

**Re:**

Reference for a preliminary ruling — Court of Appeal (Civil Division) — Interpretation of Article 141 EC — Equal pay for men and women — Duration of employment used as a criterion for determining pay and having a different effect according to the sex of the worker

**Operative part of the judgment**

Article 141 EC is to be interpreted as meaning that, where recourse to the criterion of length of service as a determinant of pay leads to disparities in pay, in respect of equal work or work of equal value, between the men and women to be included in the comparison:

- since, as a general rule, recourse to the criterion of length of service is appropriate to attain the legitimate objective of rewarding experience acquired which enables the worker to perform his duties better, the employer does not have to establish specifically that recourse to that criterion is appropriate to attain that objective as regards a particular job, unless the worker provides evidence capable of raising serious doubts in that regard;
- where a job classification system based on an evaluation of the work to be carried out is used in determining pay, there is no need to show that an individual worker has acquired experience during the relevant period which has enabled him to perform his duties better.

(<sup>1</sup>) OJ C 69, 19.03.2005.

**Judgment of the Court (Third Chamber) of 5 October 2006 (reference for a preliminary ruling from the Gerechtshof te Amsterdam — Netherlands) — ASM Lithography BV v Inspecteur van de Belastingdienst-Douane Zuid/kantoor Roermond**

(Case C-100/05) (<sup>1</sup>)

**(Customs Code — Determination of the customs debt — Import duties on compensating products determined by the person concerned and confirmed by the customs authorities under Article 121 of the Customs Code — Duties which can be calculated in accordance with Article 122(c) of the Customs Code — Repayment of the amount levied in excess on the basis of Article 236 of the Customs Code)**

(2006/C 294/18)

Language of the case: Dutch

**Referring court**

Gerechtshof te Amsterdam

**Parties to the main proceedings**

*Applicant:* ASM Lithography BV

*Defendant:* Inspecteur van de Belastingdienst-Douane Zuid/kantoor Roermond

**Re:**

Reference for a preliminary ruling — Gerechtshof te Amsterdam — Interpretation of Articles 121(1), 122(c), 214 and 236 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) — Compensating products regarded as having been released for free circulation — Related customs debt established on the basis of the taxation rules set out in Article 122(c) of Regulation No 2913/92 — No prior and express request by the party concerned — Acceptance of a post-clearance request for a new calculation pursuant to Article 236 of Regulation No 2913/92

**Operative part of the judgment**

1. Article 122(c) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code is to be interpreted as meaning that, at the time of determining the amount of the customs debt resulting from the release for free circulation of compensating products, unless the person concerned has expressly made a request to that effect, the national customs authorities are not bound to apply the rules of assessment relating to the procedure for processing under customs control where the import goods could have been placed under that procedure.
2. Article 236 of Regulation No 2913/92 is to be interpreted as meaning that the national customs authorities must allow a request for repayment of import duties where it transpires that, following an error by the person concerned and not through the exercise of a choice, the amount of the customs debt has been determined by applying Article 121 of that regulation and has already been the subject of a communication to the person concerned, even if that request entails a recalculation by those authorities of the amount of the debt by applying Article 122(c) of that regulation.

(<sup>1</sup>) OJ C 106, 30.04.2005.