JUDGMENT OF THE COURT (Fifth Chamber)
14 September 1995 *

In Joined Cases C-485/93 and C-486/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Monomeles Diikitiko Protodikio, Rhodes, and the Trimeles Diikitiko Protodikio, Rhodes (Greece), for a preliminary ruling in the proceedings pending before those courts between

Maria Simitzi

and

Municipality of Kos

on the interpretation of the EEC Treaty, in particular Articles 9, 12, 13, 16 and 95, and on the interpretation of Article 33 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida, D. A. O. Edward (Rapporteur), J.-P. Puissochet and L. Sevón, Judges,

* Language of the case: Greek.

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Maria Simitzi, by Dimitrios Kyriakopoulos, Konstantinos Finokaliotis and Dimos Nikopoulos, of the Thessaloniki Bar,

— the Greek Government, by Panagiotis Kamarineas, Assistant Legal Adviser at the State Legal Council, Panagiotis Mylonopoulos, Legal Assistant in the Special Legal Department for Contentious Community Matters of the Ministry of Foreign Affairs, and Christina Sitara, lawyer, acting as Agents,

— the Commission of the European Communities, by Richard Wainwright, Principal Legal Adviser, and Maria Kontou-Durande, of the Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Maria Simitzi, represented by Dimos Nikopoulos, Dimitrios Kyriakopoulos and Konstantinos Finokaliotis, of the Greek Government, represented by Panagiotis Kamarineas and Ioanna Galani-Maragoudaki, Assistant Special Legal Adviser in the Special Legal Department for Contentious Community Matters of the Ministry of Foreign Affairs, acting as Agents, and of the Commission of the European Communities, represented by Maria Kontou-Durande, at the hearing on 23 March 1995,

after hearing the Opinion of the Advocate General at the sitting on 18 May 1995,

gives the following

Judgment

1 By two decisions of 25 October 1993, received at the Court Registry on 24 December 1993, the Monomeles Diikitiko Protodikio (Single-Judge Administrative Court of First Instance), Rhodes, and the Trimeles Diikitiko Protodikio (Three-Judge Administrative Court of First Instance), Rhodes (Greece), referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of the EEC Treaty, in particular Articles 9, 12, 13, 16 and 95, and on the interpretation of Article 33 of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1).

2 Those questions were raised in two actions for the annulment or amendment of a decision entering the name of Maria Simitzi on the fiscal register for municipal taxes due on imports and imposing fines on her for failure to fulfil her obligations.

3 The Dodecanese, a group of islands situated at the south-eastern end of the Aegean Sea, was administered by Italy until 1946. Local Decrees Nos 187/1938 and 132/1939, adopted by the Italian administration, provided for the charging of a duty ('dazio di consumo': consumption duty) on consumer goods entering or leaving the Dodecanese and authorized the municipalities of the Dodecanese to collect it.

4 Following the incorporation of the Dodecanese into Greece, that communal tax was maintained in force by a series of Greek legislative provisions.

5 At the material time, the communal tax on imports was set at 4% of the value of the imported goods. The communal tax on exports was, save for Rhodes, set at 1% of the value of the goods exported.

6 Mrs Simitzi imported goods into the island of Kos between 8 November and 23 December 1991 and between 2 January and 26 February 1992. The mayor of Kos adopted, pursuant to national legislation, a decision by which Mrs Simitzi's name was entered on the municipal fiscal register for taxes due on imports calculated on the value of the goods imported during those periods. By that decision, the plaintiff's name was also entered on the fiscal register as liable to pay fines for failing to fulfil the obligations laid down by the national legislation.

7 She brought two actions for the annulment or amendment of that decision before the Monomeles Diikitiko Protodikio on 14 July 1992 and before the Trimeles Diikitiko Protodikio on 24 June 1992 respectively.

8 The two courts considered that the proceedings should be stayed pending a preliminary ruling by the Court of Justice on the following questions:

'1. Does an *ad valorem* charge levied by one Member State on goods imported from another Member State on their entry into the territory of the first Member State constitute a charge having equivalent effect to import duties, notwithstanding the fact that that charge is also imposed on goods entering that territory from another part of the same State?

2. Does an *ad valorem* charge levied by one Member State on goods exported to another Member State on their departure from the territory of the first Member State constitute a charge having equivalent effect to export duties, notwithstanding the fact that that charge is also imposed on goods leaving that territory for another part of the same State?

3. Is legislation pursuant to which the two *ad valorem* charges mentioned above continue to be levied compatible with Community law?

4. If the preceding question is answered in the negative and given that the territorial area over which Community law extends includes the sovereign territory of the Member State within a part of which the abovementioned *ad valorem* charges are levied, and in respect of which no special provision was made in the relevant Community Treaties, is a charge on goods imported specifically into the area in question solely from other areas of the same Member State permissible under Community law, and is a charge on goods exported specifically from that area solely to other areas of the same State permissible under Community law, or do such special charges imposed in the area in question constitute less favourable treatment of goods originating in the other abovementioned areas or destined for them than that accorded to goods from other Member States or destined for them, thus impeding the free movement of goods within the single market?

5. In the event that the abovementioned *ad valorem* charges might be considered to constitute internal taxation, do those charges constitute financial charges in the nature of turnover taxes and is their imposition concurrently with value added tax prohibited under Article 33 of Council Directive 77/388/EEC?'

9 By order of 30 January 1995, made pursuant to Article 43 of the Rules of Procedure of the Court of Justice, the two cases were joined for the purposes of the oral procedure and the judgment.

The first question

10 By their first question the national courts inquire about the meaning of charges having an effect equivalent to customs duties on imports.

11 In its judgment in Case C-163/90 *Legros and Others* [1992] ECR I-4625, the Court ruled that a charge proportional to the customs value of goods, levied by one Member State on goods imported from another Member State by reason of their entry into a region of the territory of the first Member State, constituted a charge having an effect equivalent to a customs duty on imports, notwithstanding the fact that the charge was also imposed on goods entering that region from another part of the same State.

12 However, the Hellenic Republic maintains that a distinction must be drawn between the charge at issue in the main proceedings and that involved in the *Legros* case. In the latter case, the dock dues were imposed solely on imported goods and their purpose was to limit imports in order to encourage local production. In the present cases, on the other hand, the communal tax is imposed not only on imports but also on exports from the Dodecanese, including exports of local products. That difference shows that the aim of the communal tax was solely to provide the local administrative authorities with financial resources. Consequently, the tax does not constitute a charge having an effect equivalent to a customs duty on imports or exports.

13 That argument must be rejected.

14 First of all, the Court has consistently held that it follows from the customs union system provided for by the Treaty, in particular Articles 9, 12, 13 and 16, and from the general and absolute nature of the prohibition of all customs duties applicable to goods moving between Member States that customs duties are prohibited regardless of the purpose for which they were introduced and the destination of the revenue from them (judgment in Case 24/68 *Commission* v *Italy* [1969] ECR 193, paragraph 7).

15 Second, any pecuniary charge which is imposed unilaterally on domestic or foreign goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect, within the meaning of Articles 9, 12, 13 and 16 of the Treaty, even if it is not imposed for the benefit of the State and is not discriminatory or protective in effect (*Commission* v *Italy*, paragraph 9).

16 Lastly, it does not matter, for the purposes of the Treaty, whether a charge is treated as a general charge or two distinct charges, one on exports and the other on imports. As it is imposed on all goods crossing the frontier, the charge in question hampers the interpenetration sought by the Treaty and thus has an effect on the free circulation of goods equivalent to that of a customs duty (*Commission* v *Italy*, paragraph 14).

17 Accordingly, it should be stated in reply to the national courts' first question that an *ad valorem* charge levied by a Member State on goods imported from another Member State by reason of their entry into a region of the first Member State's territory constitutes a charge having an effect equivalent to a customs duty on imports, notwithstanding the fact that it is also levied on goods entering that region from another part of the same State's territory, and notwithstanding the fact

that an *ad valorem* charge is also levied on goods exported from the region in question.

The second question

18 By their second question the national courts inquire about the meaning of charges having an effect equivalent to customs duties on exports.

19 As is recalled above, a pecuniary charge imposed unilaterally on goods by reason of the fact that they cross a frontier constitutes a charge having equivalent effect. Consequently, a charge imposed on domestic goods by reason of the fact that they are exported from the Member State in question constitutes a charge having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the Treaty.

20 That conclusion is not altered by the fact that the pecuniary charge is also levied on goods leaving one region of a Member State for another part of the territory of the same State.

21 A charge levied at a regional frontier by reason of the despatch of goods from one region of a Member State to other regions of the same State constitutes an obstacle to the free movement of goods which is at least as serious as a charge levied at the national frontier by reason of the export of goods from all the territory of a Member State (see, by analogy, the judgment in *Legros and Others*, paragraph 16).

22 Accordingly, it should be stated in reply to the national courts' second question that an *ad valorem* charge levied by a Member State on goods exported to another Member State by reason of their leaving a region of the first Member State's territory constitutes a charge having an effect equivalent to a customs duty on exports, notwithstanding the fact that it is also levied on goods leaving that region for another part of the territory of the same State.

The third question

23 In the light of the replies to the national courts' first and second questions, it should be stated in reply to the third question that a national rule under which there is levied a charge having an effect equivalent to a customs duty is not compatible with Article 9 et seq. of the Treaty.

The fourth question

24 By their fourth question the national courts inquire about the nature of *ad valorem* charges levied by a Member State on goods entering one region of its territory solely from other regions of the same State and on goods despatched from one region solely to other regions of the same State.

25 In its judgment in Joined Cases C-363/93, C-407/93, C-408/93, C-409/93, C-410/93 and C-411/93 *René Lancry SA and Others* [1994] ECR I-3957, the Court ruled that a charge proportional to customs value, levied by a Member State on all goods entering a region within that State, constitutes a charge having

equivalent effect to a customs duty on imports not only in so far as it is levied on goods entering that region from other Member States, but also in so far as it is levied on goods entering that region from another part of the same State.

26 The same reasoning must apply in the case of a charge levied on goods despatched from one region to other regions of the same State.

27 Accordingly, it should be stated in reply to the national courts' fourth question that *ad valorem* charges levied by a Member State on goods entering a region of its territory solely from other regions of the same State and on goods despatched from one region solely to other regions of the same State constitute charges having an effect equivalent to customs duties on imports and exports respectively.

The fifth question

28 In view of the answers given above, the fifth question needs no reply.

Temporal effects of this judgment

29 In its oral observations the Greek Government suggested that, if the Court were to consider a charge such as the duty in question to be incompatible with the relevant provisions of the Treaty, it could limit the temporal effects of this judgment. It pointed out, first, the uncertainty which existed about the actual scope of the prohibition of charges having equivalent effect before the judgments in the *Legros* and

Lancry cases were delivered and, second, the serious financial consequences which would ensue for local administrative authorities from a judgment declaring the duty in question to be incompatible with Community law.

30 In its judgment in *Legros*, the Court found that, owing to overriding considerations of legal certainty, the Treaty provisions relating to charges having an effect equivalent to customs duties on imports could not be relied on in support of claims for refunds of charges such as dock dues paid before the date of that judgment (16 July 1992), except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.

31 The duty in question must be treated as a charge of the same kind as the dock dues at issue in the *Legros* case. Until 16 July 1992, therefore, the Hellenic Republic could reasonably believe that the duty in question was in conformity with Community law.

32 The same considerations of legal certainty must therefore apply here and consequently the temporal limitation set by the Court in the *Legros* case must also be held to apply to claims for refunds of sums levied by way of the contested duty.

33 On the other hand, to limit the effects of this judgment in respect of the period after 16 July 1992, the date of the *Legros* judgment, would not be appropriate. After that date, the Greek Government must have been aware that the contested duty was incompatible with Community law.

34 In conclusion, it must be stated that the provisions of the Treaty relating to charges having an effect equivalent to customs duties cannot be relied on in support of claims for refunds of sums levied by way of the contested duty before 16 July 1992, except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.

Costs

35 The costs incurred by the Greek Government and the Commission of the European Communities, 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 proceedings pending before the national courts, the decision on costs is a matter for those courts.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Monomeles Diikitiko Protodikio, Rhodes, and the Trimeles Diikitiko Protodikio, Rhodes, by decisions of 25 October 1993, hereby rules:

1) An *ad valorem* charge levied by a Member State on goods imported from another Member State by reason of their entry into a region of the first Member State's territory constitutes a charge having an effect equivalent to a customs duty on imports, notwithstanding the fact that it is also levied on goods entering that region from another part of the same State's territory, and notwithstanding the fact that an *ad valorem* charge is also levied on goods exported from the region in question.

2) An *ad valorem* charge levied by a Member State on goods exported to another Member State by reason of their leaving a region of the first Member State's territory constitutes a charge having an effect equivalent to a customs duty on exports, notwithstanding the fact that it is also levied on goods leaving that region for another part of the territory of the same State.

3) A national rule under which there is levied a charge having an effect equivalent to a customs duty is not compatible with Article 9 et seq. of the EEC Treaty.

4) *Ad valorem* charges levied by a Member State on goods entering a region of its territory solely from other regions of the same State and on goods despatched from one region solely to other regions of the same State constitute charges having an effect equivalent to customs duties on imports and exports respectively.

5) The provisions of the EEC Treaty relating to charges having an effect equivalent to customs duties cannot be relied on in support of claims for refunds of sums levied by way of the contested duty before 16 July 1992, except by claimants who had, before that date, initiated legal proceedings or raised an equivalent claim.

Gulmann Moitinho de Almeida Edward

Puissochet Sevón

Delivered in open court in Luxembourg on 14 September 1995.

R. Grass
Registrar

C. Gulmann
President of the Fifth Chamber