



20.11.2009

NOTICE TO MEMBERS

Subject: Petition 0600/2009 by Karen & David Hill (British), on inadequate and erroneous information from SOLVIT UK and Spain, and harassment and intimidation by the Spanish customs authorities

1. Summary of petition

The petitioners register a complaint against SOLVIT UK and Spain and the Spanish customs authorities. They run a small business assisting owners of second homes in the Canary Islands with the transport of their personal belongings (vehicles, possessions, domestic animals) In the autumn of 2008, after many problem-free trips, they had one of their transport vehicles impounded on the grounds that it had entered the Canaries too often and now needed to be imported subject to the payment of customs duties. The petitioners were subsequently given contradictory information by SOLVIT UK and Spain, as well as the Spanish customs authorities. They were also threatened and intimidated by the Spanish customs authorities. After 6 months and 1 day, their vehicle was released. Meanwhile their business has gone bankrupt.

2. Admissibility

Declared admissible on 9 September 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 20 November 2009.

The petition

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There were 2 earlier cases in 1988 and 1993 of harassment by Spanish customs officials.

The Commission's comments

The petitioners complain against SOLVIT and against the way Spanish customs authorities have dealt with them.

Concerning the complaint against SOLVIT

The complaint from Blue Flag Transport was registered in the SOLVIT database on 20 October 2008 by SOLVIT UK and transferred to the SOLVIT centre in Spain, where the problem had occurred. SOLVIT UK provided a legal assessment of the case based on the information given by the complainant and asked SOLVIT Spain to investigate why the van and goods had been seized by the Spanish customs authorities and to find a solution for the problem.

The Spanish SOLVIT centre contacted the customs authorities and was told that the justification for impounding the van and its content was an alleged false customs declaration made by the complainant. SOLVIT Spain therefore concluded that no EU law had been misapplied and explained what the complainants had to do to get the goods and the van back.

SOLVIT UK informed the clients of the outcome and of the steps to be taken according to the Spanish SOLVIT centre. However, the complainants contested the information given by the Spanish customs authorities and did not agree with the outcome of the SOLVIT procedure. Additional contacts between SOLVIT UK and SOLVIT Spain did not produce any further results since SOLVIT as an informal network does not have the power nor the means to conduct investigations when the facts of a case are contested as was the case here. This was explained to the complainant and the case was closed in SOLVIT on 3 December 2008.

It has to be emphasised that SOLVIT is not an EU body with formal powers to adjudicate EU legislation. It is a voluntary cooperation network set up between national administrations to solve informally problems for citizens and businesses resulting from the misapplication of internal market law by public authorities. It was set up in 2002 on the basis of a Commission Recommendation ((2001/893/EC). The SOLVIT centres do not have any formal powers. The SOLVIT centres are placed within the national administrations and fall under the direct responsibility of the national governments. The role of the European Commission is to facilitate the functioning of the network.

In most cases this informal SOLVIT cooperation leads to a rapid solution of the problem

which, if formal procedures had been followed, could have lasted much longer. Unfortunately there are also cases which cannot be solved informally, for instance when legal proceedings have already been initiated, when a national authority refuses to cooperate with the national SOLVIT centre or, as in this case, when it turns out that the very facts of a case are contested between the parties.

The SOLVIT website explains these restrictions and states that taking into account this informal nature of SOLVIT, complainants do not have to accept the proposed solution and cannot challenge the solution proposed formally through SOLVIT. If they cannot accept the solutions proposed, they can pursue legal action through a national court or lodge a formal complaint with the European Commission. The complainant was informed about these options by SOLVIT UK.

Concerning the substance of the complaint

The Commission services have contacted SOLVIT Spain seeking information about the substance of the case. Notwithstanding the fact that the information received from SOLVIT is a valuable one, it seems that, in order to fully ascertain the position of the Spanish customs and tax authorities on the substance of the case, further contacts with those authorities would be necessary.