Reports of Cases

OPINION OF ADVOCATE GENERAL
SAUGMANDSGAARD ØE
delivered on 17 December 2015 [1]

Case C-528/14

X
v
Staatssecretaris van Financiën(Request for a preliminary ruling

from the Hoge Raad der Nederlanden (Supreme Court, Netherlands))

(Common Customs Tariff — Regulation (EC) No 1186/2009 — Article 3 et seq. — Relief from import duties — Personal property — Transfer of normal place of residence from a third country to the European Union — Definition of 'normal place of residence' — Not possible to establish at the same time a normal place of residence in a third country and in a Member State of the Union — Criteria for determining the normal place of residence)

I – **Introduction**

1. The request for a preliminary ruling made by the Hoge Raad der Nederlanden (Supreme Court, Netherlands) concerns the interpretation of Article 3 et seq. of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty. [2] Under Article 3, natural persons transferring their 'normal place of residence' from a third country to the customs territory of the European Union are entitled to such relief in respect of personal property imported on that occasion.

2. This reference is made in connection with proceedings brought by Mr X against the Staatssecretaris van Financiën (Netherlands Secretary of State for Finance) concerning the customs authorities' refusal to grant relief from import duty in respect of the personal property which Mr X imported into the Netherlands when he left Qatar, where he had resided and worked for three and a half years. According to those authorities, the relief from customs duty provided for in the aforementioned Article 3 cannot apply in this case because Mr X's normal place of residence remained in the Netherlands throughout that period.

3. The referring court asks the Court of Justice, first of all, whether it is possible, for the purposes of the application of Regulation No 1186/2009, for the 'normal place of residence' of a natural person to be simultaneously in a Member State and in a third country. If the answer is in the affirmative, it then asks whether the relief from customs duty authorised by Article 3 of that regulation may be applied from the time the person concerned ceases to have his normal place of residence in the third country. If the answer is in the negative, that is to say, if it is not possible to have two normal places of

1 — Original language: French.
2 — OJ 2009 L 324, p. 23.

residence in that context, the referring court seeks to ascertain the criteria to be applied in order to determine a person's normal place of residence, within the meaning of that article, where he has had, as in the main proceedings, both personal and occupational ties in a third country and only personal ties in a Member State.

II – **Legal framework**

A – *Regulation No 1186/2009*

4. Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty,[3] which was the basic relevant text, was repealed and codified by Regulation No 1186/2009.

5. Recitals 2, 3 and 4 of Regulation No 1186/2009 state:

'(2) In the absence of a specific measure of derogation adopted in accordance with the provisions of the Treaty, Common Customs Tariff duties are applicable to all goods imported into the Community. …

(3) However, in certain well-defined circumstances, where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent, such taxation is not justified.

(4) It is desirable that in such circumstances arrangements be made, as they have been traditionally in most systems of customs rules, to allow goods to enjoy relief from the application of import duties to which they would normally be liable.'

6. Articles 3 to 11 of Regulation No 1186/2009 are in Chapter I, concerning 'Personal property belonging to natural persons transferring their normal place of residence from a third country to the Community', of Title II, headed 'Relief from import duty'.

7. Article 3 provides that 'subject to Articles 4 to 11, personal property imported by natural persons transferring their normal place of residence from a third country to the customs territory of the Community is to be admitted free of import duties'.

8. Article 4(1) provides that '[t]he relief shall be limited to personal property which:

(a) except in special cases justified by the circumstances, has been in the possession of and, in the case of non-consumable goods, used by the person concerned at his former normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country of departure;

(b) is intended to be used for the same purpose at his new normal place of residence.'

9. Under Article 5(1), '[r]elief may be granted only to persons whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months'.

10. Article 6 lists the personal property in respect of which relief from import duty will not be granted.

3 — OJ 1983 L 105, p. 1.

11. Under Article 7(1), '[e]xcept in special cases, relief shall be granted only in respect of personal property entered for free circulation within 12 months from the date of establishment, by the person concerned, of his normal place of residence in the customs territory of the Community'.

12. Article 8 provides that '[u]ntil 12 months have elapsed from the date on which its entry for free circulation was accepted, personal property which has been admitted duty-free may not be lent, given as security, hired out or transferred, whether for a consideration or free of charge, without prior notification to the competent authorities', failing which import duty will be payable in accordance with the rules laid down in subparagraph (2) of that article.

13. Article 9(1) states that '[b]y way of derogation from the first paragraph of Article 7, relief may be granted in respect of personal property entered for free circulation before the person concerned establishes his normal place of residence in the customs territory of the Community, provided that he undertakes actually to establish his normal place of residence there within a period of six months'.

14. Under Article 10(1), '[w]here, owing to occupational commitments, the person concerned leaves the third country where he had his normal place of residence without simultaneously establishing his normal place of residence in the customs territory of the Community, although having the intention of ultimately doing so, the competent authorities may authorise duty-free admission of the personal property which he transfers into the said territory for this purpose'.

15. Article 11 also allows the competent authorities to derogate from certain of the conditions for applying relief from import duty 'when a person has to transfer his normal place of residence from a third country to the customs territory of the Community as a result of exceptional political circumstances'.

B – *Directives 83/182/EEC and 83/183/EEC*

16. Council Directive 83/182/EEC of 28 March 1983 concerns tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another.[4] Article 7 of that Directive, entitled 'General rules for determining residence', states in subparagraph (1) thereof:

'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 …'

17. 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[5] was repealed by Directive 2009/55/EC.[6] The wording of Article 6(1) of both these directives is the same as that of Article 7(1) of Directive 83/182.

4 — OJ 1983 L 105, p. 59.

5 — OJ 1983 L 105, p. 64.

6 — Council Directive of 25 May 2009 on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals (OJ 2009 L 145, p. 36).

III – **The main proceedings, the questions referred for a preliminary ruling and the procedure before the Court**

18. After having worked and resided in the Netherlands, Mr X was employed in Qatar from 1 March 2008 until 1 August 2011. In that third country he was provided with accommodation by his employer and had professional and personal relationships there. During that period, Mr X spent 281 days outside Qatar, during which he visited his spouse, his adult children and his family in the Netherlands and went on holiday in other countries. His spouse, who continued to work in the Netherlands, visited him six times in Qatar, for a total of 83 days.

19. With a view to his return to the Netherlands, Mr X requested the Netherlands customs authorities to authorise him to import his personal property from Qatar into the Union free of import duties, as provided for in Article 3 of Regulation No 1186/2009. The Tax Inspector refused that request on the ground that the party concerned could not have transferred his 'normal place of residence' to the Netherlands within the meaning of that article, since he had retained his normal place of residence in that Member State throughout his stay in Qatar and his normal place of residence had therefore never been in that third country.

20. Mr X lodged an appeal against that decision before the Rechtbank te Haarlem (District Court, Haarlem), which upheld his claim. The Tax Inspector brought an appeal before the Gerechtshof Amsterdam (Appeal Court, Amsterdam), which, by decision of 4 July 2013, set aside the judgment under appeal.

21. The national court states that, in the grounds of its decision, the Gerechtshof held, in reliance on certain judgments of the Court of Justice,[7] that the place of normal residence within the meaning of Article 3 must be the place in which the person concerned has his permanent centre of interests. Having concluded that it was not possible to determine, in the present case, where Mr X's permanent centre of interests was located, in the light of his personal and professional ties, the Gerechtshof found that, in such a case, priority must be given to the personal ties of the person concerned and it therefore concluded that his normal place of residence remained in the Netherlands throughout the period under consideration.

22. Mr X brought an appeal in cassation before the Hoge Raad der Nederlanden (Supreme Court, Netherlands), arguing that, since his personal ties had been in two countries at the same time, the fact that he had occupational ties only in Qatar should have been the essential criterion for locating his normal place of residence in that third country, so that he should be entitled to the relief provided for in Article 3 of Regulation No 1186/2009.

23. Against that background, by decision of 14 November 2014, which was received by the Court on 21 November 2014, the Hoge Raad der Nederlanden (Supreme Court, Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does Regulation 1186/2009 include the possibility that a natural person has at the same time his normal place of residence in both a Member State and a third country and, if so, does the relief from import duties provided for in Article 3 of the regulation apply to personal property, which, when a person ceases to have his normal place of residence in the third country, is transferred to the European Union?

7 — The order for reference states that, in that regard, the Gerechtshof referred to the judgments in *Ryborg* (C-297/89, EU:C:1991:160); *Louloudakis* (C-262/99, EU:C:2001:407), and *Alevizos* (C-392/05, EU:C:2007:251), which all concern the interpretation of Directives 83/182 and 83/183.

(2) If Regulation 1186/2009 precludes two normal places of residence and an assessment of all the circumstances does not suffice to determine the normal place of residence, on the basis of which rule or which criteria is it necessary to determine, for the purposes of the application of that regulation, in which country the person concerned has his normal place of residence in a case such as the present case in which that person has both personal and occupational ties in the third country and personal ties in the Member State?'

24. Written observations have been submitted by Mr X, the Netherlands Government and the European Commission. There has been no hearing.

IV – **Assessment**

A – *Exclusion of the possibility of establishing a normal place of residence, within the meaning of Regulation No 1186/2009, in a third country and in a Member State at the same time*

1. *Introductory comments*

25. By its first question, which is divided into two parts, the referring court asks the Court, in essence, first of all, to determine whether, for the purposes of the application of Regulation No 1186/2009,[8] it is possible for a natural person to have his 'normal place of residence' in two separate places at the same time, and more specifically simultaneously in a Member State and in a third country. Then, in the event of an affirmative reply to this first part of the question, the Court is asked to state whether the relief from customs duty provided for in Article 3 of that regulation may therefore apply to the importation of personal property transferred to the European Union from the time when the owner of that property ceases to have his normal place of residence in the third country concerned.

26. The national court raises the question, in the light of the approach taken by the Gerechtshof Amsterdam (Appeal Court, Amsterdam),[9] of the interpretation to be given to the term 'normal place of residence' within the meaning of that regulation in circumstances such as those in this case, in view of the fact that in the present case Mr X divided his time and his ties between the Netherlands and Qatar during the period spanning a number of years under consideration. It considers that the objectives pursued by Regulation No 1186/2009[10] appear not to preclude, in such a situation, the possibility that there may be a normal place of residence at the same time in a Member State and in a third country, and that it may be possible to grant the relief provided for in Article 3 of the regulation where the person concerned has given up his residence in that third country and, at that time, transferred his personal property to that Member State.[11]

8 — It should be noted at the outset that the interpretation of the term 'normal place of residence' requested by the referring court affects not only Articles 3 to 11 of Regulation No 1186/2009, which are deemed to be applicable in the main proceedings, but also other provisions of that regulation (see point 28 of this Opinion).

9 — In the words of the order for reference, '[i]n holding that it is not possible to determine unequivocally … where the permanent centre of interests of [Mr X] had been, the Gerechtshof implicitly held that the circumstances that lead to the conclusion that the party concerned had (kept) his normal place of residence in the Netherlands [, on the one hand] and the circumstances that lead to the conclusion that the party concerned had his normal place of residence in Qatar [, on the other,] were balanced'.

10 — In that regard, this court mentions the judgments in *Treimanis* (C-487/11, EU:C:2012:556, paragraphs 24 to 26), and *Wencel* (C-589/10, EU:C:2013:303). At this stage, I should point out that the latter judgment may be invoked here only by analogy, since it concerns the interpretation of the provisions of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996 (OJ 1997 L 28, p. 1).

11 — However, the national court qualifies this last claim, stating that it may also be considered that there is no actual transfer of a normal place of residence within the meaning of that article, 'given that the place of residence in the third country is in fact merely given up'.

27. M. X suggests that the reply to the first question referred should be that application of Article 3 of Regulation No 1186/2009 should be allowed in a situation such as that of the main proceedings.[12] For their part, the Netherlands Government and the Commission support the argument that the provisions of that regulation preclude the possibility of a natural person having, simultaneously, his normal place of residence both in a Member State and in a third country. I follow that approach, for the reasons stated below.

2. *The need to interpret the term 'normal place of residence' within the meaning of Regulation No 1186/2009*

28. As has been pointed out by the referring court, the Netherlands Government and the Commission, there is no definition of the term 'normal place of residence' in Regulation No 1186/2009, in which that term appears not only in Articles 3 to 11, which are relevant in the present case, but also, in particular in the French version, in Articles 12, 13, 17, and 81. The same was true of Regulation No 918/83, the purpose of which was also to set up a Community system of reliefs from customs duty and which Regulation No 1186/2009 repealed by codifying the provisions which that former measure contained, without altering the substance.[13]

29. The silence of those regulations is all the more significant because the Commission had chosen to include a definition of 'normal place of residence' in its initial proposal leading to the adoption of Regulation No 918/83,[14] a point to which I shall return later,[15] and the legislature had decided to include a common definition in Directives 83/182 and 83/183 relating to tax relief,[16] which were adopted on the same day as Regulation No 918/83.

30. Although the Court has already given some guidance for the purpose of defining 'normal place of residence' within the meaning of Directives 83/182[17] and 83/183,[18] it has not undertaken, as far as I am aware, an interpretation of that term within the meaning of the regulations establishing the Community system of relief from customs duty. It is true that several judgments of the Court concern interpretation of provisions of Regulations Nos 918/83 and 1186/2009 and make it possible, in particular, to determine the substantive scope of the 30 odd categories of relief from customs duty provided for by those instruments, but those precedents all relate to other concepts.[19]

12 — More specifically, Mr X maintains as his principal argument that, during the period under consideration, he did not have two places of residence because he no longer had a 'normal place of residence' in the Netherlands, where he went 'only on visits', and that the reply to the question raised is therefore purely theoretical. Alternatively, if another analysis of the facts were to be upheld, Mr X claims that it would be possible to establish the normal place of residence in a Member State and in a third country at the same time and that, in the present case, he may be entitled to the customs exemption provided for in Article 3, since the normal place of residence he maintained in the Netherlands is 'less important' than his 'more important' normal place of residence in Qatar.

13 — In its Proposal of 11 December 2008 which led to the adoption of Regulation No 1186/2009 (COM(2008) 842 final), the Commission stated that '[t]he new Regulation will supersede the various acts incorporated in it [see Annex V to the Proposal]; this proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with *only such formal amendments* as are required by the codification exercise itself' (emphasis added in the original).

14 — Proposal of 12 March 1979 (COM(79) 104 final).

15 — Concerning the definition proposed by the Commission and the clarification it may provide for replying to both the first and second questions raised in this case, see points 35 and 71 respectively of this Opinion.

16 — See the provisions of those directives cited in points 16 and 17 of this Opinion.

17 — See, inter alia, judgment in *Louloudakis* (C-262/99, EU:C:2001:407, paragraph 51 et seq. and the case-law cited), of which the criteria for determining the normal place of residence were reiterated in the judgment in *Commission* v *Greece* (C-156/04, EU:C:2007:316, paragraphs 45 and 46).

18 — See judgment in *Alevizos* (C-392/05, EU:C:2007:251, paragraph 54 et seq.).

19 — See, inter alia, judgments in *Universität Stuttgart* (303/87, EU:C:1989:128); *Schoonbroodt* (C-247/97, EU:C:1998:586); *Feron* (C-170/03, EU:C:2005:176); *Har Vaessen Douane Service* (C-7/08, EU:C:2009:417); *Lietuvos geležinkeliai* (C-250/11, EU:C:2012:496); *Treimanis* (C-478/11, EU:C:2012:556), and *Utopia* (C-40/14, EU:C:2014:2389).

31. As regards the conditions governing the interpretation to be made, I would point out that the Court has consistently held that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question. [20]

32. Regulation No 1186/2009 does not define the term 'normal place of residence', which it uses in particular for determining the conditions for applying Article 3 et seq., but nor does it make express reference to national law in order to establish the meaning of those words. Consequently, for the purpose of applying all the provisions of that regulation, that concept must be regarded as an autonomous concept of EU law. That approach is supported by the position previously adopted by the Court with regard to provisions of Regulation No 918/83, which Regulation No 1186/2009 replaced and which did not contain a definition of the terms used therein either. [21]

33. Although it will be necessary, in order to interpret that autonomous concept, to take into account the context of the provisions which are relevant here and the objectives they pursue, certain criteria derived from the wording of those provisions will nevertheless be mentioned first because they seem to me particularly significant in the present case.

3. *The literal interpretation of the relevant provisions*

34. As the Commission rightly points out, the way in which the relevant provisions of Regulation No 1186/2009 are worded does not support the conclusion that, for the purposes of applying the relief provided for in Article 3 thereof, it is possible to have a normal place of residence in a Member State and in a third country at the same time, since not only Article 3, but also Articles 4, 5, 7, 9, 10 and 11, [22] use the words 'normal place of residence' consistently in the singular. I would add that the same is true of all the other articles in Regulation No 1186/2009 in which that term appears, [23] in each of the different language versions of that Regulation. [24]

35. In that regard, it may also be noted that, in its initial proposal, leading to the adoption of Regulation No 918/83, [25] the Commission provided a definition of 'normal place of residence', [26] which was not reproduced in the final version of that regulation, and drew up a series of provisions which referred to that term [27] already using only the singular.

36. Those grammatical points are borne out by more substantial factors. Various expressions contained in Articles 3 to 11 of Regulation No 1186/2009 support my view that it is not possible for the 'normal place of residence' of a natural person within the meaning of that regulation to be situated simultaneously in a Member State and in a third country for the purposes of the application of those articles.

20 — See, inter alia, judgments in *Seattle Genetics* (C-471/14, EU:C:2015:659, paragraph 23 et seq.) and *Axa Belgium* (C-494/14, EU:C:2015:692, paragraphs 21 et seq.).

21 — See judgments in *Feron* (C-170/03,EU:C:2005:176, paragraph 26 et seq.) and *Treimanis* (C-487/11, EU:C:2012:556, paragraph 22 et seq.).

22 — Articles 6 and 8 are not included in that list since they concern the determination of personal goods which are eligible or ineligible for relief and do not therefore mention the term 'normal place of residence'.

23 — Namely, in particular for the French version, Articles 12, 13, 17, and 81 of that regulation.

24 — As well as the French version, see, in particular, the versions in Dutch ('normale verblijfplaats'), Danish ('sædvanlige opholdssted'), Spanish ('residencia normal'), German ('gewöhnlichen Wohnsitz'), Italian ('residenza normale'), Portuguese ('residência habitual'), Rumanian ('reședința obișnuită'), Swedish ('normala bostad') and English ('normal place of residence').

25 — The aforementioned proposal (COM(79) 104 final).

26 — See Article 4 (2) of that proposal, cited in point. 71 of this Opinion.

27 — See Articles 5, 6, 10, 11, 12, 14, 16, 17, 20 and 71 of that proposal.

37. First of all, I agree with the analysis of the Netherlands Government that the wording of the aforementioned Article 3 implies that the right to relief for which it provides applies only in the case of the *transfer* of a normal place of residence from a third country to the customs territory of the Union, not to the situation of a person who already has his normal place of residence in a Member State and therefore in that territory. The word 'transfer' used by the legislature necessarily presupposes, if only on an etymological level, the shift of that residence between a place situated outside the Union and another within it. The requirement for that movement is also apparent from the heading of the chapter which includes Articles 3 to 11.

38. A reading of Article 4 supports that analysis because it mentions goods that have been used by the person concerned at 'his *former* normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the *third country of departure*' and which will also be used at 'his *new* normal place of residence',[28] terms which in my view suggest that there can be only one 'normal place of residence' at any one time within the meaning of that regulation.

39. Similarly, Articles 7, 9, 10 and 11, in which that term is used, by no means suggest that it would be possible to have, concurrently during the same period, normal places of residence outside and within the customs territory of the Union. On the contrary, I think that those provisions draw a clear distinction between the establishment of the normal place of residence of the person concerned — first, outside that territory and, subsequently, within it.

40. Therefore, a literal interpretation of the provisions of Regulation No 1186/2009 under consideration in the present case prompts me to give a negative answer to the first part of the first question raised by the referring court. That conclusion is prima facie borne out in the light both of the broad logic and the purpose of those provisions.

4. *The contextual interpretation of the relevant provisions*

41. It is apparent from the combined reading of recitals 2 and 3 and of Article 1[29] of Regulation No 1186/2009 that the guiding principle continues to be that of the common taxation of the movement of goods which, as in the main proceedings, enter the territory of the Union. It is only as an exception, 'owing to special circumstances',[30] which are 'well-defined', that certain goods imported into the Union may be exempt from customs duty under that regulation.

42. Relief is therefore granted to the person concerned who requests it, subject to the importation in question having been carried out in accordance with the conditions laid down by that regulation. The advantageous measures adopted in respect of relief from customs duties have the particular feature that, on the one hand, they do not have general scope but, on the other, they are permanent.[31]

28 — Emphasis added.

29 — Regulation No 1186/2009, according to Article 1, 'sets out those cases in which, owing to special circumstances, relief from import duties, export duties and measures adopted on the basis of Article 133 of the Treaty shall be granted when goods are released for free circulation or are exported from the customs territory of the Community'.

30 — That restrictive formula was also to be found in former Article 184 of the Customs Code (see Council Regulation (EEC) No 2913/92 of 12 October 1992, establishing the Community Customs Code (OJ 1992 L 302, p. 1)), which constituted the legal basis for the intervention of the Community legislature concerning relief from import duty or export duty, which was included among 'privileged' operations (Title VI).

31 — As paragraph 1 of the Explanatory Memorandum of the aforementioned proposal (COM(79) 104 final) points out, the proposal distinguishes relief from import duty from an exemption, since customs duty remains applicable to similar goods imported for purposes or by persons other than those specified in the relief measure, and from a suspension of duty, which is a temporary measure.

43. Since relief from import duty is therefore a device which makes it possible to waive permanently the taxation of goods which have been imported for purposes precisely identified by the Union legislature, I consider that the conditions for applying that exemption should, in principle, be interpreted strictly. [32] Nevertheless, those conditions cannot be construed so strictly as to cause relief from customs duty to lose its effectiveness, especially where entitlement to the relief depends on factors linked to the private life of the persons concerned. [33] That is true, in particular, as regards the interpretation of Article 3 et seq. of Regulation No 1186/2009, which requires a genuine transfer of the normal place of residence from a third country to a Member State if the goods of the person concerned are to be admitted free of duty.

44. In that regard, I note that, as has been pointed out by the referring court in this case, the Court has previously excluded the possibility of a person having two normal places of residence at the same time in the territory of two different Member States, but that is only for the purposes of the application of Regulation No 1408/71. In the grounds of its decision, the Court stated inter alia that the opposite solution, whereby it is possible to have a number of places of residence, would deprive of all practical effectiveness the provisions of that regulation which use the place of residence as the connecting factor for the determination of the legislation applicable in the context of that instrument. [34] Similarly, the possibility of having several 'normal' places of residence seems to me contrary to the logic underlying the exemption mechanism provided for in Article 3 et seq. of Regulation No 1186/2009.

5. *The teleological interpretation of the relevant provisions*

45. As stated in recital 3 of Regulation No 1186/2009, which reproduces in essence the second recital of Regulation No 918/83, the customs reliefs provided for by those measures are justified by the fact that it is acceptable not to tax goods imported into the territory of the Union 'where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent'. It is apparent from the preparatory works for Regulation No 918/83 that it was considered that, in cases in which the specific circumstances referred to by that instrument are present, 'the conditions under which the goods granted relief are imported are such that these goods cannot be in real competition with similar goods of Community origin or have an adverse effect on States' tax revenue'. [35]

46. Admittedly, the possibility of having two normal places of residence, as envisaged by the referring court, may seem compatible with those concerns, since it would not appear to be necessary in such a situation to have recourse to measures for the protection of the economy of the Union. Nevertheless, I consider that the notion that a person may have his 'normal' place of residence in both a Member State and in a third country and import his personal property into the territory of the Union when he ceases to reside in that third country does not correspond to the situation envisaged in Article 3 et seq. of Regulation No 1186/2009.

32 — See, by analogy, judgment in *Schoonbroodt* (C-247/97, EU:C:1998:586, paragraph 23 and the case-law cited), in which the Court stated that *provisions granting suspension of customs duties 'are to be interpreted strictly according to their terms and may not therefore be applied, contrary to their wording, to products which they do not mention*'.

33 — In paragraph 1.4 of its opinion on the proposal for a regulation leading to the adoption of Regulation No 918/83 (OJ 1980 C 72, p. 20), the Economic and Social Committee noted that '[i]t should thus be clearly stated that the subject matter being dealt with affects the lives of private individuals and families, and a restrictive approach should not be adopted', a passage also cited in the judgment in *Treimanis* (C-487/11, EU:C:2012:556, paragraph 26).

34 — Judgment in *Wencel* (C-589/10, EU:C:2013:303, paragraphs 48 et seq.).

35 — The aforementioned Opinion of the Economic and Social Committee (paragraph 1.4). Similarly, in paragraph 4 of the Explanatory Memorandum of the aforementioned proposal (COM(79) 104 final), it is stated that relief may be granted in respect of personal effects being used by persons coming to settle in a country because that importation does not affect the national production of similar goods, since they are imported without any commercial consideration.

47. When asked about the interpretation of provisions of Regulation No 918/83, the Court has emphasised that the 'objectives pursued by the EU legislature when [that Regulation] was adopted … [were] to make it easier to establish a new residence in the Member State and to facilitate the work of the customs authorities of the Member States'.[36] It is therefore clear that, by adopting the common reliefs from import duties established by that regulation, the legislature intervened not only in the interests of persons who would have had to pay customs duty when settling in a Member State, but also in order to simplify the task of the State authorities which would have been responsible for monitoring the taxation of goods imported on such an occasion. In my view, all those considerations may be transposed in respect of Regulation No 1186/2009, since it simply codified the provisions, inter alia, of Regulation No 918/83.

48. With regard, in the present case, to the possibility that a person may have a 'normal place of residence' within the meaning of Regulation No 1186/2009 in a Member State and in a third country at the same time, I consider, as does the Commission, that what it describes as a 'complete return to a normal place of residence in the Member State' does not meet the aforementioned objective of facilitating the establishment of a new place of residence in a Member State. If a person leaves one of his two 'normal' places of residence, namely the one situated in a third country, to go and live only in the other, namely the one *already established in a Member State*, there is not, strictly speaking, a genuine *transfer of the normal place of residence* to the customs territory of the Union as required by Article 3 et seq. of that regulation.

49. It is also apparent from the international texts which the EU legislature took as its basis, among other sources,[37] that the determining factor for justifying relief from import duty in circumstances such as those set out in the aforementioned Article 3 is that goods are imported by a natural person in connection with the transfer of the main place in which he lives, referred to — depending on the sources — as domicile or normal place of residence, from the country of exportation to the country of importation.[38]

50. I therefore consider that the answer to the first part of the first question referred for a preliminary ruling should be that Regulation No 1186/2009 is to be interpreted as meaning that a natural person is precluded from having his normal place of residence simultaneously in a Member State and in a third country, in particular for the purposes of the application of the reliefs from customs duty provided for in Article 3 of that regulation.

6. *The second part of the first question*

51. In view of the negative reply which I suggest should be given to the first part of the first question, I consider that there is no need to answer the second part of that question, which relates to the possible application of Article 3 of Regulation No 1186/2009 to personal property transferred to the Union when the person concerned ceases to occupy his 'normal' places of residence in a third country, since that question is formulated only in the alternative by the referring court, in the event that it was possible to have two 'normal places of residence' within the meaning of that regulation.

36 — Judgment in *Treimanis* (C-487/11, EU:C:2012:556, paragraph 24). Those objectives had been identified in the same terms by Advocate General Poiares Maduro in his Opinion in *Feron* (C-170/03, EU:C:2004:312, point 74), referring to the Opinion of Advocate General Saggio in *Heinonen* (C-394/97, EU:C:1999:10, paragraph 16).

37 — See paragraphs 5 and 7 of the Explanatory Memorandum of the aforementioned proposal (COM(79) 104 final), and the fourth recital of Regulation No 918/83, the substance of which was reiterated in recital 5 of Regulation No 1186/2009.

38 — Thus, in the words of the Recommendation of 5 December 1962 of the Customs Co-operation Council (now World Customs Organisation) concerning the free admission of removable articles imported on transfer of residence (document available on the following website: http://www.wcoomd.org/en/about-us/legal-instruments/recommendations/~/media/5E6130F9EAA54352A7710C2CA72ABA2B.ashx), that text was adopted in order to '*facilitate the transfer of residence by natural persons from one country to another' and recommends* 'admission free of import duties and taxes and free of economic import prohibitions and restrictions in respect of removable articles imported by a natural person *on transfer of his residence to the country of importation*' (emphasis added).

52. In that regard, I shall simply point out that that possibility appears to me incompatible with the fundamental criterion laid down in Article 3 that 'natural persons [applying for relief from the duty concerned] [*transfer] their normal place of residence from a third country to the customs territory of the Community*'.[39] In my view, that wording necessarily implies a change of just one place of residence from a third country to a Member State. That situation is different from the situation that would arise if a person could leave his normal place of residence in a third country in order to live in future only in his alleged other normal place of residence already situated in a Member State, as envisaged by the referring court.[40] If he cannot fully satisfy that criterion, that person cannot avail himself of the right to relief provided by that article.

B – *The criteria for determining the normal place of residence of a natural person within the meaning of Regulation No 1186/2009*

1. *Introductory comments*

53. The second question referred for a preliminary ruling is subject to the hypothesis that, as I propose, the Court interprets the provisions of Regulation No 1186/2009 as precluding the possibility of a natural person having two normal places of residence within the meaning of those provisions.

54. The referring court raises the question, having regard to the decision being appealed before it and to the claims made by Mr X in his appeal, of the criteria to be adopted, for the purposes of the application of that regulation, in identifying the country in which the normal place of residence of a person in circumstances such as those of the main proceedings is situated, namely, when, during a given period, the person concerned has had both personal and occupational links in a third country and only personal links in a Member State. In essence, that question therefore asks the Court to define 'normal place of residence' within the meaning of Regulation No 1186/2009 and, in particular, to specify the criteria which are to prevail in the event that the connecting factors do not all relate to one and the same place.

55. In setting out the grounds for its question, the referring court observes that the Court has already analysed the concept of 'normal place of residence' in connection with the interpretation of Directives 83/182 and 83/183, which relate to tax exemptions, not customs reliefs. It wonders if and to what extent the criteria for defining 'normal place of residence' contained in those two directives, particularly in relation to the balance between personal ties and occupational ties, and the related judgments of the Court[41] are relevant for the purposes of determining the normal place of residence within the meaning of Regulation No 1186/2009. As justification for its doubts, it points out that the objective of those directives is different from that of the regulation and notes that the main proceedings are different from those giving rise to cases previously brought before the Court, in that the person concerned in the present case has occupational ties only in the third country, not in the Member State concerned.[42]

39 — Emphasis added.

40 — Following the same logic, the Netherlands Government maintains, in the alternative, that if the Court concludes that it is possible, under Article 3 of Regulation No 1186/2009, to have a normal place of residence in a Member State and in a third country at the same time, that still does not mean that the person concerned is entitled to the relief from customs duty provided for in that article, arguing that, in that case, the normal place of residence in the third country is *given up* — not transferred to the customs territory of the Union, and the normal place of residence in the Member State is maintained — not set up there.

41 — That court refers to the judgments in *Ryborg* (C-297/89, EU:C:1991:160); *Louloudakis* (C-262/99, EU:C:2001:407), and *Alevizos* (C-392/05, EU:C:2007:251).

42 — In that regard, the referring court cites the judgment in *Louloudakis* (C-262/99, EU:C:2001:407, paragraphs 52 and 53), but it notes, however, that, in Regulation No 1186/2009, there is no provision comparable to the second subparagraph of Article 7(1) of Directive 83/182, according to which primacy is to be given to personal ties in certain circumstances, and it considers that such circumstances, furthermore, are not present in this case.

56. Mr X takes the view that the reply to the second question should be in line with the judgements of the Court interpreting 'normal place of residence' within the meaning of Directives 83/182 and 83/183, on the grounds that Regulation No 1186/2009 has the same context and pursues almost the same objective as those directives, in that Article 3 of the regulation also refers to the movement of personal property for individuals. Similarly, the Netherlands Government considers that, by analogy with those judgments, priority should be given to personal ties and that it is for the national court to determine in which residence they are stronger, on the basis of facts which it sets out in a non-exhaustive list based on that case-law. [43]

57. On the other hand, the Commission considers that the definition of 'normal place of residence' as laid down in Directives 83/182 and 83/183 and interpreted by the Court cannot be transposed to the present case. It suggests that that term should be defined, for the purpose of Regulation No 1186/2009, as corresponding, 'in principle, to the place in which the person concerned actually resides for the greater part of the year'. It is only in the alternative, in cases in which it is not clear that that place is in a third country, that it should be necessary to take into account the fact that the person concerned has his main personal ties in a Member State.

58. I consider, that, for the purposes of the application of Regulation No 1186/2009, 'normal place of residence' must be interpreted autonomously, not only in relation to the laws of the Member States, [44] but also in relation to the definitions of that concept or similar concepts contained in other acts of EU law, as set out in the case-law of the Court.

2. *The possible interpretation of 'normal place of residence' in the light of other acts of EU law*

59. Unlike Regulation No 1186/2009, both Directive 83/182 and Directive 83/183, which were adopted in connection with tax relief, expressly state what is meant by 'normal place of residence', in Article 7(1) and Article 6(1), respectively. [45] I would point out that that guidance is given by the legislature only 'for the purposes' of those directives, not for EU law in general. [46] The Commission rightly states that if the legislature had intended to use an identical definition for the purposes of the application of Regulation No 1186/2009, it would have done so and this is all the more obvious in the present case because Regulation No 918/83, which was codified by Regulation No 1186/2009, was adopted on the same day as those two directives.

60. In addition to Directives 83/182 and 83/183, to which the national court refers, it should be noted that 'normal place of residence' has also been the subject of a definition, formulated in identical terms, in directives adopted subsequently in relation to the issue and administration of driving licences. [47] The Court has stated that observance of the normal residence condition laid down in those directives constituted an essential element of the system established by the directives to combat abuse, linked to

43 — Referring to paragraph 55 of the judgment in *Louloudakis* (C-262/99, EU:C:2001:407), that Government concluded that the court should take into consideration, '*in particular, the actual presence of the person concerned and of the members of his family, 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 authorities 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*'. To that it adds that 'details such as the country in which the pension is set up, the country in which the employer is established and the country in which health insurance has been taken out' should also be taken into consideration.

44 — See paragraphs 31 et seq. of this Opinion.

45 — The wording of those provisions is set out in points 16 and 17 of this opinion.

46 — In the light of the headings of those articles ('General rules for determining residence') and of the preparatory works relating to those directives (see, inter alia, with regard to Directive 83/183, Article 8 of Commission Proposal COM(1975) 528 final (OJ 1975 C 267, p. 11)), it seems to me that the definitions of that concept were introduced mainly to supplement the list, which follows in paragraph 2 of those articles, of admissible evidence by which the persons concerned may establish where their place of residence is situated.

47 — First Council Directive 80/1263/EEC of 4 December 1980 on the introduction of a Community driving licence (OJ 1980 L 375, p. 1) already used the term 'normal place of residence' on several occasions, but did not define it. Article 9 of Council Directive 91/439/EEC of 29 July 1991 on driving licences remedied that omission. That definition was repeated in Article 12 of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 (OJ 2006 L 403, p. 18), which repealed the previous directive.

what it has called 'driving-licence tourism', and to facilitate monitoring.[48] It therefore seems that when the legislature has intended to use the same definition of that concept as that contained in Directives 83/182 and 83/183, including in a quite different domain from that of taxation, it has done so expressly.

61. In any event, it is only in connection with the scope of Directives 83/182 and 83/183 that the Court has provided a number of clarifications concerning the definitions given in those directives. It has held, inter alia, that, for the purpose of each of them, '[n]ormal residence must be regarded as the place where a person has established his permanent centre of interests', that '[t]he 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' and that the normal place of residence must be determined not only having regard to 'all of the relevant facts' but also in the light of the objective of the directive at issue.[49]

62. It is apparent from the preambles to Directives 83/182 and 83/183 that their main objective is to encourage free movement of persons within the Union, by eliminating tax obstacles to the importation into one Member State of personal property from another.[50] That objective is not the same as those referred to in Regulation No 1186/2009,[51] since that regulation concerns the movement of goods, not between Member States, but between a Member State and a third country, the only situation in which measures to protect the economy of the European Union which justify customs charges[52] are normally applicable, as the referring court has rightly pointed out.

63. Another reason why I consider that the term 'normal place of residence' within the meaning of those directives cannot be transposed to the interpretation of Regulation No 1186/2009, albeit only as an alternative source of inspiration, is that the legal areas covered by those two categories of measure are different, even though they have similarities. It is true that what tax exemptions and customs relief have in common is that their object is to exempt eligible goods from taxation and that the aim of improving parallelism between the provisions applicable to tax matters and those applicable to customs matters is clearly set out in the prepatory legislative works.[53] However, those two categories of relief cannot be wholly assimilated, principally because, in customs matters, the question of whether relief may be granted arises, by definition, only with regard to goods originating in a third country, but also because the way in which they are applied and their effects are different.[54]

48 — See, inter alia, judgments in *Grasser* (C-184/1, EU:C:2011:324, paragraph 27); *Hofmann* (C-419/10, EU:C:2012:240, paragraphs 70 and 76), and *Nīmanis* (C-664/13, EU:C:2015:41, paragraphs 36 et seq.).

49 — As regards Directive 83/182, see judgments in *Ryborg* (C-297/89, EU:C:1991:160, paragraphs 17 et seq.), and *Louloudakis* (C-262/99, EU:C:2001:407, paragraphs 51 et seq.), and, as regards Directive 83/183, see judgment in *Alevizos* (C-392/05, EU:C:2007:251, paragraphs 54 et seq.).

50 — See judgments in *Ryborg* (C-297/89, EU:C:1991:160, paragraph 13); *Louloudakis* (C-262/99, EU:C:2001:407, paragraph 58), and *Alevizos* (C-392/05, EU:C:2007:251, paragraph 53).

51 — See points 45 et seq. of this Opinion.

52 — See recitals 2 and 3 of Regulation No 1186/2009.

53 — See the aforementioned Opinion of the Economic and Social Committee (paragraph 1.8); the Explanatory Memorandum of Commission Proposal (COM(2007) 614 final, p. 2 and 3), which led to the adoption of Council Regulation (EC) No 274/2008 of 17 March 2008 (OJ 2008 L 85, p. 1), which amended Regulation No 918/83 and was codified by Regulation No 1186/2009; Georgopoulos, Th., 'La franchise douanière – Le droit douanier communautaire entre cohérence et flexibilité', *R.A.E.*, 2005, No 4 p. 608.

54 — See Berr, C. J. and Trémeau, H., *Le droit douanier communautaire et national*, Economica, Paris, 2006, paragraph 157, and Soulard, Ch., 'Union douanière – Taxation des marchandises', *Jurisclasseur Europe*, fascicule 504, 2007, paragraph 124.

64. Finally, I would point out that if all the criteria for establishing a normal place of residence stemming both from Directives 83/182 and 83/183 and from the related case-law were transposed for the purposes of the application of Regulation No 1186/2009, that would risk undermining the effectiveness of Article 3 et seq. of that regulation, since it would have the consequence in practice of making eligibility for the customs relief available under those provisions, essentially in the interest of EU citizens, significantly more difficult than the legislature intended. [55]

65. In my view, it is apparent from those considerations, first, that the special rule that primacy must be given to the place in which the person concerned has personal links where it is impossible to determine where the permanent centre of his interests is situated, can be decisive only if, as the relevant provisions of Directives 83/182 and 83/183 state, the person concerned has lived 'in turn in different places situated in two or more Member States'. [56] I agree with the Commission that the choices thus made by the legislature must be observed when it is necessary to determine which of the various Member States concerned may levy tax on the goods in question, for the purposes of allocating fiscal jurisdiction within the European Union, but not where the person concerned has alternated the place in which he lives between a Member State and a third country.

66. Secondly, the reference period used in Directives 83/182 and 83/183, according to which the normal place of residence is in principle the place in which the person concerned lives 'for at least 185 days in each calendar year', that is to say more than half of each year taken into consideration, seems to me inappropriate for customs relief. I shall expand upon my proposal below, [57] but I would point out at this stage that, in my view, although the criterion relating to the portion of the year a person spends in a country is relevant, the frequency of the period, namely every year, is not entirely appropriate with regard to the question of possible exemption from customs duty.

67. I therefore consider that the relevant factors for determining the 'normal place of residence' set out in the aforementioned directives, as interpreted by the Court, cannot be transposed to the present case, either as such, or by analogy, in the light of the differences in wording, objectives and areas covered, which distinguish Regulation No 1186/2009 from those directives.

68. For the sake of completeness, I note that concepts similar to that of 'normal place of residence', which exist in various areas of EU law, have also been interpreted by the Court. I shall refer here briefly, in particular, to the judgments relating to the terms 'residence' and 'normally' within the meaning of Regulation No 1408/71 [58] and the term 'habitual residence', which appears in particular in the so-called Brussels IIa Regulation, [59] but is not defined therein. [60]

55 — It has rightly been pointed out that '[s]ince the freedom of movement of European citizens … has been established as a fundamental principle of Community law, it would be absurd if they were to be confronted with too rigid a customs regime when they returned or when they (first) settled within the European Union. Although Regulation No 918/83 does not reserve specific relief for European nationals, they will be the first to benefit from release [linked to events in their private life'] (see Georgopoulos, Th., op. cit., p. 607). See also point 77 of this Opinion.

56 — Under the second subparagraph of Article 7(1) of Directive 83/182, and the second subparagraph of Article 6(1) of Directive 83/183, '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'.

57 — See points 74 et seq. of this Opinion.

58 — With regard to term 'residence' defined in Article 1(h) of Regulation No 1408/71, see judgment in *Swaddling* (C-90/97, EU:C:1999:96, paragraphs 29 and 30), and with regard to the concept of employment 'normally' carried out in a Member State, which appears, inter alia, in Articles 14 et seq. of the regulation, see judgment in *Banks and Others* (C-178/97, EU:C:2000:169, paragraphs 25 et seq.).

59 — Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 388, p. 1), under which both the habitual residence of the spouses and the habitual residence of the child very often serve as the basis of jurisdiction.

60 — With regard to the 'habitual residence' of the child within the meaning of the Brussels IIa Regulation, see, inter alia, judgments in *A* (C-523/07, EU:C:2009:225, paragraphs 37 et seq.), and *Mercredi* (C-497/10 PPU, EU:C:2010:829, paragraphs 44 et seq.).

69. It is apparent from that case-law that a certain period of stable residence making it possible to identify close links with a country is generally required where use is made of such location factors and that the Court has provided a list of assessment criteria only for the purposes of the application of the regulations concerned. Since those factors were established by the EU legislature in order to connect a cross-border situation to one or other of the Member States, with regard to the applicable law and jurisdiction respectively, the judgments in question, like those relating to Directives 83/182 and 83/183, have a different context from that of the present case, in that this case concerns whether property originating in a third country is taxable under EU law.

70. I consider that it is therefore necessary to give a definition of the term 'normal place of residence' which is specifically tailored to the provisions of Regulation No 1186/2009 for which an interpretation is sought.

3. *The definition of the term 'normal place of residence' specific to Regulation No 1186/2009*

71. First of all, I would point out that in its initial proposal for what was to become Regulation No 918/83,[61] the Commission intended to define the term 'normal place of residence' for the purposes of the application of that proposed regulation in an Article 4, the substance of which is similar to that of Article 3 of Regulation No 1186/2009. The definition of that term, which was not preserved in the final version of Regulation No 918/83, was worded as follows: 'the place where a person habitually lives, that is the place where a person resides continuously during a certain period by reason of personal or occupational ties indicating close links between that person and the place where he lives'.

72. In the present case, the Commission takes the view that the answer to the second question referred should be that '[f]or the purposes of the application of Article 3 of Regulation No 1186/2009, the normal place of residence is in principle the place in which the person concerned actually resides for most of the year'. As an incidental point, it suggests following an alternative method in cases in which the principal personal links of the person concerned connect that person to a Member State.

73. For my part, I consider that the reply to that question should contain a definition of the term 'normal place of residence' within the meaning of Regulation No 1186/2009 which would apply not only in respect of Article 3 thereof, but for all the provisions of the regulation which use that term as a criterion.[62]

74. I also consider that, in order that a natural person may be regarded as having established his 'normal place of residence' in a third country, a sufficient period of residence must be required[63] and a criterion of proportion (or ratio) must be applied, as the Commission suggests. I think it is necessary for the person concerned to have lived in that country at the very least most, if not all, of the time during the relevant period. That temporal, mathematical and objective criterion has the advantage of not calling for a balancing of various factual elements, sometimes relating to subjective considerations which it may be difficult or even irrelevant in practice to list in detail — as proposed by the Netherlands Government — and complex for the national court to weigh up in each individual case.

61 — The aforementioned proposal (COM(79) 104 final).

62 — See point 28 of this Opinion.

63 — Similarly, the aforementioned recommendation of the Customs Co-operation Council stated, in respect of the requirements for free admission of removable articles imported on transfer of residence: 'in the case of persons returning to the country of importation, *the period of residence abroad is deemed to be sufficient*' (emphasis added).

75. On the other hand, I do not think it is necessary to take a 'year' as the only reference period, since the calendar year is a reference point which, in my view, is undoubtedly relevant in tax matters, bearing in mind the usual reference point of the accounting or tax year, but is less directly relevant in the context of customs duty, in particular for the purpose of determining whether a person is entitled to relief from customs duty. I take the view that it would be illogical to make the country in which a person's 'normal place of residence' within the meaning of Regulation No 1186/2009 is deemed to be situated vary each year or even make that determination subject to an annual average. What seems to me decisive in that regard is the overall period during which the person has lived in a third country before importing his personal property into the customs territory of the Union. The actual outcome may be quite different depending on whether the identification of his normal place of residence is based on an annual analysis or on the whole of the relevant period. [64]

76. I also consider that it is not appropriate, or even necessary, to give a definition and, in the alternative, to propose another solution, especially if it is difficult to identify the country in which the person concerned has lived during the greater part of the period under consideration.

77. The possibility of introducing, without any basis under Regulation No 1186/2009, an alternative criterion based on the fact that the person concerned has his main personal links in a Members State has the disadvantage that it may lead to a result that is the opposite of that produced by the temporal criterion which I advocate. That is the situation, in particular, in the present case. [65] Moreover, that criterion would deprive the relief provided for in Article 3 et seq. of that regulation of a large part of its effectiveness, since EU citizens who live permanently in a third country for their work, leaving their family settled in the Member State from which they originate, would often not qualify for that advantage.

78. Furthermore, to provide for an alternative criterion seems to me unjustified in the light of the common rules relating, on the one hand, to the relationship between any principle and its exceptions and, on the other hand, the burden of proof. It is clearly for the person claiming entitlement to the derogation from the principle of taxation constituted by customs relief [66] to adduce proof of all the facts on which he relies in that regard. [67] Moreover, it will be for the national court to apply the criteria which will be defined by the Court in the light of the facts of the case before it, and possibly to reject the claim for customs relief if any doubt persists as regards the fact that the normal place of residence of that person is actually situated in a third country. To make the person concerned bear the burden of proving that he is entitled to that relief makes it possible inter alia to reduce the opportunities for abusing that customs advantage.

64 — For example, if over a five-year period, a person has lived longer in a third country during the first four years, but longer in a Member State during the final year, that might lead to the conclusion, if the annual analysis model were used, that his normal place of residence was within the territory of the Union in respect of the last year, so that the person concerned would be refused customs relief even though he had lived most of the time abroad during that period.

65 — In the case of Mr X, it is common ground that the period at issue was from 1 March 2008 to 1 August 2011 and that he spent only 281 days outside Qatar, that is considerably less than a year, during those three and a half years. It is therefore in that third country that he spent most of his time and where, in my view, his 'normal place of residence' is situated. On the other hand, if the criterion relating to the place in which the person concerned has most personal links were used, that would have the effect of designating the Netherlands as his normal place of residence.

66 — See points 41 et seq. of this Opinion.

67 — Article 126 of Regulation No 1186/2009 expressly states that '[w]here [this regulation] provides that the granting of relief shall be subject to the fulfilment of certain conditions, the person concerned shall, to the satisfaction of the competent authorities, furnish proof that these conditions have been met'.

79. In that regard, I note that, as the Commission points out, the possible risk of abuse of the rules governing relief from customs duty provided for in Article 3 of Regulation No 1186/2009, which could be the consequence inter alia of too broad a view of the term 'normal place of residence', is in principle limited by the series of cumulative conditions laid down in Articles 4 to 11 of that regulation. Since these adequately define the circumstances in which those rules apply, it is not necessary, in my view, to add to them requirements such as those proposed by the Netherlands Government.

80. Finally, I wish to point out that, since the legislature intentionally opted for a straightforward solution, choosing not to give a specific definition of the term 'normal place of residence' within the meaning of Regulation No 918/83 and then of Regulation No 1186/2009, I think it is essential not to opt for an excessively complex definition of that term in the interpretation requested in this case.

81. I therefore suggest that the Court reply to the second question that, in order to determine the normal place of residence of a natural person within the meaning of Regulation No. 1186/2009, it is for the national court adjudicating in the main proceedings to take into account all the facts which make it possible to identify the place in which that person actually lived during the greater part of the relevant period, that is to say the period during which the person concerned lived partly in one or more third countries.

V – **Conclusion**

82. Having regard to the foregoing considerations, I propose that the Court of Justice answer the questions referred to it for a preliminary ruling by the Hoge Raad der Nederlanden (Supreme Court, Netherlands) as follows:

(1) The provisions of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty are to be interpreted as meaning that a natural person is precluded from having his 'normal place of residence' simultaneously in a Member State and in a third country, in particular for the purposes of the application of the relief from customs duty provided for in Article 3 of that regulation.

(2) In the same context, the 'normal place of residence' of a natural person is to be determined by taking into account all the facts which make it possible to identify the place in which that person actually lived during the greater part of the relevant period.