

### **Case 314/85 Foto-Frost [1987]**

**Facts:** Foto-Frost, a German importer of photographic goods, imported into Germany prismatic binoculars originating from Denmark and the United Kingdom. The competent customs offices initially allowed the goods to enter free of duty, but following a check considered that the customs duty was due under the German customs legislation. However, it took the view that, according to the relevant Regulation, it was not appropriate to effect the post-clearance recovery. As the German office itself was not empowered to take this decision according to the Regulation, the Minister for Finance requested the Commission to decide whether the post-clearance recovery of the duty could be waived. The Commission addressed to Germany a decision to the effect that it could not, and the custom office issued the notice for the post-clearance recovery of duty. Foto-Frost applied for the annulment of the notice before the Finance Court of Hamburg, which took the view that the validity of the Commission's decision was doubtful. In connection with these proceedings, the Finance Court of Hamburg referred for a preliminary ruling whether a national court could review the validity of a decision adopted by the Commission and whether the relevant Commission's decision was valid.

**Held:** National courts do not have the power to declare acts of the Community institutions invalid. Divergences between national courts as to the validity of Community acts would put in jeopardy the unity of the Community legal order and legal certainty. Requests for preliminary rulings and actions for annulment constitute means for reviewing the legality of acts of the Community institutions. The power to declare a Community act invalid must be reserved to the Court of Justice, which is in the best position to decide as Community institutions whose acts are challenged are entitled to participate in the proceedings. The three requirements laid down by the relevant Regulation to waive the post-clearance recovery of duties were fulfilled: the failure to collect the duty was a result of an error made by the customs authorities, Foto-Frost acted in good faith and it had completed its customs declaration correctly. Therefore, the Commission decision was invalid.