penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value added tax.

Koopmans O'Keeffe Bosco

Delivered in open court in Luxembourg on 9 October 1980.

J. A. Pompe
Deputy Registrar
For the Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI DELIVERED ON 10 JULY 1980 [1]

Mr President,
Members of the Court,

1. I shall begin by briefly summarizing the facts which lie at the origin of this reference for a preliminary ruling.

In 1976 Gerhard Fink, a national of the Federal Republic of Germany, entrusted to Giovanni Carciati, an Italian national residing in Ravenna, a motor-car licensed in Germany and registered in the name of the Hermann Fink undertaking, in order to be able to make use of it in Italy when making his frequent business visits. In March 1978 Mr Carciati was stopped by members of the Guardia di Finanza [Italian revenue enforcement officers] while driving the motor-car in question and was charged with importing a motor-car into Italy without paying the appropriate taxes and dues. As a consequence, he had to appear before the Tribunale di Ravenna to answer a charge of smuggling, together with an infringement of the provisions governing value added tax.

In the context of those proceedings the Tribunale referred the following question to the Court of Justice by an order of 23 November 1979:

"Are Articles 25, 216, 282, 287 and 339 of the Decree of the President of the Republic No 43 of 23 January 1973, in conjunction with Law No 1163 of 27 October 1957 ratifying and

1 — Translated from the Italian.

implementing the International Convention of New York of 4 June 1954, and Articles 67, 69, 70 and 71 of the Decree of the President of the Republic No 633 of 26 October 1972 in conflict with the Community rules in relation to the free movement of goods?"

2. I think it convenient to make a brief summary of the content of the international and Italian legal provisions to which the national court has referred in its order.

Article 2 of the New York Convention of 4 June 1954 — ratified by all the Member States of the European Communities — regulates the temporary tax-free importation of motor vehicles; it provides, in paragraph (1), that "Each of the Contracting States shall grant temporary admission without payment of ... taxes ... to vehicles owned by persons normally resident outside its territory which are imported and utilized, for their private use on the occasion of a temporary visit, either by the owners of the vehicles or by other persons normally resident outside its territory". Article 216 of Decree of the President of the Republic No 43 of 23 January 1973 (Consolidated Text of the Legislative Provisions on Customs Matters), governs the temporary importation of road vehicles for private use by referring to the New York Convention, and provides in particular, at indent 2, that when the conditions laid down in the above-mentioned Convention are lacking or are no longer present "the penalties prescribed for the offence of smuggling remain applicable". The same Consolidated Text also lays down the fine to be imposed on any person in possession of foreign goods who fails to prove that they have been lawfully obtained (Article 282 in conjunction with Article 25), or who uses "foreign goods which have been imported duty-free and at a reduced rate of (frontier) charges ..., wholly or partly for a purpose other than that for which the tax exemption or reduction was granted" (Article 287). Finally, as to the duty which has not been paid, to the amount of which the fine corresponds, Decree of the President of the Republic No 633 of 26 October 1972, on the introduction and administration of value added tax, provides that the tax in question shall apply, *inter alia*, "to imports effected by any person" (Article 1), and then lays down, specifically, in Articles 67 to 70, the provisions concerning the tax on imports.

3. It is settled that the Court of Justice has no jurisdiction to determine, in rulings based on Article 177 of the EEC Treaty, the compatibility of particular national provisions with Community law. But there is a consistent body of case-law to the effect that it may, when presented with an imprecisely worded reference for a preliminary ruling, identify the question of Community law in terms which enable it to give a ruling. In this case, the general question on which the Italian court is asking for guidance is clearly that of interpreting the fundamental principles in the EEC Treaty on the free movement of goods, and in particular the principles applicable to the rules concerning imports, in order to establish whether they may preclude national rules which, by subjecting the normal importation of motor vehicles to

the payment of value added tax, prohibit persons residing in the territory of that State from making use of motor vehicles which have benefited from the arrangements for temporary importation, and thus from the exemption from that tax.

In my opinion the reply should be in the negative, as regards both the imposition of value added tax on the importation of motor vehicles and the restrictions imposed by national law on the use of a vehicle which has been temporarily imported.

In the first instance I think it is beyond question that the application of VAT to imports of motor vehicles for private use cannot give rise to any conflict with the principles of the Treaty. In that respect I think it is sufficient to recall that the application of VAT to imports is expressly provided for in the Second Council Directive of 11 April 1967 — No 67/228/EEC — on the harmonization of legislation of Member States concerning turnover taxes, Article 2 of which provides that: "The following shall be subject to the value added tax ... (b) the importation of goods".

As for the prohibition imposed by a Member State on persons residing therein against using vehicles which have been temporarily imported free of tax, that constitutes — as is rightly observed in the Commission's observations — the only truly effective way of preventing tax evasion and of ensuring that the tax is paid in the country of destination of the goods. In fact it is clear that if persons resident in the importing State were also allowed to use motor vehicles imported temporarily tax-free, it would be exceedingly difficult to identify cases of fraud.

However, under the Sixth Council Directive of 17 May 1977, No 77/388/EEC, on the common system of value added tax, the Member States must exempt from value added tax imports of goods under temporary importation arrangements "under conditions which they (the Member States) shall lay down for the purpose of ... preventing any possible evasion, avoidance or abuse" (Article 14). That indicates that the Member States retain wide powers to intervene in relation to temporary importations for the purpose of preventing tax evasion, and that such powers are fully compatible with the principle of the free movement of goods.

A further confirmation of that fact is furnished by the Proposal for a Council Directive on tax exemptions for certain means of transport temporarily imported into one Member State from another which was submitted by the Commission on 30 October 1975 (Official Journal 1975 C 267 of 21 November 1975, p. 8). Article 3 of that proposed directive (on the temporary importation of certain means of transport for private use, including motor-driven road vehicles) lays down that such goods shall be exempted provided that the individual who imports them "(aa) has his ... residence in a Member State of the Community other than that of temporary importation; (bb) employs the means of transport in question for his private use", and that such means "is not disposed of or hired out in the Member State of temporary importation or lent to a

resident of that State". Similar restrictions are provided for under Article 4 of the same proposal as to the use of private cars imported temporarily for business use.

The body of secondary Community legislation being drafted thus contains restrictions on the use of vehicles temporarily imported free of tax which are substantially the same as those laid down in the above-mentioned rules in the New York Convention.

Lastly, there do not seem to me to be any grounds for doubting that a Member State has the power to impose criminal sanctions for failure to observe the national rules relating to the temporary importation of motor vehicles. In fact, once provisions such as the Italian ones have been recognized as being compatible with the principles of the Community system, it is within the powers of the Member States, in the appropriate circumstances, to make failure to observe such rules an offence.

4. In the light of all those considerations I propose that the reply to the question which has been referred to the Court by the Tribunale di Ravenna by the order of 26 November 1979, should be as follows:

The rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value-added tax.