

Key Trends in the Case Law of the Supreme Administrative Court of Lithuania in Application of European Union Law in Tax Disputes

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Abstract: The article analyses cases of the Supreme Administrative Court of Lithuania and the impact the case-law of the European Court of Justice has made in this area of administrative legal relations. The dual nature of regulation in the tax sphere, where certain taxes and customs are directly regulated by EU law, while other taxes are left for the competence of the Member States, makes it an area of legal relations particularly perceptive to jurisprudence of the European Court of Justice. The analysis is focused on two types of cases – cases concerning value added tax and the right of a taxable person to deduct it, where the directive of the European Union is applicable; and cases concerning external trade of the EU, where the European Union Customs Code applies. As far as the application of the European Union Customs Code is concerned, the article limits itself to cases related to unlawfully imported goods into the customs territory of the European Union goods, which are subject to excise duty. The author of the article comes to a conclusion that from a twenty-year perspective of EU law application in the case-law of the Supreme Administrative Court of Lithuania, a clear trend towards consistency with the jurisprudence of the European Court of Justice and a tendency to refer to the European Court of Justice for a preliminary ruling is observed.

Keywords: *legislation in taxation legal relations, value added tax (VAT), right to deduct VAT, customs, European Union Customs Code, excise duty on goods unlawfully imported to the EU, case-law of the Supreme Administrative Court, jurisprudence of the European Court of Justice.*

Preparation for membership in the European Union (hereinafter also referred to as the EU) led to reforms of the Lithuanian legal system, which were aimed at ensuring the real implementation of the fundamental principle of the rule of law. In this respect, the reform of administrative justice, as a mandatory institution of the rule of law, was particularly important, the priorities of which were the protection of citizens' rights and legitimate interests in the field of public administration, the

creation of more effective judicial control over executive power and the establishment of a system of administrative courts. M. Romeris once said that “<...> there is no rule of law without an administrative court: all we have is a police state”.¹ The establishment of administrative courts in Lithuania was a social change that implied a change in the functions of courts as a certain social organisation in the system of administrative justice.

In the second phase of the administrative justice reform, a fully autonomous system of administrative courts was established and began functioning on 1 January 2001. The Supreme Administrative Court of Lithuania was established instead of the Administrative Cases Division of the Court of Appeal of Lithuania and the Higher Administrative Court, i.e. an appellate court for all cases settled by regional administrative courts.²

Paragraph 4 of Article 4 of the Law of the Republic of Lithuania on Administrative Proceedings (hereinafter also referred to as the Law on Administrative Proceedings)³ says that in application of rules of law of the European Union, the court shall also follow decisions of the judicial authorities of the European Union, and in cases set by law the court shall refer to a competent judicial authority of the European Union for a preliminary ruling about interpretation or validity of European Union legal acts.

Tax disputes fall within the competence of administrative courts (subparagraph 4 of paragraph 1 of Article 17 of the Law on Administrative Proceedings;⁴ paragraph 22 of Article 2 of the Law of the Republic of Lithuania on Tax Administration (hereinafter also referred to as the Law on Tax Administration)).⁵ The legal regulation of tax relations is characterized by that administration of some taxes is directly regulated by EU law (customs administration⁶), whereas administration

1 Römeris M. Valstybės Taryba // Teisė, 1929. No. 16. P. 23–36.

2 Law No. VIII-1928 on Amending and Supplementing Articles 2, 3, 4, 5, 6 of the Law of the Republic of Lithuania on Establishment of Administrative Courts, dated 19 September 2000 // Valstybės žinios. 2000, No. 85-2567 // Valstybės žinios. 2000, No. 85-2566.

3 Law of the Republic of Lithuania on Administrative Proceedings // Valstybės žinios. 1999, No. 13-308.

4 Subparagraph 4 of paragraph 1 of Article 17 of the Law on Administrative Proceedings establishes that administrative courts shall decide cases relating to tax disputes.

5 Law of the Republic of Lithuania on Administrative Proceedings // Valstybės žinios. 1999, No. 13-308. It is indicated in paragraph 22 of Article 2 of the Law on Tax Administration that tax disputes are disputes arising between the taxpayer and the tax administrator regarding a decision on approval of the inspection act or other similar decision, according to which a tax is re-assessed for the taxpayer and ordered to be paid, also regarding a decision of the tax administrator refusing to repay (offset) a tax overpayment (difference).

6 The main customs legal act is Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (<https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX%3A32013R0952>, visited on 27 December 2021). The

of other taxes (value added tax (hereinafter also referred to as VAT),⁷ excise duty⁸) is regulated by laws transposing provisions of EU directives into national law. This specificity of the legal regulation of the said tax relations means that the proceedings in tax disputes are unavoidably related to interpretation and application of EU law, therefore, the jurisprudence of the Court of Justice of the European Union (hereinafter also referred to as the CJEU, the Court of Justice) is particularly important in cases of this category.

Prof. V. Valančius notes that “the relationship of national courts and the Court of Justice of the European Communities can be described as a “two-way street” where the Court of Justice gives guidelines for national courts for interpretation and application of EU law and where case law of national courts can, in its own turn, serve as an impulse for the Court of Justice in addressing specific EU law application issues.”⁹

The Supreme Administrative Court of Lithuania, following the jurisprudence of the Court of Justice, began to form its case law also for tax legal relations which arose yet before the membership of the Republic of Lithuania in the European Union. In this respect, the ruling of the plenary session of the Supreme Administrative Court of Lithuania of 27 October 2004 in administrative case No. A¹-355/2004 is to be pointed out.¹⁰

In the said administrative case, the Supreme Administrative Court of Lithuania interpreted rules of the Law of the Republic of Lithuania on Value Added Tax with regard to the provisions of First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover

Union Customs Code, applicable from 1 May 2016, sets general rules and procedures applicable to goods entering or leaving the customs territory of the Union. Until 1 May 2016, Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code was in effect in the EU (<https://eur-lex.europa.eu/legal-content/lt/TXT/?uri=CELEX%3A31992R2913>, visited on 27 December 2021).

- 7 The EU common system of value added tax (VAT) is established by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, EUR-Lex, visited on 27 December 2021 (<https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=celex%3A32006L0112>). This directive is implemented by the Law of the Republic of Lithuania on Value Added Tax // Valstybės žinios. 2002, No. 35-1271.
- 8 EU general provisions on excise duty are established by Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, EUR-Lex, visited on 27 December 2021 (<https://eur-lex.europa.eu/legalcontent/LT/TXT/?uri=celex%3A32008L0118>). This directive is implemented by the Law of the Republic of Lithuania on Excise Duty // Valstybės žinios. 2001, No. 98-3482.
- 9 Virgilijus Valančius, *Europos Sąjungos teisės poveikis Lietuvos administracinei justicijai: tendencijų kontūrai*, *Jurisprudencija* 97, 7(2007): 37.
- 10 Ruling of the plenary session of the Supreme Administrative Court of Lithuania of 27 October 2004 in administrative case No. A¹-355/2004, Infolex, visited on 28 December 2021 (<https://www.infolex.lt/teise/Default.aspx?ID=20&item=doc&aktoid=41829>).

taxes,¹¹ Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment¹² and the jurisprudence of the Court of Justice.

The legal literature emphasizes that “the fundamental right that a registered VAT payer acquires is the right to VAT deduction, i.e. the right to deduct the input and/or import VAT and by that part to reduce the amount of VAT to be paid to the budget or to increase the amount of VAT to be refunded from the budget.”¹³ The whole VAT operation mechanism in the European Union is in fact based on this right, in this way ensuring equal rights and fair competition of persons taking part in the production and trade process and the application of the principle of fiscal neutrality.

It was namely the case law formed in the ruling adopted in the plenary session of the Supreme Administrative Court of Lithuania on 27 October 2004 regarding the exercise of the right to VAT deduction that led to substantial changes not only in judicial practices but also in tax administration. The said final act of the court is also significant because the Law of the Republic of Lithuania on Value Added Tax does not (and did not) have a directly stipulated condition, which, if met, would lead to restriction of the right of a taxable person to VAT deduction, therefore, in solving the issue of validity of restriction of the right to VAT deduction, it was necessary to follow provisions of EU legal acts on the general functioning of the VAT system and the rules for their interpretation, formulated in the jurisprudence of the Court of Justice.

In the said ruling, the Supreme Administrative Court of Lithuania indicated: (1) the fact that the taxpayer has a VAT invoice containing formal details required by law is not alone enough to prove his right to VAT deduction if the entirety of available evidence suggests that the economic operation did not occur or the content of the operation was different from that reflected in the accounting documents; (2) the fact that the VAT invoice that the taxpayer has does not contain all formal details or formal details are not indicated correctly therein is not alone enough to deny the right to VAT deduction if the entirety of available evidence suggests that the economic operation of namely such content as reflected in the accounting documents

11 First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, EUR-Lex, visited on 28 December 2021 (<https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=CELEX:01967L0227-19770523>).

12 Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment, EUR-Lex, visited on 28 December 2021 (<https://eur-lex.europa.eu/legal-content/LT/TXT/?uri=celex%3A31977L0388>).

13 Aistė Medelienė, Bronius Sudavičius, *Mokesčių teisė* (Vilnius: Valstybės įmonė Registrų centras, 2011), 540.

has occurred; (3) the taxpayer does not have the right to VAT deduction if he acted in bad faith in performance of the economic operation, i.e. he knew or had a possibility of knowing that his counterparty or previous seller of the goods had not paid or would not pay the value added tax; (4) the tax administrator, in order to deny the taxpayer's right to VAT deduction due to his bad faith, has to prove unlawfulness of the taxpayer's counterparty's activities that is related to a specific operation and that usually is in the form of failure to pay the value added tax and present evidence leading to the doubt about the taxpayer's good faith, in which case it is the taxpayer, willing to deduct VAT, that must prove that he did not know or had no possibility of knowing about unlawfulness of the counterparty's activities; (5) the fact that the goods may have entered into civil circulation unlawfully does not affect the tax treatment of the goods and the tax administrator must prove, in order to deny the right to deduct VAT, not that the goods have entered the market illegally but that there was no real supply of goods or provision of services as an object of VAT.

How could the rules on interpretation of law formulated in the ruling of the plenary session of the Supreme Administrative Court of Lithuania of 27 October 2004 be assessed retrospectively? First of all, the formal approach to accounting documents, on which an economic operation subject to VAT is based, has been abandoned, stressing that the failure to state formal details on the VAT invoice held by the taxpayer or indication of wrong details does not in itself invalidate the right to deduct VAT. Furthermore, it was stressed that the principle of fiscal neutrality must be applied when deciding on the taxpayer's right to deduct VAT.

However, in our view, the ruling excessively expanded the possibilities of restricting the right to deduct VAT on the sole basis that the content of an economic operation is different from that reflected in accounting documents no matter whether or not the supply subject to VAT has been really performed and without linking the restriction of the right to deduct VAT to the taxable person's good faith.

A conceptually new practice was formulated regarding grounds and conditions for restricting the taxable person's right to deduct VAT in the ruling of the grand panel of judges of the Supreme Administrative Court of Lithuania of 5 February 2013 in administrative case No. A⁶⁰²-705/2013.¹⁴ The following essential rules of interpretation of law were formulated in this ruling: (1) a taxable person can be denied the right to deduct VAT if, with regard to objective evidence, the following is found: (a) the transactions, on which such a right is based, were made in abuse; or (b) tax fraud committed by the taxable person; or (c) if, with regard to objective circumstances, it is proven that the taxable person (buyer) knew or should have known that, by acquiring goods, he takes part in a transaction related to VAT fraud by the

14 Ruling of the grand panel of judges of the Supreme Administrative Court of Lithuania of 5 February 2013 in administrative case No. A⁶⁰²-705/2013, Infolex, visited on 29 December 2021 (<https://www.infolex.lt /tp/507237#pa4>).

supplier or another economic entity participating in a purchase or sale transaction in such a supply or service provision chain; (2) the sole fact of non-payment of the output VAT to the budget *per se* cannot serve as a basis for restricting the buyer's right to deduct VAT; (3) the right to deduct VAT, where there are both substantive and formal conditions for claiming such a right, can be denied (restricted) in case when the taxable person, seeking to exercise his right to deduction, knows (must know) that it participates in a VAT fraud related transaction and this legally relevant fact must be proven by the tax administrator by presenting objective evidence.

The Supreme Administrative Court of Lithuania, when adopting the said ruling, referred to the case law of the Court of Justice in interpretation of provisions of EU legal acts on the common system of value added tax formulated in: judgment of the Court of Justice of 21 February 2006 in *Halifax C-255/02*;¹⁵ judgment of the Court of Justice of 6 July 2006 in joined cases *Axel Kittel and Recolta Recycling SPRL C-439/04* and *C-440/04*;¹⁶ judgment of the Court of Justice of 12 January 2006 in *Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd C-354/03*, *C-355/03* and *C-484/03*;¹⁷ judgment of the Court of Justice of 6 December 2012 in *Bonik*, *C-285/11*;¹⁸ judgment of the Court of Justice of 21 June 2012 in joined cases *Mahagében and David*, *C-80/11* and *C-142/11*.¹⁹

Taxation of intra-Community supplies is a constituent element of the functioning of the common system of value added tax in the European Union. Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter also referred to as the VAT Directive) establishes that Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met: (a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that

- 15 Judgment of the European Court of Justice of 21 February 2006 *Halifax plc, Leeds Permanent Development Services Ltd, County Wide Property Investments Ltd v. Commissioners of Customs & Excise*, C-255/02, ECLI:EU:C:2006:121.
- 16 Judgment of the Court of Justice of 6 July 2006 *Axel Kittel v. Belgian State and Belgian State v. Recolta Recycling SPRL*, joined cases C-439/04 and C-440/04, ECLI:EU:C:2006:446.
- 17 Judgment of the Court of Justice of 12 January 2006 *Optigen Ltd, Fulcrum Electronics Ltd, Bond House Systems Ltd v. Commissioners of Customs & Excise*, joined cases C-354/03, C-355/03 and C-484/03, ECLI:EU:C:2006:16.
- 18 Judgment of the Court of Justice of 6 December 2012 *Bonik EOOD v. Direktor na Direktsia 'Obzhalvane i upravljenje na izpalnenieto' – Varna pri Tsentralno upravljenje na Natsionalnata agentsia za prihodite*, C-285/11, ECLI:EU:C:2012:774.
- 19 Judgment of the Court of Justice of 21 June 2012 *Mahagében kft v. Nemzeti Adó- és Vámhivatal Dél-dunántúli Regionális Adó Főigazgatósága and Péter Dávid v. Nemzeti Adó- és Vámhivatal Észak-alföldi Regionális Adó Főigazgatósága*, joined cases C-80/11 and C-142/11, ECLI:EU:C:2012:373.

in which dispatch or transport of the goods begins; (b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.

The said provision of the VAT Directive has been transposed into national law in paragraph 1 of Article 49 of the Law of the Republic of Lithuania on Value Added Tax,²⁰ which provides that zero-rate of VAT shall be charged on goods supplied to a VAT payer identified for VAT purposes in another Member State and dispatched from the territory of the country to another Member State, irrespective of who – whether the supplier of goods, the purchaser of goods or a third party on order from either of them – dispatches the goods.

The mechanism laid down in Article 138(1) of the VAT Directive is characterized, first, by the exemption granted by the Member State from which the goods are dispatched or transported for the supply of goods when they are dispatched or transported within the Community, together with the right to deduct input VAT paid in that Member State, and, second, that the Member State, to which the goods are delivered, taxes the intra-Community purchases of goods. This mechanism ensures a clear separation of the tax powers of the relevant Member States (see paragraphs 30 and 40 of the judgment of the Court of Justice of 6 April 2006 in *EMAG Handel Eder*, C-245/04²¹).

According to settled case law of the Court of Justice, in all cases where the provisions of the directive are unconditional and sufficiently clear in terms of their content, private individuals may rely on them before national courts against the State if it has not transposed the directive into national law in due time or transposed it incorrectly (see, for example, judgment of the Court of Justice of 15 January 2014 in *Association de médiation sociale*, C-176/12, p. 31²²).

However, the Court of Justice has noted that it follows that Article 138(1) of the VAT Directive must be interpreted as having direct effect, i.e. so that it may be relied upon by taxable persons before national courts against the State in order to obtain a VAT exemption in respect of an intra-Community supply of goods (see judgment of the Court of Justice of 9 October 2014 in *Traum*, C-492/13, p. 48²³).

20 Law of the Republic of Lithuania on Value Added Tax.// Valstybės žinios. 2002, No. 35-1271.

21 Judgement of the Court of Justice of 6 April 2006 *EMAG Handel Eder OHG v. Finanzlandesdirektion für Kärnten*, C-245/04, ECLI:EU:C:2006:232.

22 Judgment of the Court of Justice of 15 January 2014 *Association de médiation sociale v. Union locale des syndicats CGT, Hichem Laboubi, Union départementale CGT des Bouches-du-Rhône, Confédération générale du travail (CGT)*, C-176/12, ECLI:EU:C:2014:2.

23 Judgment of the Court of Justice of 9 October 2014 *Traum EOOD v. Direktor na Direktsia 'Obzhalvane i danachno-osiguritelna praktika' Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite*, C-492/13, ECLI:EU:C:2014:2267.

Member States do not therefore have a broad discretion to determine the conditions for tax exemption for intra-Community supply of goods.

It is evident from case law of the Court of Justice that the VAT exemption of the intra-Community supply of goods becomes applicable only when the right to dispose of the goods as owner has been transferred to the purchaser and the supplier establishes that those goods have been dispatched or transported to another Member State and that, as a result of that dispatch or that transport, the goods have physically left the territory of the Member State of supply (judgment of the Court of Justice of 7 December 2010 in case *R.*, C-285/09,²⁴ p. 41; judgment of 16 December 2010 in case *Euro Tyre Holding*, C-430/09,²⁵ p. 29).

The goods concerned must be dispatched or transported by or on behalf of the vendor or the person acquiring the goods out of the territory of the country but within the European Union, and that transfer must be effected for that taxable person or a non-taxable legal person acting as such in a Member State other than that of the departure of the dispatch or transport of the goods (see judgment of the Court of Justice of 20 October 2016 in case *Plöckl*, C-24/15,²⁶ p. 29).

The Supreme Administrative Court of Lithuania has indicated that, according to Article 138(1) of the VAT Directive and paragraph 1 of Article 49 of Law on Value Added Tax, the intra-Community supply of goods must meet three essential conditions to prevent VAT being levied on such supplies (subject to a VAT rate of 0%): (1) supply of goods, described as the transfer of the owner's right to dispose of the item to the buyer of the goods, must occur; (2) the goods that are the object of the supply must be transported from the territory of the Member State of the supplier; (3) the VAT payer supplies the goods to another taxpayer or person acting as a taxpayer in the territory of another Member State.²⁷ Such case law of the Supreme Administrative Court of Lithuania is fully in line with the rules of interpretation of Article 138(1) of the VAT Directive formulated in the jurisprudence of the Court of Justice.

The ruling of the grand panel of judges of the Supreme Administrative Court of Lithuania of 22 November 2017 in administrative case No. A-516-602/2017 touched upon a wider range of issues related to taxation of intra-Community sup-

24 Judgment of the Court of Justice of 7 December 2010 *R.*, other parties: *Generalbundesanwalt beim Bundesgerichtshof, Finanzamt Karlsruhe-Durlach*, C-285/09, ECLI:EU:C:2010:742.

25 Judgment of the Court of Justice of 16 December 2010 *Euro Tyre Holding BV v. Staatssecretaris van Financiën*, C-430/09, ECLI:EU:C:2010:786.

26 Judgment of the Court of Justice of 20 October 2016 *Josef Plöckl v. Finanzamt Schrobenhausen*, C-24/15, ECLI:EU:C:2016:791.

27 Judgment of the Supreme Administrative Court of Lithuania of 11 July 2013 in administrative case No. A⁶⁰²-996/2013, Infolex, visited on 8 January 2022 (<https://www.infolex.lt/tp/704619>).

plies, which reflects the jurisprudence of the Court of Justice better.²⁸ This ruling formulated the following new aspects of judicial practices: (1) the requirement to indicate the actual person acquiring the goods in the VAT invoice is not one of the essential conditions (requirements) for recognising a supply to be an intra-Community supply; (2) the fact of actual transportation of the goods is to be proven with evidence confirming transportation of the goods that the taxable person (normally) has when usually performing specific supply transactions; (3) when a VAT invoice does not indicate the actual persons acquiring the goods, the right to VAT exemption can be denied only if the supplier: committed fraud himself; knew or, being prudent and careful, could have known that the person acquiring the good was acting fraudulently; (4) having found that the supplier's counterparty took part in fraud or committed violations, the competent tax authority, with regard to objective evidence and without requiring the supplier to carry out checks that he does not have to carry out, must establish that the taxable person knew or should have known that the transaction, referred to in order to prove one's right to VAT exemption, is related to VAT fraud.

The customs administration in the European Union is regulated by Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (hereinafter also referred to as the Union Customs Code), applicable from 1 May 2016 (before this date, it was Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code (hereinafter also referred to as the Community Customs Code) that was in force in the EU).

It is said in Article 3 of the Union Customs Code that customs authorities shall be primarily responsible for the supervision of the Union's international trade, thereby contributing to fair and open trade, to the implementation of the external aspects of the internal market, of the common trade policy and of the other common Union policies having a bearing on trade, and to overall supply chain security.

Customs authorities mean the customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation (Article 5(1) of the Union Customs Code).

According to national law, the Customs of the Republic of Lithuania (hereinafter referred to as the "Customs") shall be responsible for the administration of customs duties in the Republic of Lithuania, besides, the Customs shall administer the value added tax and excise duty to the extent assigned by the Law on

²⁸ Judgement of the Supreme Administrative Court of Lithuania of 22 November 2017 in administrative case No. A-516-602/2017, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/1547259#pa4>).

Value Added Tax and the Law on Excise Duty (subparagraphs 1 and 2 of Article 13, paragraph 2 of Article 15 of the Law of the Republic of Lithuania on Tax Administration).

Customs activities in the implementation of customs legislation are governed by the directly applicable Union Customs Code (until 1 May 2016, the Community Customs Code). The range of case law of the Supreme Administrative Court of Lithuania in examination of disputes arising out of legal relations regulated by customs law is wide and diverse, so we will limit ourselves to one area that, in our opinion, is a problem area, i.e. case law in cases related to goods subject to the excise duty unlawfully imported into the customs territory of the European Union.

Under Article 202(3)(3) of the Community Customs Code, the customs debtors shall be any persons who acquired or held the goods in question and who were aware or should reasonably have been aware at the time of acquiring or receiving the goods that they had been introduced unlawfully.

Article 233(1)(d) established that a customs debt shall be extinguished where goods in respect of which a customs debt is incurred in accordance with Article 202 are seized upon their unlawful introduction and are simultaneously or subsequently confiscated.

The Court of Justice has noted that the seizure of such goods, together with their simultaneous or subsequent confiscation within the meaning of point (d) of the first paragraph of Article 233 of the Customs Code, can only lead to the extinction of the customs debt if that seizure was executed before those goods went beyond the area in which the first customs office is situated inside the customs territory of the Community (judgment of the Court of Justice of 29 April 2010 in *Dansk Transport og Logistik*, C-230/08,²⁹ p. 53).

It has been stated in the case law of the Supreme Administrative Court of Lithuania that: (1) the Community Customs Code does not require the person to have (in fact) unlawfully brought the goods into the customs territory of the Community in order to be recognized as a debtor within the meaning of the Community Customs Code, if the person concerned has acquired or stored goods that unlawfully entered the customs territory of the Community and at the time of acquisition or receipt of such goods knew or there are reasonable grounds to believe that he should have known that the goods were brought unlawfully; (2) a person who is recognized a customs debtor for the import of excise goods shall also be considered as an importer within the meaning of the Law of the Republic of Lithuania on Excise Duty and the Law of the Republic of Lithuania on Value Added Tax; (3) the circumstance that excise goods, unlawfully imported into the customs ter-

29 Judgment of the Court of Justice of 29 April 2010 *Dansk Transport og Logistik v. Skatteministeriet*, C-230/08, ECLI:EU:C:2010:231.

ritory of the Community, have been destroyed by competent authorities does not have any meaning with regard to the obligation concerning the customs debt on import (ruling of the Supreme Administrative Court of Lithuania of 18 November 2011 in administrative case No. A¹⁴³-2619/2011³⁰).

Article 124(1)(e) of the Union Customs Code provides that without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished where goods liable to import or export duty are confiscated or seized and simultaneously or subsequently confiscated. Article 124(1)(f) of the said Code provides that without prejudice to the provisions in force relating to non-recovery of the amount of import or export duty corresponding to a customs debt in the event of the judicially established insolvency of the debtor, a customs debt on import or export shall be extinguished where goods liable to import or export duty are destroyed under customs supervision or abandoned to the State.

‘Customs debt’ means the obligation on a person to pay the amount of the import duties (customs debt on importation) or export duties (customs debt on exportation) which apply to specific goods under the Community provisions in force (Article 4(9) of the Community Customs Code).

As for the application of these provisions of the Union Customs Code, it is noted in the case law of the Supreme Administrative Court of Lithuania that the facts of destruction of the goods would lead to the extinguishing of the customs debt on importation in case the customs debt on importation had appeared and the goods had been confiscated and destroyed at the time Article 124(1)(e) and (f) of the Union Customs Code were in effect, i.e. after 1 May 2016, as the provisions of the Union Customs Code, providing for appearance/extinguishing of a customs debt, are substantive, therefore, they can be regarded only in those situations that appeared after the effective date of this Code (ruling of the Supreme Administrative Court of Lithuania of 25 September 2019 in administrative case No. eA-4293-968/2019;³¹ see also the ruling of the Supreme Administrative Court of Lithuania of 20 November 2019 in administrative case No. eA-1256-261/2019;³²

30 Ruling of the Supreme Administrative Court of Lithuania of 18 November 2011 in administrative case No. A¹⁴³-2619/2011, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/288622#pa4>).

31 Judgement of the Supreme Administrative Court of Lithuania of 25 September 2019 in administrative case No. eA-4293-968/2019, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/1763836>).

32 Judgement of the Supreme Administrative Court of Lithuania of 20 November 2019 in administrative case No. eA-1256-261/2019, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/1780236>).

the ruling of 30 September 2020 in administrative case No. eA-1407-442/2020;³³ the ruling of 7 July 2021 in administrative case No. eA-1823-575/2021³⁴).

Thus, the Supreme Administrative Court of Lithuania in its case law consistently holds the position that the fact of confiscation or destruction of goods, their abandonment to the State or their confiscation and subsequent destruction is a basis for admitting that the customs debt as is it defined in Article 4(9) of the Community Customs Code has been extinguished. However, the provisions of Article 124(1)(e) and (f) of the Union Customs Code *expressis verbis* apply only to import and export duties.

According to paragraph 2 of Article 20 of the Law of the Republic of Lithuania on Excise Duty (version of Law No. XII-2696³⁵ of 3 November 2016), the obligation to pay excise duty to the customs shall *mutatis mutandis* disappear in the cases specified in Article 124(1)(d)–(g) of the Union Customs Code. An analogous rule is also established in paragraph 2 of Article 121 of the Law of the Republic of Lithuania on Value Added Tax (version of Law No. XII-2697³⁶ of 3 November 2016), which provides that the obligation to pay import VAT to the customs shall *mutatis mutandis* disappear in the cases specified in Article 124(1)(d)–(g) of the Union Customs Code.

As we have already mentioned, taxation with the value added tax and the excise duty is regulated not only by national law but also by European Union law (the VAT Directive and Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (hereinafter also referred to as the Excise Directive)). Neither the VAT Directive nor the Excise Directive directly establishes that the obligation to pay the said taxes would disappear in case of destruction of goods, their abandonment to the State or their confiscation and subsequent destruction. Therefore, a question may be reasonably raised whether a Member State may, according to the provisions of the VAT Directive and the Excise Directive, provide for conditions in national law on the disappearance of the obligation to pay the import VAT and the excise duty.

33 Judgement of the Supreme Administrative Court of Lithuania of 30 September 2020 in administrative case No. eA-1407-442/2020, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/1929230>).

34 Judgement of the Supreme Administrative Court of Lithuania of 7 July 2021 in administrative case No. eA-1823-575/2021, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/2010458>).

35 Law on Amending Articles 3, 9, 12, 14, 15, 20, 21, 33 and 43 of Law No. IX-569 of the Republic of Lithuania on Excise Duty, Register of Legal Acts, visited on 9 January 2022 (<https://www.e-tar.lt/portal/lt/legalAct/bc092070abd411e6b844f0f29024f5ac>).

36 Law on Amending Articles 2, 123, 14, 15, 45, 53, 56, 71, 93, 94, 120 and 121 of Law No. IX-751 of the Republic of Lithuania on Value Added Tax, Register of Legal Acts, visited on 9 January 2022 (<https://www.e-tar.lt/portal/lt/legalAct/fc6b39boabd811e6b844f0f29024f5ac>).

Article 7(1) of the Excise Directive provides that excise duty shall become chargeable at the time, and in the Member State, of release for consumption. Article 7(2)(d) of the Excise Directive says that for the purposes of this Directive, 'release for consumption' shall mean the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.

Article 2(1)(d) of the VAT Directive says that the importation of goods is subject to VAT and Article 70 says that the chargeable event shall occur and VAT shall become chargeable when the goods are imported.

The Supreme Administrative Court of Lithuania, when examining administrative case No. A-830-442/2020, had doubts whether the regulation established in paragraph 2 of Article 20 of the Law of the Republic of Lithuania on Excise Duty (version of Law No. XII-2696 of 3 November 2016) and in paragraph 2 of Article 121 of the Law of the Republic of Lithuania on Value Added Tax (version of Law No. XII-2697 of 3 November 2016) is in line with the provisions of the VAT Directive and the Excise Directive, therefore, by its ruling of 30 September 2020³⁷, it referred to the Court of Justice for a preliminary ruling with the following question: Are Articles 2(b) and 7(1) of the Excise Directive and Articles 2(1)(d) and 70 of the VAT Directive to be interpreted as meaning that the obligation to pay excise duty and/or VAT is not extinguished where smuggled goods are seized and subsequently confiscated after they have already been unlawfully introduced (released for consumption) into the customs territory of the Union, even if the customs debt has been extinguished on the ground provided for in Article 124(1)(e) of the Union Customs Code?

The case has not been settled by the Court of Justice yet, but an opinion of Advocate General Tanchev was already delivered for the case file on 6 October 2021, where it is proposed to answer the said question of the Supreme Administrative Court of Lithuania as follows: Articles 2(b) and 7(1) of the Excise Directive and Articles 2(1)(d) and 70 of the VAT Directive are to be interpreted as meaning that the obligation to pay excise duty and VAT is not extinguished where smuggled goods are seized and subsequently confiscated after they have already been unlawfully introduced into the customs territory of the European Union, even if the customs debt has been extinguished on the ground provided for in Article 124(1)(e) of the Union Customs Code.³⁸

37 Judgement of the Supreme Administrative Court of Lithuania of 30 September 2020 in administrative case No. A-830-442/2020, Infolex, visited on 9 January 2022 (<https://www.infolex.lt/tp/1941125#pa4>).

38 Opinion of Advocate General Evgenij Tanchev delivered on 6 October 2021 in *UB v. Kauno teritorinė muitinė*, C-489/20, ECLI:EU:C:2021:824.

To conclude, it can be stated that, with regard to the case law of the Supreme Administrative Court of Lithuania, applying EU law in tax disputes, from the perspective of twenty years of activity, there is a clear trend toward consistency with the jurisprudence of the Court of Justice and, in the event of uncertainty about the interpretation and application of EU law, a tendency to refer the Court of Justice for a preliminary ruling is observed.