JUDGMENT OF THE COURT (Fourth Chamber)

26 April 2007 *

In Case C-392/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Simvoulio tis Epikratias (Greece), made by decision of 30 June 2005, received at the Court on 31 October 2005, in the proceedings

Georgios Alevizos

v

Ipourgos Ikonomikon,

THE COURT (Fourth Chamber),

composed of K. Lenaerts (Rapporteur), President of the Chamber, E. Juhász, R. Silva de Lapuerta, J. Malenovský and T. von Danwitz, Judges,

* Language of the case: Greek.

Advocate General: J. Kokott,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 December 2006,

after considering the observations submitted on behalf of:

— Mr Alevizos, by P. Damouli, dikigoros,

— the Greek Government, by M. Apessos, I. Bakopoulos and K. Boskovits, acting as Agents,

— Commission of the European Communities, by D. Triantafyllou, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2007,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 6 of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (OJ 1983 L 105, p. 64), as amended by Council Directive 89/604/EEC of 23 November 1989 (OJ 1989 L 348, p. 28, 'Directive 83/183').

2 The reference has been made in the context of proceedings between Mr Alevizos and the Ipourgos Ikonomikon (Greek Minister for Economic Affairs) concerning excise duties and a special supplementary single-payment tax on vehicle registration ('special vehicle registration tax') levied on the permanent import into Greece of a private motor vehicle from Italy.

Legal context

Community legislation

Directive 83/183

3 The first and second recitals in the preamble to Directive 83/183 are worded as follows:

'... in order that the people of the Member States become more aware of the existence of the European Community, further measures to benefit private individuals should be taken in order to create conditions in the Community similar to those in a domestic market;

... in particular, the tax obstacles to the importation by private individuals of personal property into one Member State from another Member State are such as to hinder the free movement of persons within the Community; ... therefore, these obstacles should be eliminated as far as possible by the introduction of tax exemptions'.

4 Under Article 1(1) of Directive 83/183, subject to the conditions and in the cases set out in that directive, every Member State is to 'exempt personal property imported permanently from another Member State by private individuals from turnover tax, excise duty and other consumption taxes which normally apply to such property'.

5 Article 1(2) states that:

'Specific and/or periodical duties and taxes connected with the use of such property within the country, such as for instance motor vehicle registration fees, road taxes and television licences, are not covered by this Directive.'

6 Article 2 of Directive 83/183 provides that:

'1. For the purposes of this Directive, "personal property" means property for the personal use of the persons concerned or the needs of their household. Such property must not, by reason of its nature or quantity, reflect any commercial interest, nor be intended for an economic activity within the meaning of Article 4 of Directive 77/388/EEC ...

2. The exemption for which Article 1 makes provision shall be granted for personal property:

...

(b) of which the person concerned has had the actual use before the change of residence is effected or the secondary residence established. In the case of motor-driven vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, Member States may require that the person concerned should have had the use of them for a period of at least six months before the change of residence.

...'

7 The concept of 'normal residence' within the meaning of Directive 83/183 is defined in Article 6(1), concerning '[g]eneral rules for determining residence', in the following terms:

'For the purposes of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.'

8 Under Article 7(1)(a) of Directive 83/183, the exemption for which Article 1 makes provision is to be granted in respect of personal property imported by a private individual when transferring his normal residence.

Directive 92/12/EEC

9 The third, fourth and twentieth recitals in the preamble to Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) state:

'... the concept of products subject to excise duty should be defined; ... only goods which are treated as such in all the Member States may be the subject of Community provisions; ...

... in order to ensure the establishment and functioning of the internal market, chargeability of excise duties should be identical in all the Member States;

...

... as a result of the abolition of the principle of taxes on imports in relations between Member States, the provisions on exemptions and allowances on imports cease to apply in respect of relations between Member States; ... these provisions should therefore be abolished and the directives concerned adapted accordingly'.

10 Under Article 1(1) of Directive 92/12, the purpose of that directive is to '[lay] down the arrangements for products subject to excise duties and other indirect taxes which are levied directly or indirectly on the consumption of such products, except for value added tax and taxes established by the Community'.

11 Article 3(1) of Directive 92/12 provides that:

'This Directive shall apply at Community level to the following products as defined in the relevant Directives:

— mineral oils,

— alcohol and alcoholic beverages,

— manufactured tobacco.'

12 Under Article 23(3) of Directive 92/12:

'The provisions on excise duty laid down in the following Directives shall cease to apply on 31 December 1992:

...

— Directive 83/183/EEC ...,

...'

National legislation

13 Directive 83/183 was transposed into Greek law by Order D.264/23 of the Minister for Economic Affairs of 8 March 1985 (FEK B' 139/18.3.1985). That order was replaced by Order D.245/11 of the Minister for Economic Affairs of 1 March 1988 (FEK B' 195/6.4.1988, 'Order D.245/11').

14 Under its Article 1(1), Order D.245/11 'determines the cases in which exemption is granted from customs duties and from other taxes for personal property imported by private individuals'.

15 Article 2(1)(c) of Order D.245/11, in the version resulting from Article 15 of Law No 2187/1994 (FEK A' 16), which was adopted following the judgment of the Court in Case C-9/92 *Commission* v *Greece* [1993] ECR I-4467, reproduces the definition of the concept of normal residence contained in Article 6(1) of Directive 83/183.

16 Article 3(1) of Order D.245/11 lays down the principle of the exemption from customs duties and other taxes for personal goods imported by natural persons who transfer their normal residence from another State to Greece.

17 Article 25 of Chapter 8 of Order D.245/11 is worded as follows:

'1. The exemptions referred to in Article 3 of this Order shall be granted for personal property imported by Greek nationals having their normal residence in Greece who

have left Greece to work abroad, where they remain working as an employee or otherwise for more than two (2) successive years and, when their work is terminated, return to Greece to settle there permanently.

2. The persons entitled to exemption as envisaged by the preceding paragraph shall include Greek civil servants (including diplomats), judicial officers, officers, non-commissioned officers and other ranks of the armed forces, the public security forces and the harbour police corps who remain abroad for more than two (2) consecutive years solely and exclusively for the purpose of carrying out their duties and on termination of the latter return to Greece on transfer or permanently.'

18 Article 6(13) of Law No 2459/1997 on the abolition of tax exemptions and other provisions (FEK A' 17) repealed inter alia Article 25 of Order D.245/11 'relating to exemption for the personal property of Greeks working abroad, but only as concerns means of transport'. According to that provision, '[f]or passenger vehicles that were owned by such persons on 31 December 1996, when customs clearance takes place within six (6) months of publication of this Law in the *Official Gazette of the Hellenic Republic*, excise duty shall be calculated on the basis of the coefficients defined in Article 37 of Law No 1882/1990, as amended.' That provision entered into force on 1 January 1997. The period laid down in Article 6(13) was extended until 31 December 1997 by Article 32(1) of Law No 2523/1997 (FEK A' 179).

19 Directive 92/12 was transposed into Greek law by Law No 2127/1993 on harmonisation with Community law of the fiscal rules applicable to oil products,

ethyl alcohol and alcoholic beverages and manufactured tobacco, and other provisions (FEK A' 48).

20 Article 75 of Law No 2127/1993 provides that:

'Motor vehicles and motorcycles which meet the conditions set out in Articles 9 and 10 of the EEC Treaty and are sent or transported into the country from other Member States of the Community shall be subject to the excise duty stipulated for equivalent imported or domestically manufactured vehicles.'

21 Article 83 of that Law provides that:

'Partial or total exemption from excise duty as provided for by the provisions in force at any given time for vehicles imported permanently from non-member countries shall also apply, subject to the same terms and conditions, to the vehicles referred to in Article 75.'

The dispute in the main proceedings and the question referred for a preliminary ruling

22 By decree of the Greek Minister for Defence, Mr Alevizos, an officer in the Greek Air Force, was posted from 12 July 1995 to 8 August 1997 to the Regional

Headquarters Allied Forces Southern Europe in Naples (Italy), where he occupied a position within the North Atlantic Treaty Organisation (NATO). By decision of the Chief of the General Air Staff, the Air Force approved the move, at the expense of the service, of Mr Alevizos's wife and two children.

23 At the end of the period of service set for that position, the Consul General of the Hellenic Republic at Naples issued a certificate of return to Greece for Mr Alevizos and for the members of his family in which Mr Alevizos was classed as a person coming under Chapter 8 of Order D.245/11.

24 Attached to that certificate was a declaration from the interested party to the effect that he wished to import into Greece a private motor vehicle — a Mercedes E 200 (year of manufacture: 1996), which he had bought in Germany on 17 December 1996 and of which he took possession on 23 December 1996.

25 On his return to Greece, Mr Alevizos lodged a transfer declaration in respect of that vehicle at the Elefsina Customs Office.

26 By decision of 28 August 1997, that office claimed the sum of GRD 4 136 413 from Mr Alevizos by way of excise duties under Article 75 of Law No 2127/1993, calculated in accordance with Article 6(13) of Law No 2459/1997 on the basis of the reduced coefficients defined by Article 37 of Law No 1882/1990 then in force. By that same decision, it also claimed the sum of GRD 1 470 775 from Mr Alevizos by way of special registration tax pursuant to Article 15(7) of Law No 2367/1953.

27 After paying the sums requested of him in respect of excise duties and special registration tax ('the taxes at issue in the main proceedings'), Mr Alevizos lodged an appeal against the tax decision of 28 August 1997 before the Diikitiko Protodikio Athinon (Administrative Court of First Instance) (Athens) (Greece), which partially reversed that decision by increasing the percentage reduction for normal wear-and-tear to the vehicle.

28 Mr Alevizos lodged an appeal against that judgment before the Diikitiko Efetio Athinon (Administrative Appeal Court) (Athens).

29 Confirming the judgment at first instance, that court held that Mr Alevizos's stay in Naples constituted an official task of a definite duration and that, whilst he was posted to NATO in that city, his place of normal residence within the meaning of

Article 6(1) of Directive 83/183 and Article 2 of Order D.245/11 continued to be Greece, which was the permanent centre of his personal and professional ties, notwithstanding the fact that the members of his family had accompanied him to Italy.

30 The Diikitiko Efetio Athinon consequently held that Mr Alevizos's case came not within Article 3 of Order D.245/11, but within Articles 25(1) and (2) of that order and Article 6(13) of Law No 2459/1997 repealing the provisions of Article 25 with effect from 1 January 1997.

31 Mr Alevizos lodged an application for review of the judgment of the Diikitiko Efetio Athinon before the appeal court.

32 Against that background, uncertain as to how to interpret the concept of 'normal residence' within the meaning of Article 6(1) of Directive 83/183, the Simvoulio tis Epikratias (Council of State) (Greece) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Are civil servants and officers, non-commissioned officers and other ranks of the armed forces, the public security forces and the harbour police corps covered, like

other workers, by Article 6 of Council Directive 83/183/EEC and capable of acquiring "normal residence" in another country where they live for at least 185 days in each calendar year in order to carry out an official task of a definite duration, or do they continue, even during the period of their assignment in the other country, to have their normal residence in Greece, irrespective of whether they have transferred their personal and occupational ties to the other country?'

The questions referred for a preliminary ruling

33 By its question, the national court asks essentially whether Article 6(1) of Directive 83/183 must be interpreted as meaning that an employee in the public service, the armed forces, the public security forces or the harbour police corps of a Member State, who stays for at least 185 days a year in another Member State with the members of his family in order to carry out an official task of a definite duration in that latter State, has, for the duration of that task, his normal residence, within the meaning of Article 6(1), in that other Member State, or whether, on the contrary, he continues to have his normal residence in the first Member State.

34 Before answering that question, it is necessary to determine whether Directive 83/183 applies to the case in the main proceedings.

The applicability of Directive 83/183

35 First, as regards the scope ratione temporis of Directive 83/183, it is necessary to examine whether, as the Greek Government contends, the provisions of that

directive concerning excise duties had, by reason of Directive 92/12, ceased to apply at the date of the transfer of Mr Alevizos's vehicle from Italy to Greece.

36 It is clear that the scope of Directive 92/12 is defined in Article 3(1) thereof by reference to three categories of products constituting an exhaustive list, which correspond, as is clear from the third recital in the preamble to the directive, to goods which are treated as subject to excise duty 'in all the Member States'. That list does not include motor vehicles, which are thus excluded from the scope of that directive.

37 As is clear from points 33 and 34 of the Advocate General's Opinion, it is not acceptable, for reasons particularly connected with legal certainty, for a particular provision of Directive 92/12, namely Article 23(3), to be recognised, in the absence of an express indication by the legislature to that effect, as having a wider scope than that generally conferred on the directive by Article 3(1) thereof.

38 Moreover, whilst for the products referred to in Article 3(1) of Directive 92/12, the harmonisation carried out by that directive — particularly through the standardisation of requirements for levying excise duties in the Community, to ensure the establishment and functioning of the internal market (see the fourth recital in the preamble to Directive 92/12; see also Case C-296/95 *EMU Tabac and Others* [1998] ECR I-1605, paragraph 22; Case C-325/99 *Van de Water* [2001] ECR I-2729, paragraph 39; and Case C-240/01 *Commission* v *Germany* [2004] ECR I-4733, paragraph 36) — makes it possible to avoid double taxation in relations between

Member States and therefore renders unnecessary the application to those products of the provisions of Directive 83/183 concerning exemptions from excise duty on imports (see recital 20 in the preamble to Directive 92/12), conversely, it applies differently for other products.

39 In the absence of a Community harmonisation measure comparable to those laid down by Directive 92/12 for products referred to in Article 3(1) thereof, those other products run the risk of double taxation in intra-Community relations, as the Advocate General noted in point 37 of her Opinion. In view of the objective of completing the internal market, such a risk justifies maintaining in force the provisions of Directive 83/183 concerning tax exemptions as regards those products.

40 It follows that Article 23(3) of Directive 92/12, according to which the provisions of Directive 83/183 concerning excise duties ceased to have effect on 31 December 1992, covers such duties only in so far as they relate to the three categories of product set out in Article 3(1) of Directive 92/12. Those provisions therefore remained applicable after that date in respect of other products, such as motor vehicles, which do not fall within the scope of Directive 92/12.

41 Secondly, as regards the scope ratione personae of Directive 83/183, it is necessary to determine whether, as the Greek Government maintains, this relates solely to imports of goods by workers within the meaning of Article 39 EC, to the exclusion of imports by members of a public service such as Mr Alevizos.

42 In that respect, it is necessary to state at the outset that Directive 83/183 was adopted on the basis of Article 99 of the EC Treaty (now Article 93 EC). That provision empowers the Council to harmonise national legislation concerning, inter alia, excise duties, to the extent necessary to ensure the establishment and functioning of the internal market (*Commission* v *Germany*, paragraph 35).

43 In addition, it is clear from reading the first and second recitals in the preamble to Directive 83/183, in conjunction with Articles 1 and 2 thereof, that that directive was adopted to benefit 'private individuals' in order to improve the free movement of 'persons' in the Community and thereby to increase the feeling of belonging to the Community and that, to this end, it seeks to facilitate imports of personal property, defined as property 'for the personal use of the persons concerned or the needs of their household'.

44 Therefore, the scope ratione personae of Directive 83/183 cannot be limited to workers within the meaning of Article 39 EC, nor can it exclude from the latter those in employment in the public service of a Member State.

45 It follows that a situation such as that of Mr Alevizos comes within the scope ratione personae of Directive 83/183.

46 It is necessary, thirdly, to examine the scope ratione materiae of Directive 83/183 as regards the taxes at issue in the main proceedings.

47 Under Article 1(1) of Directive 83/183, 'excise duty and other consumption taxes which normally apply to' 'personal property imported permanently from another Member State by private individuals' fall, in particular, within the sphere of the exemption laid down by that provision.

48 One of the taxes at issue in the main proceedings constitutes, under the applicable national legislation, 'excise duty' (see paragraph 26 of this judgment) and therefore normally comes within the scope of the tax exemption provided for by Article 1(1) of Directive 83/183. While the name given to a tax in national law is not as such decisive (see Case C-365/02 *Lindfors* [2004] ECR I-7183, paragraph 24), it is nevertheless for the national court to determine whether that tax may be considered to be normally chargeable on the permanent import into Greece of a vehicle for personal use from another Member State, as required by Article 1(1).

49 As regards the special registration tax, also the subject of complaint by Mr Alevizos (see paragraph 26 of this judgment), it must be stated that it is settled case-law of the Court that, in order for it to fall within the scope of the tax exemption provided for in Article 1(1) of Directive 83/183, the tax at issue must correspond, according to the national law applicable, to a levy linked to actual importation. Conversely, where the national provisions governing the tax concerned identify the operative event giving rise to the tax as something other than importation, such as a first registration or the use of a vehicle on national territory, the tax does not come within the scope of Article 1(1) of Directive 83/183 (see Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 47; *Lindfors*, paragraph 26; and the judgment of 16 June 2005 in Case C-138/04 *Commission* v *Denmark*, not published in the ECR, paragraph 13).

50 In the absence, in the file submitted to the Court, of any indication as to the operative event for the special registration tax (at issue in the main proceedings), it will be for the national court to undertake the necessary investigations, in the light of the case-law referred to in the previous paragraph, on the basis of the relevant national provisions.

51 It follows from the foregoing that excise duties such as those at issue in the main proceedings come within the scope of the tax exemption provided for in Article 1(1) of Directive 83/183 where it becomes clear — and that is something for the national court to determine — that they are normally charged on the permanent import by a private individual of a vehicle for personal use from another Member State. A special supplementary single-payment registration tax such as that at issue in the main proceedings also falls within Article 1(1) where it becomes clear — and that is something which it is for the national court to determine — that it is linked to the actual importation of the vehicle.

52 If it should transpire that the taxes at issue in the main proceedings come within the scope of the tax exemption provided for in Article 1(1) of Directive 83/183, the question of the interpretation of Article 6(1) of that directive would then arise.

The interpretation of Article 6(1) of Directive 83/183

53 It is important, first, to note that the objective of Directive 83/183, in the light of which the question raised must be answered, is, according to the recitals in its preamble, to encourage free movement of persons within the Community. The elimination of obstacles to the importation into one Member State of personal property from another is, from that point of view, particularly necessary for the creation of conditions analogous to those of an internal market (see, by analogy, Case C-262/99 *Louloudakis* [2001] ECR I-5547, paragraph 58).

54 Secondly, with regard to Article 7 of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59), which defines the concept of normal residence in terms analogous to those used in Article 6 of Directive 83/183, the Court has already held that the criteria for determining that concept refer both to a person's occupational and personal ties with a particular place and to the duration of those ties. Consequently, they must be

examined in conjunction with each other (see Case C-297/89 *Ryborg* [1991] ECR I-1943, paragraph 19, and *Louloudakis*, paragraph 51).

55 Normal residence must be regarded as the place where a person has established his permanent centre of interests (see, by analogy, *Ryborg*, paragraph 19, and *Louloudakis*, paragraph 51).

56 The criterion of permanence refers to the condition that the person must be habitually resident in the place concerned for at least 185 days in each calendar year. In the case in the main proceedings, in which, according to the findings of the national court, that condition has been fulfilled, the definite duration of Mr Alevizos's posting to NATO in Italy thus does not as such exclude the possibility that during the period at issue he had his normal residence in that Member State.

57 All of the relevant facts must be taken into consideration in determining normal residence as the permanent centre of interests of the person concerned (see *Ryborg*, paragraph 20), namely, in particular, the actual presence of the person concerned and of the members of his family, the availability of accommodation, the place where the children actually attend school, the place where business is conducted, the place where property interests are situated, that of administrative links to public services and social services, inasmuch as those factors express the intention of that person to confer a certain stability on the place of connection, by reason of the continuity arising from a way of life and the development of normal social and occupational relationships (*Louloudakis*, paragraph 55).

58 It must be pointed out that, although, in accordance with the second subparagraph of Article 6(1) of Directive 83/183, the aspect of attendance at an educational establishment does not imply transfer of normal residence as regards the person concerned himself, it may none the less, considered in a family context, be evidence of such transfer, as stated by Mr Alevizos in his written observations, with regard to his children (see, by analogy, *Louloudakis*, paragraph 56).

59 As for the Greek Government's contention that Mr Alevizos had, in the present case, retained professional links with the Greek authorities and a social and tax connection with Greece during the period of his posting to NATO in Italy, it must be pointed out, first, that, were such a situation to exist, it would not vitiate the fact that during that period Mr Alevizos was carrying on his professional activity in Italy, which was the centre of his occupational ties, as the Advocate General has stated at point 66 of her Opinion.

60 Secondly, it is clear from the second subparagraph of Article 6(1) of Directive 83/183 that that provision gives priority to personal ties where the person concerned does not have personal and occupational ties concentrated in a single Member State (see, by analogy, *Louloudakis*, paragraph 52).

61 Thus, Article 6(1) of Directive 83/183 provides for both occupational and personal ties to a given place to be taken into account and must be interpreted as meaning that, in the event that an overall assessment of occupational and personal ties does not suffice to locate the permanent centre of interests of the person concerned, primacy must be given, for the purposes of locating it, to personal ties (see, by analogy, *Louloudakis*, paragraph 53).

62 It follows from the foregoing that Article 6(1) of Directive 83/183 must be interpreted as meaning that an employee in the public service, the armed forces, the public security forces or the harbour police corps of a Member State, who stays for at least 185 days a year in another Member State with the members of his family in order to carry out an official task of a definite duration in that latter State, has, for the duration of that task, his normal residence, within the meaning of Article 6(1), in that other Member State.

Articles 18 EC and 39 EC

63 At the hearing, the Commission of the European Communities contended that the case in the main proceedings could also be examined under Articles 18 EC and 39 EC.

64 Even if, formally, the national court has limited its question to the interpretation of Article 6 of Directive 83/183, such a situation does not prevent the Court from providing the national court with all the elements of interpretation of Community law which may enable it to rule on the case before it, whether or not reference is made thereto in the question referred (see, to that effect, Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8; Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 16; *Weigel*, paragraph 44; and *Lindfors*, paragraph 32).

65 In the present case, on the assumption that the taxes at issue in the main proceedings do not come within the scope of Article 1(1) of Directive 83/183, it is necessary to assess the effect that the application of those taxes has on the right of a Community national such as Mr Alevizos to freedom of movement, as enshrined in Articles 18 EC and 39 EC.

66 According to settled case-law, Article 18 EC, which sets out generally the right of every citizen of the Union to move and reside freely within the territory of the Member States, finds specific expression in Article 39 EC in relation to freedom of movement for workers (see Case C-100/01 *Oteiza Olazabal* [2002] ECR I-10981, paragraph 26, and Case C-520/04 *Turpeinen* [2006] ECR I-10685, paragraph 13). It is therefore necessary to ascertain first whether the case in the main proceedings can come within the scope of Article 39 EC.

67 In that respect it is necessary to point out that the concept of 'worker' within the meaning of Article 39 EC has a specific Community meaning and must not be interpreted narrowly. Any person who pursues activities which are real and genuine, to the exclusion of activities on such a small scale as to be regarded as purely marginal and ancillary, must be regarded as a 'worker'. The essential feature of an employment relationship is, according to the case-law of the Court, that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration (see, in particular, Case 66/85 *Lawrie-Blum* [1986] ECR 2121, paragraphs 16 and 17; Case C-138/02 *Collins* [2004] ECR I-2703, paragraph 26; and Case C-456/02 *Trojani* [2004] ECR I-7573, paragraph 15).

68 As follows from well-established case-law, the legal nature of the employment relationship is of no consequence in regard to the application of Article 39 EC (see, in particular, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 5; Case 344/87 *Bettray* [1989] ECR 1621, paragraph 16; and *Trojani*, paragraph 16). The fact that the worker is employed as a civil servant, or even that the employment relationship is governed by public law rather than by private law, is irrelevant in that respect (see *Sotgiu*, paragraph 5).

69 Moreover, whilst acknowledging that the position occupied by Mr Alevizos in the Greek Air Force before his temporary posting to a position in NATO might fall within the concept of 'employment in the public service' within the meaning of Article 39(4) EC in so far as it involves direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities (see, to that effect, Case 149/79 *Commission* v *Belgium* [1980] ECR 3881, paragraph 10; Case C-290/94 *Commission* v *Greece* [1996] ECR I-3285, paragraph 2; Case C-47/02 *Anker and Others* [2003] ECR I-10447, paragraph 58), it must be noted that, taking account of the fundamental nature, in the scheme of the EC Treaty, of the principles of freedom of movement and equality of treatment of workers within the Community, the exceptions made by that provision cannot have a scope going beyond the aim in view of which that derogation was included (*Sotgiu*, paragraph 4).

70 That aim is to allow only Member States the opportunity of restricting admission of foreign nationals to certain positions in the public service (*Sotgiu*, paragraph 4), which presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form

the foundation of the bond of nationality (see *Commission* v *Belgium*, paragraph 10). Article 39(4) EC cannot, conversely, have the effect of disentitling a worker, once admitted into the public service of a Member State, to the application of the provisions contained in Article 39(1) to (3) EC (see, to that effect, *Sotgiu*, paragraph 4).

71 In addition, nothing on the file indicates in the present case that the levying of the taxes at issue in the main proceedings might be linked to Mr Alevizos's status as an officer in the Greek Air Force. The taxes are imposed on him as a person who has transferred his residence from one Member State to another.

72 Concerning Mr Alevizos's temporary posting to a position in NATO, it is settled case-law that a Community national working in a Member State other than his State of origin does not lose his status as a 'worker' within the meaning of Article 39(1) EC through occupying a post in an international organisation (see, inter alia, Joined Cases 389/87 and 390/87 *Echternach and Moritz* [1989] ECR 723, paragraphs 11 and 15; Case C-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, paragraph 28; Case C-293/03 *My* [2004] ECR I-12013, paragraph 37; and Case C-185/04 *Öberg* [2006] ECR I-1453, paragraph 12).

73 It follows that a national of a Member State such as Mr Alevizos may not be refused the rights and protection which Article 39 EC affords him (see, to that effect, *Öberg*, paragraph 13).

74 It is settled case-law of the Court that all of the Treaty provisions relating to the freedom of movement for persons are intended to facilitate the pursuit by Community nationals of occupational activities of all kinds throughout the Community (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 94; Case C-18/95 *Terhoeve* [1999] ECR I-345, paragraph 37; Case C-190/98 *Graf* [2000] ECR I-493, paragraph 21; and *Weigel*, paragraph 52).

75 In the present case, the levying of the taxes in the case in the main proceedings could have the effect for Mr Alevizos of making return to his Member State of origin less attractive if, owing to the legislation of that State, that return, after the completion of professional activities in another Member State, is accompanied by unfavourable consequences in respect of the tax situation of workers who have availed themselves of their right to free movement. Such consequences would thus be likely to dissuade a national of one Member State from leaving it in order to carry on an activity in another Member State and to exercise his right to free movement (see, to that effect, Case C-370/90 *Singh* [1992] ECR I-4265, paragraphs 19 and 23, and Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 31).

76 However, the EC Treaty offers no guarantee to a worker that transferring his activities to a Member State other than that in which he previously resided will be neutral as regards taxation. Given the disparities in the tax legislation of the Member States, such a transfer may be to the worker's advantage in terms of indirect taxation or not, according to circumstance. It follows that, in principle, any disadvantage, by comparison with the situation in which that worker carried on activities prior to that transfer, is not contrary to Article 39 EC, provided, however, that the legislation concerned does not place that worker at a disadvantage as compared with those already subject to such a tax (see *Weigel*, paragraph 55, and *Lindfors*, paragraph 34).

77 Against that background, the compatibility of the taxes at issue in the main proceedings with Article 39 EC will depend, particularly, on the level of those taxes and on their detailed rules of application (see Case C-138/04 *Commission* v *Denmark*, paragraph 16).

78 In the present case, it will be for the national court to determine whether the national provisions governing the taxes at issue in the main proceedings are based on objective criteria and ensure, in particular as regards the account to be taken of the actual depreciation of the vehicle subject to tax (see, to that effect, Case C-47/88 *Commission* v *Denmark* [1990] ECR I-4509, paragraphs 19 to 22; *Weigel*, paragraph 70; and Joined Cases C-290/05 and C-333/05 *Nádasdi and Németh* [2006] ECR I-10115, paragraphs 47 and 51 to 57), that Mr Alevizos is not placed in a less favourable position than that of workers who have been permanently resident in Greece (see, to that effect, *Lindfors*, paragraph 35).

79 Should the national court find that such a less favourable situation exists, it would then have to examine whether that difference in treatment is justified by objective considerations that are independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law (see *D'Hoop*, paragraph 36, and *Lindfors*, paragraph 35).

80 Since the case in the main proceedings is capable of falling within the scope of Article 39 EC, it is not necessary to rule on the interpretation of Article 18 EC (see, to that effect, *Oteiza Olazabal*, paragraph 26).

81 In the light of all the foregoing, the answer to the question submitted must be that:

— Excise duties such as those at issue in the main proceedings come within the scope of the tax exemption provided for in Article 1(1) of Directive 83/183 where it is established — and that is something which it is for the national court to determine — that they are normally charged on the permanent importation by a private individual of a vehicle for personal use from another Member State.

A special supplementary single payment registration tax such as that at issue in the main proceedings comes within Article 1(1) where it is established — and that is something which it is for the national court to determine — that it is linked to the actual importation of the vehicle.

— Article 6(1) of Directive 83/183 must be interpreted as meaning that an employee in the public service, the armed forces, the public security forces or the harbour police corps of a Member State, who stays for at least 185 days a year in another Member State with the members of his family in order to carry out an official task of a definite duration in that latter State, has, during the period of that task, his normal residence, within the meaning of Article 6(1), in that other Member State.

— If, at the conclusion of the national court's investigations, it is established that the taxes at issue in the main proceedings do not come within the scope of the tax exemption provided for by Article 1(1) of Directive 83/183, it will be for the national court, having regard to the requirements arising from Article 39 EC, to determine whether the national provisions governing those taxes are such as to ensure that a person who, in the context of a transfer of residence, imports a vehicle into his Member State of origin is not placed in a less favourable position in connection with those taxes than that of other persons living permanently in that Member State and, if so, whether such a difference in treatment is justified by objective considerations that are independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law.

Costs

82 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Excise duties such as those at issue in the main proceedings come within the scope of the tax exemption provided for in Article 1(1) of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals, as amended by Council Directive 89/604/EEC of 23 November 1989, where it is established — and that is something which it is for the national court to determine — that they are normally charged on the permanent importation by a private individual of a vehicle for personal use from another Member State. A special supplementary single payment registration tax such as that at issue in the main proceedings comes within Article 1(1) where it is established — and that is something which it is for the national court to determine — that it is linked to the actual importation of the vehicle.

Article 6(1) of Directive 83/183 must be interpreted as meaning that an employee in the public service, the armed forces, the public security forces or the harbour police corps of a Member State, who stays for at least 185 days a year in another Member State with the members of his family in order to carry out an official task of a definite duration in that latter State, has, during the period of that task, his normal residence, within the meaning of Article 6(1), in that other Member State.

If, at the conclusion of the national court's investigations, it is established that the taxes at issue in the main proceedings do not come within the scope of the tax exemption provided for by Article 1(1) of Directive 83/183, it will be for the national court, having regard to the requirements arising from Article 39 EC, to determine whether the national provisions governing those taxes are such as to ensure that a person who, in the context of a transfer of residence, imports a vehicle into his Member State of origin is not placed in a less favourable position in connection with those taxes than that of other persons living permanently in that Member State and, if so, whether such a difference in treatment is justified by objective considerations that are independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law.

[Signatures]