JUDGMENT OF THE COURT (Fifth Chamber)

15 June 1999 *

In Case C-394/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Helsingin Käräjäoikeus, Finland, for a preliminary ruling in the criminal proceedings before that court against

Sami Heinonen,

on the interpretation of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1) and Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232),

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, P. Jann (Rapporteur), J.C. Moitinho de Almeida, C. Gulmann and M. Wathelet, Judges,

* Language of the case: Finnish.

Advocate General: A. Saggio,

Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— the Finnish Government, by Holger Rotkirch, Ambassador, Head of Legal Affairs in the Ministry of Foreign Affairs, and Tuula Pynnä, Legal Adviser in the same Ministry, acting as Agents,

— the Commission of the European Communities, by Roland Tricot and Kirsi Leivo, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Finnish Government and the Commission at the hearing on 12 December 1998,

after hearing the Opinion of the Advocate General at the sitting on 19 January 1999,

gives the following

Judgment

1 By order of 5 November 1997, received at the Court on 25 November 1997, the Helsingin Käräjäoikeus (Helsinki District Court) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1) and Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232).

2 Those questions were raised in criminal proceedings brought against Mr Heinonen for an offence under Article 10 of the Alkoholilaki ('the Law on Alcohol'), as amended by Law No 287/96, and under Article 8(1) of the Alkoholijuomista ja väkiviinasta annettu asetus (Decree on alcoholic drinks and spirits, as amended by Decree No 288/96, 'the Decree').

The provisions of Community law

3 Council Regulation (EC) No 3285/94 of 22 December 1994 on the common rules for imports and repealing Regulation (EC) No 518/94 (OJ 1994 L 349, p. 53), which, in accordance with Article 1, is to apply to 'imports of products

originating in third countries, except for... products originating in certain third countries listed in Council Regulation (EC) No 519/94 on common rules for imports from certain third countries', provides in Article 24(2)(a)(i):

'(a) Without prejudice to other Community provisions, this Regulation shall not preclude the adoption or application by Member States:

(i) of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants, the protection of national treasures possessing artistic, historic or archaeological value, or the protection of industrial and commercial property'.

4 Council Regulation (EC) No 519/94 of 7 March 1994 on common rules for imports from certain third countries and repealing Regulations (EEC) Nos 1765/82, 1766/82 and 3420/83 (OJ 1994 L 67, p. 89) contains an identical provision in Article 19(2)(a)(i).

5 Article 1 of Regulation No 918/93 sets out 'those cases in which, owing to special circumstances, relief from import or export duties shall be granted'. According to the second recital in the preamble to that regulation, those are circumstances where, 'by virtue of the special conditions under which goods are imported, the usual need to protect the economy is absent'.

6 The ninth recital in the preamble to Regulation No 918/83 states that that regulation 'does not preclude the application by Member States of import or export prohibitions or restrictions which are justified on grounds of public

morality, public policy or public security, protection of health and life of humans, animals or plants, protection of national treasures possessing artistic, historical or archaeological value or protection of industrial or commercial property'.

7 Article 45 of Regulation No 918/83 provides:

'(1) Subject to Articles 46 to 49, goods contained in the personal luggage of travellers coming from a third country shall be admitted free of import duties, provided such imports are of a non-commercial nature.

(2) For the purposes of paragraph (1):

(a) ...

(b) "imports of a non-commercial nature" means imports which:

— are of an occasional nature, and

— consist exclusively of goods for the personal use of the travellers or their families, or of goods intended as presents; the nature and quantity of such goods should not be such as might indicate that they are being imported for commercial reasons.'

8 Article 46 of that regulation sets the maximum quantities to which the relief referred to in Article 45(1) is limited in respect of certain goods. It does not set any maximum quantity in respect of beer.

9 So far as concerns goods other than those listed in Article 46, the first paragraph of Article 47 of Regulation No 918/83, in the version contained in Council Regulation (EC) No 355/94 of 14 February 1994 (OJ 1994 L 46, p. 5), limits the relief to a total value of ECU 175 per traveller.

10 Article 49(1) of Regulation No 918/83 provides:

'Member States may reduce the value and/or the quantities of goods allowed to enter duty-free if they are imported by:

— persons residing in the frontier zone,

— frontier workers,

— the crews of means of transport used between third countries and the Community

...'

11 Article 1 of Directive 69/169, as amended by Fourth Council Directive 78/1033/EEC of 19 December 1978 (OJ 1978 L 366, p. 31) and Council Directive 94/4/EC of 14 February 1994 amending Directives 69/169/EEC and 77/388/EEC and increasing the level of allowances for travellers from third countries and the limits on tax-free purchases in intra-Community travel (OJ 1994 L 60, p. 14), provides:

'Goods contained in the personal luggage of travellers coming from third countries shall be exempt from the turnover tax and excise duty levied on imports if the imported goods have no commercial character and the total value of the goods does not exceed ECU 175 per person.'

12 According to Article 4 of Directive 69/169, each Member State is to set quantitative limits for the exemptions from duty on imports listed therein. That provision does not set any quantitative limit on imports of beer, nor does it lay down any restriction on importing alcoholic drinks linked to the duration of the journey.

13 So far as concerns imports of a non-commercial nature, Article 3 of Directive 69/169 reproduces the definition given in Article 45 of Regulation No 918/83.

14 Article 5 of Directive 69/169 permits Member States to set lower limits as to value and/or quantity for the exemption of goods under the same conditions as those laid down in Article 49 of Regulation No 918/83.

Provisions of national law

15 For many years the Republic of Finland has pursued a restrictive policy on alcohol. Thus, according to the legislation in force from 1 July 1992 until 31 December 1994, it was in principle permissible to import alcohol on returning from travel abroad only if the journey had lasted 24 hours and only in very small quantities. The legislation was amended with a view to accession to the European Union. At the beginning of 1995, the restrictions linked to the duration of the journey were abolished.

16 In 1996, however, restrictions on imports of alcohol were reintroduced. The Law on alcohol was amended by Law No 287/96 with effect from 1 May 1996. Article 10 of that Law provides:

'The right of persons arriving from outside the European Economic Area to import alcoholic drinks for their own needs may be limited by decree, for the protection of public order and safety and the health of humans, with respect to journeys of short duration.'

17 Article 8(1) of the Decree, as amended with effect from the same date, provides:

'A person resident in Finland who arrives in the country, otherwise than by air transport, from outside the European Economic Area and whose journey has lasted for 20 hours at most may not import alcoholic drinks.'

18 The *travaux préparatoires* gave the following justifications for the amendment of the Law on alcohol:

— the price of alcoholic drinks is much higher in Finland than in neighbouring countries such as Russia or Estonia;

— the application of Community legislation relating to imports by travellers from third countries caused significant social, health and public-order problems in Finland;

— during that period, the number of travellers bringing in alcohol and tobacco products from Russia rose so much that it became more difficult for frontier workers and commercial vehicles to cross the frontier;

— specialist duty-free alcohol and tobacco shops were established in the Russian border zone;

— the total consumption of alcohol in Finland increased by about 10% in 1995, and that increase went hand-in-hand with increased social and health problems;

— public order and public safety in Finland were affected (drunken driving became common, violence increased in both frequency and seriousness, in particular in certain frontier areas and in ports when ships arrived from Estonia, illegal markets appeared and multiplied, even near schools, alcoholic drinks were sold in the street to minors and drunks, all which problems

required action by the police and hindered them in the performance of their other duties);

— sales in the shops of the Finnish alcohol monopoly company declined significantly;

— the Republic of Finland lost tax revenue estimated at about FIM 400 million.

The dispute in the main proceedings

19 On 14 June 1997 Mr Heinonen, who resides in Finland, sailed from Helsinki to Tallinn (Estonia). He sailed back the same day, after a voyage of less than 20 hours.

20 A routine customs check carried out on Mr Heinonen's return revealed him to be in possession of nineteen 0.33 litre cans of beer. The customs authorities issued a notice ordering him to pay a fine for smuggling a mildly alcoholic substance into Finland and ordering that substance to be confiscated.

21 On 16 Jun 1997 Mr Heinonen sent a letter to the Public Prosecutor contesting that notice. The Prosecutor thereupon referred the matter to the Helsingin Käräjäoikeus, which he requested to convict Mr Heinonen. The latter maintained

that his conduct was not liable to criminal penalties since he was authorised under Community law to import freely at least the quantity of beer in question.

22 The Helsingin Käräjäoikeus decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

'1. May the duty-free regulation and the travel directive be interpreted as meaning that national limits laid down by Member States on imports by travellers of beer and other alcoholic drinks, based on grounds referred to in the ninth recital in the preamble to the duty-free directive and in Article 36 of the EC Treaty or on other imperative requirements of the public interest, are compatible with the provisions of the regulation and the directive?

2. Do facts (a) to (h) set out in point IV(6) of this order for reference (paragraph 18 above) constitute grounds such that a Member State's national restrictions based thereon are compatible with the provisions of the duty-free regulation and the travel directive?

3. May a rule limiting travellers' imports of alcoholic drinks, which in this question also includes beer, on the basis of the duration of the journey be regarded as compatible with the provisions of the duty-free regulation and the travel directive?'

The first question

23 By its first question, the national court is asking, essentially, whether national legislation prohibiting or restricting imports of certain goods by travellers arriving from non-member countries on grounds of public morality, public policy, public security or protection of health and life of humans is contrary to Regulation No 918/83 and Directive 69/169.

24 As stated in the fourth recital in its preamble, the objective of Regulation No 918/83 is, in accordance with the requirements of the Customs Union, to eliminate differences in the field of exemptions from customs duties. More specifically, the objective of Articles 45 to 49 is to simplify the clearance through customs of goods contained in the personal luggage of travellers coming from non-member countries (Case 158/80 *Rewe* v *Hauptzollamt Kiel* [1981] ECR 1805, paragraph 11), and thus to facilitate passenger traffic.

25 The purpose of Directive 69/169, as its title suggests, is to harmonise exemptions from turnover tax and excise duty on imports in international travel. As is clear from the recitals in its preamble and from those in the preambles to the directives subsequently amending it, the aim is to liberalise the system of taxes on imports in travel in order to facilitate such travel.

26 The ninth recital in its preamble states, however, that Regulation No 918/83 does not preclude the application by Member States of import or export prohibitions or restrictions which are justified on grounds of public morality, public policy or public security, protection of health and life of humans, that it to say, grounds which, even in the context of intra-Community trade, are capable of justifying restrictions on the free movement of goods in accordance with Article 36 of the EC Treaty (now, after amendment, Article 30 EC).

27 The same interpretation must apply as regards Directive 69/169 which, like Regulation No 918/83, is limited to providing for a system of exemptions applicable to goods whose importation is not otherwise prohibited on one of the grounds set out in the preceding paragraph of this judgment.

28 It should be noted, in this connection, that both Article 24(2)(a)(i) of Regulation No 3285/94 and Article 19(2)(a)(i) of Regulation No 519/94 expressly provide that those regulations are not to preclude the adoption or application by Member States of prohibitions, quantitative restrictions or surveillance measures on grounds of public morality, public policy, public security or the protection of health and life of humans.

29 It follows that, while Regulation No 918/83 and Directive 69/169 are intended to define the customs and tax rules applicable to imports of a non-commercial nature by travellers from non-member countries, it is not the objective of that harmonising legislation to govern specifically the protection of the public-policy interest requirements referred to in Article 24(2)(a)(i) of Regulation No 3285/94 and Article 19(2)(a)(i) of Regulation No 519/94, with the result that the Member States retain their competence to adopt the necessary measures to protect those requirements.

30 The answer to be given to the first question must therefore be that national legislation prohibiting or restricting imports of certain goods by travellers arriving from non-member countries on grounds of public morality, public policy, public security or protection of health and life of humans is not contrary to Regulation No 918/83 and Directive 69/169.

The second question

31 By its second question the national court is asking, essentially, whether the circumstances described in paragraph 18 of this judgment can be such as to justify a restriction on imports of alcoholic drinks by travellers arriving from third countries.

32 It must first of all be pointed out that economic considerations, such as the last two circumstances mentioned in paragraph 18 of this judgment, are not included among the reasons which, according to Article 24(2)(a)(i) of Regulation No 3285/94 and Article 19(2)(a)(i) of Regulation No 519/94, may justify a restriction on imports of products from non-member countries (see, by analogy, with respect to Article 36 of the Treaty, Case 95/81 *Commission* v *Italy* [1982] 2187, paragraph 27).

33 By contrast, maintenance of public order and protection of internal security are among the first group of interests referred to in Article 24(2)(a)(1) of Regulation No 3285/94 and Article 19(2)(a)(i) of Regulation No 519/94. The same is true of protection of health and life of humans, to which the campaign against alcoholism makes a contribution (in the context of Article 36 of the Treaty, see Case C-189/95 *Franzén* [1997] ECR I-5909, paragraph 76).

34 In those circumstances, the answer to be given to the second question must be that national legislation restricting imports of alcoholic drinks by travellers arriving from non-member countries in order to maintain public order is not, in principle, contrary to Regulation No 918/83 or Directive 69/169.

The third question

35 By its third question, the national court is asking, essentially, whether national legislation restricting imports of alcoholic drinks, including drinks with a low alcohol content, by travellers arriving from third countries on the basis of the duration of the journey, with a view to combating disturbances of public order connected with the consumption of alcohol is contrary to Regulation No 918/83 and Directive 69/169.

36 In order to clarify the meaning of that question, it should be borne in mind that, with regard to Article 30 of the EC Treaty (now, after amendment, Article 28 EC) and Article 36 of the Treaty, the Court has stated that, while it is for the Member States to decide at what level they wish to protect the interests referred to in Article 36 of the Treaty and how that level is to be attained, they may however do so only within the limits set by the Treaty and, in particular, in compliance with the principle of proportionality (*Franzén,* paragraph 75).

37 As the Advocate General has noted at point 28 of his Opinion, the point at issue here is therefore whether the measure adopted by the Finnish legislature is proportionate to the objective pursued.

38 However, while the objective pursued by Articles 30 and 36 of the Treaty is to guarantee respect of the fundamental freedom which is the free movement of goods in the internal market, the objective of the Community customs and tax provisions at issue in the main proceedings is more restricted in that it is intended to facilitate passenger travel from non-member countries in conformity with the requirements of the customs union.

39 The question whether or not the legislation in question in the main proceedings is appropriate and necessary must be considered in the light of those considerations.

40 As regards the question of its appropriateness, that legislation introduces only a limited derogation from the Community system of customs and tax reliefs applicable to travellers, since it covers only one specific category of goods, alcoholic drinks. That derogation is further limited by the fact that it relates only to journeys which satisfy precise criteria, namely journeys by land or sea lasting less than 20 hours.

41 Those limitations correspond to the typical circumstances singled out by the Finnish authorities as being the chief source of the social and health problems with which they were faced. The Finnish Government has, moreover, stated that it was possible to detect an improvement in the situation as soon as the legislation at issue in the main proceedings was implemented. Those factors are such that it may properly be inferred from them that the legislation in question is appropriate.

42 With regard to the need for legislation such as that applicable in the main proceedings, the Commission claimed that, by establishing stricter checks on the movement of travellers, the Finnish authorities could have made better use of the opportunities offered by the Community legislation, such as strict application of the concept of 'imports of a non-commercial nature', a reduction in the reliefs granted to frontier workers and crews of means of transport and refusing travellers making a purely token journey to another country any relief at all. The Finnish Government replied that recourse to those options would have provided only an inadequate response to the problems it had to resolve. In addition, such recourse would have required material resources, particularly in the computer field, which were either not, or at least not immediately, available, whilst the authorities had to confront serious disturbances of public order connected with a sharp rise in the consumption of alcohol.

43 It should be pointed out that the Member States, which retain exclusive competence as regards the maintenance of public order and the safeguarding of internal security (Case C-265/95 *Commission* v *France* [1997] ECR I-6959, paragraph 33), enjoy a margin of discretion in determining, according to particular social circumstances and to the importance attached by those States to

a legitimate objective under Community law, such as the campaign against various forms of criminality linked to the consumption of alcohol, the measures which are likely to achieve concrete results.

44 In the circumstances described in paragraph 18 of this judgment, the introduction of a restriction on imports of alcoholic drinks by travellers arriving from non-member countries would seem to be a necessary measure, since the alternatives proposed by the Commission do not appear to be effective enough to attain the objective pursued.

45 Accordingly, the answer to be given to the third question must be that national legislation restricting imports by travellers arriving from third countries of alcoholic drinks, on the basis of the duration of the journey, with a view to combating disturbances of public order connected with the consumption of alcohol, is not contrary to Regulation No 918/83 or Directive 69/169.

Costs

46 The costs incurred by the Finnish Government 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 (Fifth Chamber),

in answer to the questions referred to it by the Helsingin Käräjäoikeus by order of 5 November 1997, hereby rules:

1. National legislation prohibiting or restricting imports of certain goods by travellers arriving from non-member countries on grounds of public morality, public policy, public security or protection of health and life of humans is not contrary to Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty and Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by law, regulation or administrative action relating to exemption from turnover tax and excise duty on imports in international travel.

2. National legislation restricting imports of alcoholic drinks by travellers arriving from non-member countries in order to maintain public order is not, in principle, contrary to Regulation No 918/83 or Directive 69/169.

3. National legislation restricting imports by travellers arriving from third countries of alcoholic drinks, on the basis of the duration of the journey, with a view to combating disturbances of public order connected with the

consumption of alcohol, is not contrary to Regulation No 918/83 or Directive 69/169.

Puissochet Jann Moitinho de Almeida

Gulmann Wathelet

Delivered in open court in Luxembourg on 15 June 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber