JUDGMENT OF THE COURT (First Chamber)

15 July 2004 *

In Case C-365/02,

REFERENCE to the Court under Article 234 EC by the Korkein hallinto-oikeus (Finland) for a preliminary ruling in the proceedings pending before that court brought by

Marie Lindfors,

on the interpretation of Article 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 (OJ 1983 L 105, p. 64),

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr, R. Silva de Lapuerta and K. Lenaerts (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: H. von Holstein, Deputy Registrar,

* Language of the case: Finnish.

after considering the written observations submitted on behalf of:

— Ms Lindfors, by P. Snell, oikeustieteen kandidaatti,

— the Finnish Government, by T. Pynnä, acting as Agent,

— the Danish Government, by J. Bering Liisberg, acting as Agent,

— the Greek Government, by P. Panagiotounakos, D. Kalogiros and P. Mylonopoulos, acting as Agents,

— the Commission of the European Communities, by R. Lyal and I. Koskinen, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Lindfors, represented by P. Snell; the Finnish Government, represented by T. Pynnä; the Danish Government, represented by J. Molde, acting as Agent; the Greek Government, represented by M. Apessos, acting as Agent; and the Commission, represented by R. Lyal and I. Koskinen, at the hearing on 15 January 2004,

after hearing the Opinion of the Advocate General at the sitting on 4 March 2004,

gives the following

Judgment

1 By order of 10 October 2002, received at the Court on 14 October 2002, the Korkein hallinto-oikeus (Supreme Administrative Court) referred to the Court for a preliminary ruling under Article 234 EC a question on the interpretation of Article 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 (OJ 1983 L 105, p. 64).

2 That question was raised in proceedings between Ms Lindfors and the Finnish authorities concerning the car tax under Finnish legislation to which she was assessed following the transfer of her residence to Finland.

Legal background

Relevant provisions of Directive 83/183

3 Article 1 of Directive 83/183 provides:

'1. Every Member State shall, subject to the conditions and in the cases hereinafter set out, 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.

2. 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.'

Finnish legislation

4 The relevant provisions of national law are in the Autoverolaki (1482/1994) (Law on car tax) of 29 December 1994, in the version applicable in 1999 ('the Law on Car Tax').

5 Paragraph 1(1) of the Law on Car Tax prescribes that that tax (or 'autovero') is 'payable to the State before registration or bringing into use of [a private vehicle] in Finland'.

6 According to Article 2 of that law, 'bringing into use in Finland means use of the vehicle in traffic in Finnish territory even if the vehicle is not registered in Finland'. That provision continues: 'However, the use exclusively for his own needs for up to six months ... of a vehicle registered in a State other than Finland temporarily imported for his own use by a natural person permanently resident in a State other than Finland is not regarded as taxable use of a vehicle'.

7 Under Paragraph 4(1) of that law, '[t]he person liable to pay car tax is the importer of the vehicle or the manufacturer of a vehicle manufactured in Finland'. Similarly, Article 5 of the law states that '[t]he person liable to pay car tax must also pay value added tax on the car tax'.

8 At the material time for the main proceedings, Paragraph 6(1) of the Law on Car Tax stated:

'The tax due is the taxable value of the car, reduced by FIM 4 600. The amount of the tax is, however, always at least 50 % of the taxable value of the vehicle'.

9 Under Paragraph 7(1) of that law, the tax levied on an imported used car is the tax on an equivalent new vehicle, but reduced according to a proportional scale which takes into account the period (calculated in months) during which the vehicle has been in use.

10 Under Paragraph 25(1) of that law, '[t]he tax on one privately owned taxable vehicle imported in connection with a person's transfer of residence to the country is reduced by up to FIM 80 000', if the conditions set out in that provision are satisfied.

The main proceedings and the question referred for a preliminary ruling

11 After residing in other Member States, Ms Lindfors moved permanently to Finland, and in connection with that transfer of residence imported into Finland on 4 August 1999 a private vehicle which was her personal property, which she had brought into use in the Netherlands in 1995 after buying it in Germany.

12 In a tax assessment of 4 August 1999, the Hangon tullikamari (Hanko Customs Board) (Finland) granted Ms Lindfors a tax reduction of FIM 80 000 and fixed the car tax payable by her at FIM 16 556, plus value added tax of FIM 3 642, making a total of FIM 20 198 (approximately EUR 3 400).

13 Ms Lindfors brought proceedings against that decision in the Helsingin hallinto-oikeus (Helsinki Administrative Court) (Finland). She considered that autovero constituted a consumption tax prohibited under Article 1(1) of Directive 83/183.

14 Her action was dismissed. The Helsingin hallinto-oikeus held that, as a tax connected with the registration or use in traffic of a vehicle in Finland, autovero was to be regarded as a specific tax connected with the use of property within the country within the meaning of Article 1(2) of Directive 83/183, such a tax being outside the scope of that directive.

15 Ms Lindfors sought leave from the Korkein hallinto-oikeus to appeal against the decision of the Helsingin hallinto-oikeus.

16 The Korkein hallinto-oikeus decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is Article 1 of Directive 83/183 ... to be interpreted as meaning that car tax (autovero) charged under the Law on Car Tax (Autoverolaki) on a vehicle imported into Finland from another Member State in connection with a transfer of residence is a consumption tax within the meaning of Article 1(1) of the directive, or is it a specific duty or tax connected with the use of such property within the country within the meaning of Article 1(2)?'

The question referred for a preliminary ruling

Preliminary remarks

17 The Court has already held, in its judgment of 19 September 2002 in Case C-101/00 *Tulliasiamies and Siilin* [2002] ECR I-7487, paragraphs 61 and 80, that autovero constitutes discriminatory internal taxation prohibited by Article 90 EC in so far as the amount of that tax on an imported used car exceeds the amount of the residual tax incorporated in the value of a similar used car already registered in Finnish territory.

18 The national court's question concerns solely the lawfulness of levying a tax such as autovero — regardless of its method of calculation or amount — on the occasion of a transfer of residence from one Member State to another.

Observations submitted to the Court

19 Ms Lindfors submits that autovero is a consumption tax which is levied because of the importation of a vehicle into Finnish territory. Such a tax should fall within the exemption laid down in Article 1(1) of Directive 83/183.

20 That autovero is a consumption tax within the meaning of that provision follows, according to Ms Lindfors, not only from the characteristics of that tax but also indirectly from the scope 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) and from proposal 98/C 108/12 for a Council Directive governing the tax treatment of private motor vehicles moved permanently to another Member State in connection with a transfer of residence or used temporarily in a Member State other than that in which they are registered (OJ 1998 C 108, p. 75, and — amended proposal — OJ 1999 C 145, p. 6).

21 The Finnish, Danish and Greek Governments observe that autovero cannot be equated to a tax which normally applies to personal property imported permanently from another Member State by private individuals within the meaning of Article 1(1) of Directive 83/183. The determining circumstance for liability to the tax is the use of the vehicle on the highway in Finland, even if that tax is usually charged on the occasion of registration. In any event, autovero, as a specific tax connected with use or registration, is expressly excluded from the scope of that directive by virtue of Article 1(2) of the directive.

22 The Commission notes that Article 1(2) of Directive 83/183 excludes 'motor vehicle registration fees' from the scope of the directive. In contrast to taxes which are intended to contribute to the financing of the public administration, 'fees' constitute the consideration for services provided by the public authorities. According to the Commission, autovero is not a 'fee' charged on registration but a consumption tax prohibited by Article 1(1) of that directive in connection with a transfer of residence. That prohibition relates to taxes whose chargeable event is the importation of property in connection with a transfer of residence.

23 The Commission submits that tax has already been charged on the registration of the vehicle and its bringing into use in the State of origin. Freedom of movement would be compromised if the Member State of destination could charge tax again on that basis. The provisions of Directive 83/183 must be interpreted in the light of the fundamental right to freedom of movement enshrined in Article 18 EC for citizens of the Union.

Findings of the Court

24 It must first be examined whether, as Ms Lindfors and the Commission claim, autovero falls within the scope of Article 1(1) of Directive 83/183. It should be noted in this respect that the name given to a tax in national law is not as such decisive for the assessment of whether the tax in question is one referred to in that provision.

25 Reading Paragraphs 1 and 2 of the Law on Car Tax together shows that autovero is payable before the registration or bringing into use of a private vehicle in Finland. It is apparent from the case-file, in particular from Article 2 of that law and the observations of the Finnish Government and Ms Lindfors, that, with the exception of temporary import, the use of a vehicle on the Finnish road system entails the charging of autovero. Thus the Government explains that the determining circumstance for the charging of that tax is the use of the car in traffic, even though the tax is usually charged on the occasion of registration. Ms Lindfors similarly confirms that the Law on Car Tax is based on the principle that any use of the vehicle, however minimal, entails the charging of the tax.

26 In those circumstances, a tax such as autovero cannot be regarded as a tax connected with importation falling within the scope of the exemption laid down in Article 1(1) of Directive 83/183. The chargeable event for that tax is the use of a vehicle on Finnish territory, which is not necessarily connected with the act of importation (see, to that effect, Case C-387/01 *Weigel* [2004] ECR I-4981, paragraph 47).

27 It follows that a tax with the characteristics of autovero does not fall within the scope of the tax exemption laid down in Article 1(1) of Directive 83/183.

28 That conclusion is supported by Article 1(2) of Directive 83/183. Since autovero is payable as a result of the use of a vehicle in Finland, taxes such as that at issue in the main proceedings constitute 'specific ... duties and taxes connected with the use of ... property within the country' within the meaning of that provision.

29 Nor can Ms Lindfors base her argument on the scope of Directive 83/182, which concerns tax exemptions applicable on the temporary import of certain means of transport. The circumstance that, in accordance with Article 1 of that directive, a citizen of the Union who temporarily imports a vehicle into Finland is exempted from autovero does not allow the conclusion that that tax is within the tax exemption established by Directive 83/183, which relates to the permanent import of vehicles.

30 The proposal for a directive 98/C 108/12 does not allow Directive 83/183 to be interpreted as Ms Lindfors and the Commission do. On the contrary, it is apparent from the fourth, fifth and seventh recitals in the preamble to that proposal that the adoption of a directive prohibiting the Member States from imposing, as stated in Article 1 of the proposal, 'excise duties, registration taxes or other consumption taxes ... on private motor vehicles registered in other Member States and brought into that Member State permanently in connection with the transfer of normal residence of a private individual' has become necessary precisely because of the inadequacy of the rules laid down by Directive 83/183, as Advocate General Tizzano pointed out in his Opinion in *Weigel* (point 52).

31 It is true that, as the Commission points out, autovero is capable of having a negative influence on decisions of citizens of the Union to exercise their right to freedom of movement as enshrined in particular by Article 18 EC.

32 Although the national court has formally limited its question to the interpretation of Article 1 of Directive 83/183, that does not preclude the Court from providing the national court with all those elements for the interpretation of Community law which may be of assistance in adjudicating on the case pending before it, whether or not that court has specifically referred to them in its question (see, to that effect, Case C-241/89 *SARPP* [1990] ECR I-4695, paragraph 8; Case C-315/92 *Verband Sozialer Wettbewerb ('Clinique')* [1994] ECR I-317, paragraph 7; Case C-87/97 *Consorzio per la tutela del formaggio Gorgonzola* [1999] ECR I-1301, paragraph 16; and *Weigel*, paragraph 44).

33 The Court must therefore examine the effect of Article 18 EC, so that the national court can assess whether the application of autovero in a case such as

that in the main proceedings is compatible with the requirements deriving from that provision.

34 It has already been held that the EC Treaty offers no guarantee to a citizen of the Union 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 citizen'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 citizen carried on activities prior to that transfer, is not contrary to Article 18 EC, provided that the legislation concerned does not place that citizen at a disadvantage as compared with those already subject to such a tax (see *Weigel*, paragraph 55).

35 The case-file shows that the Law on Car Tax provides, in Paragraph 25(1), for a tax reduction of up to FIM 80 000 (EUR 13 455) inter alia for citizens of the Union exercising their right to freedom of movement in connection with a transfer of residence to Finland. It will be for the national court to ascertain whether the application of that provision and any other provisions of national law is capable of ensuring that, as regards that tax, Ms Lindfors is not placed in a less favourable position than that of citizens who have been permanently resident in Finland. Should the national court find that such a less favourable situation exists, it will have to examine whether that difference in treatment is justified by objective considerations independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law (see Case C-224/98 *D'Hoop* [2002] ECR I-6191, paragraph 36).

36 In the light of all the foregoing, the national court's question must be answered as follows:

Article 1 of Directive 83/183 must be interpreted as not precluding, in connection with a transfer of residence of the owner of a vehicle from one Member State to another, a tax such as that laid down by the Law on Car Tax from being charged before the registration or bringing into use of the vehicle in the Member State to which residence is transferred. However, having regard to the requirements deriving from Article 18 EC, it is for the national court to ascertain whether the application of national law is capable of ensuring that, as regards that tax, that owner is not placed in a less favourable situation than that of citizens who have been permanently resident in the Member State in question and, if necessary, whether such a difference of treatment is justified by objective considerations independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law.

Costs

37 The costs incurred by the Finnish, Danish and Greek Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Korkein hallinto-oikeus by order of 10 October 2002, hereby rules:

Article 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 must be interpreted as not precluding, in connection with a transfer of residence of the owner of a vehicle from one Member State to another, a tax such as that laid down by the Autoverolaki (1482/1994) (Law on Car Tax) from being charged before the registration or bringing into use of the vehicle in the Member State to which residence is transferred. However, having regard to the requirements deriving from Article 18 EC, it is for the national court to ascertain whether the application of national law is capable of ensuring that, as regards that tax, that owner is not placed in a less favourable situation than that of citizens who have been permanently resident in the Member State in question and, if necessary, whether such a difference of treatment is justified

by objective considerations independent of the residence of the persons concerned and proportionate to the legitimate aim pursued by national law.

Jann Rosas von Bahr

Silva de Lapuerta Lenaerts

Delivered in open court in Luxembourg on 15 July 2004.

R. Grass

Registrar

P. Jann

President of the First Chamber