

Communication concerning the decision of the Curia of Hungary
in administrative case n° Kfv.V.35.533/2016

In its decision delivered as a result of an *ex post* inspection, the customs authority withdrew its earlier decisions and ordered the plaintiff – and other natural and legal persons – to jointly pay customs duties and value added taxes. The authority based its on-the-merits decision on Articles 38 and 91 of Council Regulation no. 2913/92/EEC of 12 October 1992 establishing the Community Customs Code (hereinafter referred to as the Customs Code), and argued that the external Community transit procedures had not been properly concluded. The non-Community goods had been unlawfully removed from customs supervision, which, according to Article 203 of the Customs Code, resulted in a customs debt to be paid by the debtors included in the operative part of the authority's decision. The plaintiff filed a lawsuit against the second instance decision of the customs authority. The court of first instance rejected the plaintiff's claims.

Proceeding upon the plaintiff's petition for judicial review, the Curia found that – in accordance with the relevant national and Community legislation as well as the case-law of the European Court of Justice – the plaintiff should also bear responsibility for the irregular conclusion of external Community transit procedures and the unlawful removal of goods from customs supervision, therefore it upheld the first instance judgement.

In agreement with the views of the defendant and the court of first instance, the Curia stated that some of the causes that had contributed to the unlawful removal of goods from customs supervision could be clearly attributed to the plaintiff's conduct. The presentation of goods to customs, the submission of customs documents, the irregular conclusion of the transit procedure and the unlawful release into free circulation are attributable not to the plaintiff's employee as an individual with private interests, but to the plaintiff as a customs agency. In addition, the plaintiff failed to exercise due diligence in controlling the activities of its employee and failed to take the measures necessary to avoid the unlawful removal of goods from customs supervision in a case of high financial risks.

Budapest, the 14th of June 2017

Administrative and Labour Department of the Curia of Hungary