fine goes beyond what is necessary in order to ensure compliance with the obligation and the fulfilment of the objectives pursued by that regulation.

Finally, the Court notes that the regulation provides for the possibility to detain undeclared cash to allow the competent authorities to carry out the necessary controls and checks relating to the provenance of that cash, its intended use and destination. Therefore, a penalty which consists of a fine of a lower amount, together with a measure to detain undeclared cash is capable of attaining the objectives pursued by the regulation without going beyond what is necessary for that purpose.

In those circumstances, the Court rules that **the regulation precludes the Hungarian legislation,** in so far as the latter penalises a failure to comply with the obligation to declare by imposing a fine equivalent to 60% of the amount of undeclared cash, where that amount is more than €50 000.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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