Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

6 September 2012*

(Regulation (EEC) No 918/83 — Articles 1(2)(c), 2 and 7(1) — Relief from import duties on personal property — The term 'property intended … for meeting … household needs' — Motor vehicle imported into the European Union — Vehicle used by a member of the family of the importing owner)

In Case C-487/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Administratīvā rajona tiesa (Latvia), made by decision of 15 September 2011, received at the Court on 22 September 2011, in the proceedings

**Laimonis Treimanis**

v

**Valsts ieņēmumu dienests,**

THE COURT (Second Chamber),

composed of U. Lõhmus, President of the Sixth Chamber, acting as President of the Second Chamber, A. Rosas, A. Ó Caoimh, A. Arabadjiev and C.G. Fernlund (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Valsts ieņēmumu dienests, by N. Jezdakova, acting as Agent,

— the Latvian Government, by I. Kalniņš and D. Pelše, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and by A. De Stefano, avvocato dello Stato,

— the European Commission, by L. Bouyon and A. Sauka, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Latvian.

## Judgment

1 This reference for a preliminary ruling concerns the interpretation of Articles 1(2)(c), 2 and 7(1) 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).

2 The reference has been made in proceedings between Mr Treimanis and the Valsts ieņēmumu dienests (the Latvian State Tax Authority; the 'VID') concerning import duties in relation to a motor vehicle imported into the European Union (EU).

## Legal context

3 The first three recitals in the preamble to Regulation No 918/83 state:

'… 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 [European Union]; … the same is true in the case of agricultural levies and all other import charges laid down under the common agricultural policy or the specific arrangements applicable to certain goods resulting from the processing of agricultural products;

… 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;

… it is desirable that in such circumstances arrangements should 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'.

4 Article 1(2)(c) of that regulation is worded as follows:

'For the purposes of this Regulation:

...

(c) "personal property" means any property intended for the personal use of the persons concerned or for meeting their household needs.

The following, in particular, shall constitute "personal property":

— household effects,

— cycles and motor cycles, private motor vehicles and their trailers, camping caravans, pleasure craft and private aeroplanes.

— Household provisions appropriate to normal family requirements, household pets and saddle animals, as well as the portable instruments of the applied or liberal arts, required by the person concerned for the pursuit of his trade or profession, shall also constitute "personal property". Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons'.

5 Article 2 of Regulation No 918/83 states:

'Subject to Articles 3 to 10, personal property imported by natural persons transferring their normal place of residence from a third country to the customs territory of the [European Union] shall be admitted free of import duties.'

6 Article 3 of the regulation provides:

‘The 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.

In addition, Member States may make relief conditional upon such property having borne, either in the country of origin or in the country of departure, the customs and/or fiscal charges to which it is normally liable.’

7 Under Article 7 of Regulation No 918/83:

‘1. Until 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.

2. Any loan, giving as security, hiring out or transfer before the expiry of the period referred to in paragraph 1 shall entail payment of the relevant import duties on the property concerned, at the rate applying on the date of such loan, giving as security, hiring out or transfer, on the basis of the type of property and the customs value ascertained or accepted on that date by the competent authorities.’

## The dispute in the main proceedings and the question referred for a preliminary ruling

8 Mr Treimanis used to live with his son in the United States. In 2007, they decided to move to Latvia to a property owned by Mr Treimanis. On 19 March 2007, Mr Treimanis, as the owner of a motor vehicle, imported that vehicle free of import duties, pursuant to Article 2 of Regulation No 918/83. The registration certificate issued on that date states that Mr Treimanis is the owner of the vehicle, but that his son is the registered keeper.

9 On 17 December 2007, the Riga Region customs office of the VID adopted a decision requiring Mr Treimanis to pay the sum of LVL 2 257.64 by way of import duties, value added tax and a fine. That decision was upheld by a decision of the director of the VID of 9 May 2008. The director found that Mr Treimanis had not satisfied the conditions laid down in Article 7 of Regulation No 918/83, since the motor vehicle at issue in the main proceedings could not be regarded as intended for meeting the needs of the household composed of Mr Treimanis and his son. According to the information in the population register, although Mr Treimanis’ son resided in Riga, he was a student in Tallinn (Estonia), he was not working and he was wholly dependent on his father. In addition, Mr Treimanis’ registered place of residence was still in the United States, where he had been resident since the autumn of 2007. In those circumstances, the director of the VID inferred that Mr Treimanis and his son were not living together and that the motor vehicle could not be regarded as having been imported for the needs of the household.

10 Mr Treimanis brought an action before the Administratīvā rajona tiesa (District Administrative Court) seeking annulment of the decision of 9 May 2008. He argued that the director of the VID had wrongly restricted the scope of the term ‘household’, which encompasses the joint management of affairs and the duty of parents to support their children. In addition, he submitted that, between him and his son, there was not a loan for use, but merely a relationship of agency, since his son was authorised to act in his father’s interests and the motor vehicle was not intended to meet the son’s needs. His relationship with his son had therefore to be assessed in a family setting.

11 The director of the VID contended that Mr Treimanis had 'lent' the vehicle to his son under a 'loan for use' agreement and, accordingly, the son was named on the registration certificate as the registered keeper of the vehicle.

12 Since the Administratīvā rajona tiesa was uncertain whether, in the circumstances of the case, the imported motor vehicle falls to be regarded as property used for meeting the needs of the household composed of Mr Treimanis and his son, or as being lent for the purposes of Article 7 of Regulation No 918/83, it decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 7(1) of [Regulation No 918/83] preclude the owner of a private car imported into the European Union from a third country from transferring the car, for use free of charge, to a family member who has actually moved his residence from that third country to the European Union and who formed part of a household with the owner of the car in that third country before the car was imported into the European Union, where the car owner has essentially remained in the third country since the vehicle was imported?'

## Consideration of the question referred

13 By its question, the referring court asks in essence whether Articles 2 and 7(1) of Regulation No 918/83 must be interpreted as meaning that the owner of a private motor vehicle, who has transferred his 'normal place of residence' from a third country to a Member State of the European Union and who has imported the vehicle from that third country into that Member State, may receive relief from import duties if the vehicle is used, free of charge, within the European Union by a member of the owner's family, with whom he was living as part of the same household in that third country, while the owner has continued to reside primarily in that country since the vehicle was imported.

14 In order to answer that question, it is necessary to determine, first, whether the motor vehicle at issue in the main proceedings meets the conditions for relief from import duties and, second, whether, in circumstances such as those of the case before the referring court, entitlement to relief from import duties is lost, with the result that those duties must be paid.

15 As regards, in the first place, the duty-free importation, Regulation No 918/83 lays down conditions in relation to (i) the importer and (ii) the nature of the property imported.

16 As regards the importer, Article 2 of the regulation provides that, in order to be admitted free of import duties, the property must be imported by a natural person transferring his normal place of residence to the customs territory of the European Union.

17 It is for the referring court to verify that the owner of the motor vehicle at issue in the case before it has in fact transferred his 'normal place of residence' to Latvia. On reading the order for reference, it is not possible to determine whether Mr Treimanis actually resides in Latvia or whether he stays there frequently. In paragraph 8 of that order, it is stated, first, that, in the course of 2007, Mr Treimanis and his son moved to Latvia and, second, that Mr Treimanis' registered place of residence was still in the United States, where he was essentially living when the decision of 9 May 2008 was adopted.

18 If the referring court were to find that Mr Treimanis did not transfer his 'normal place of residence from a third country to the customs territory of the [European Union]', for the purposes of Article 2 of Regulation No 918/83, it ought to infer from this that the motor vehicle concerned could not be imported free of import duties. In the opposite case, it will have to be determined whether the conditions relating to the nature of the property imported are satisfied.

19 As regards the nature of the property imported free of import duties, Article 2 of Regulation No 918/83 states that this relates to personal property. Article 1(2)(c) of the regulation defines personal property as 'any property intended for the personal use of the persons concerned or for meeting their household needs'. That provision specifies that private motor vehicles fall within that category.

20 In the case before the referring court, it has been ascertained that the motor vehicle imported is used by the importer's son, with the result that it cannot be regarded as property intended for the importer's personal use.

21 It must therefore be ascertained whether a motor vehicle such as that at issue in the main proceedings, which has been imported by its owner but is used by his son, may be regarded as 'property intended … for meeting … household needs' for the purposes of Article 1(2)(c) of Regulation No 918/83.

22 Article 1 of Regulation No 918/83 does not define what is meant by 'property intended … for meeting … household needs'. In that connection, it follows from the need for the uniform application of EU law and 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 purposes of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union (Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43; and Case C-170/03 *Feron* [2005] ECR I-2299, paragraph 26).

23 It follows that the term 'property intended … for meeting … household needs' as used in Article 1(2)(c) of Regulation No 918/83 must be given an autonomous interpretation.

24 For the purposes of that interpretation, it is appropriate to recall the objectives pursued by the EU legislature when Regulation No 918/83 was adopted. Those objectives are 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.

25 The second recital in the preamble to Regulation No 918/83 states that the taxation of imports '[is not justified] 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'.

26 Similarly, in accordance with the Opinion of the Economic and Social Committee on the proposal for a Council (EEC) regulation setting up a Community system of reliefs from customs duty (OJ 1980 C 72, p. 20), it should '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. Furthermore, 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'.

27 Lastly, the Court has held that, under the relevant provisions of Regulation No 918/83, imports which consist exclusively of goods for the personal use of travellers or their families are to be regarded as imports of a non-commercial nature (Case C-99/00 *Lyckeskog* [2002] ECR I-4839, paragraph 25). Similarly, under Article 1(2)(c) of Regulation No 918/83, what is really essential is that the personal property is not such as might indicate, by its nature or quantity, that it is being imported for commercial reasons (*Feron*, paragraph 20).

28 In addition, it would be more difficult to attain the objectives pursued by Regulation No 918/83 if personal property imported without any commercial purpose were subject to taxation upon importation, as Advocate General Poiares Maduro observed in point 74 of his Opinion in *Feron*.

29 Consequently, it is acceptable for property to be imported free of import duties where its use is closely connected to the private life of the parties concerned and their families and there is no commercial purpose. The term 'property intended … for meeting … household needs' must be interpreted in the light of those considerations.

30 In so far as it follows from Article 1(2)(c) of Regulation No 918/83 that a private motor vehicle constitutes personal property, it must be determined whether, when used by a member of the importer's family, such a vehicle may be categorised as 'property intended … for meeting … [the needs of the importer's household]'.

31 It does not appear, in the light of the principles set out in paragraphs 24 to 29 above, that the use of such property by a member of the importer's family can be regarded as being for commercial purposes.

32 However, it is necessary to define what is covered by the term 'member of the importer's family'.

33 In that connection, the Commission states that Article 1(f)(i) of Regulation (EEC) No 1408/71 of the Council 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), as amended by Council Regulation (EC) No 307/1999 of 8 February 1999 (OJ 1999 L 38, p. 1), defines 'member of the family' as meaning 'any person defined or recognised as a member of the family or designated as a member of the household by the legislation under which benefits are provided …; where, however, the said legislations regard as a member of the family or a member of the household only a person living under the same roof as the employed or self-employed person or student, this condition shall be considered satisfied if the person in question is mainly dependent on that person'.

34 In addition, Article 2(2)(c) of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77) defines 'family member', inter alia, as one of 'the direct descendants who are under the age of 21 or are dependants …'.

35 In the light of those provisions and for the purpose of defining 'property intended … for meeting … household needs', where a person has imported property, a member of that person's family who uses that property may be defined as a person who is living under the same roof as the importer or who is mainly dependent on the importer.

36 It follows from those considerations that, when used by a member of the importer's family, that is by a person living under the same roof as the importer or mainly dependent on him, a private motor vehicle may be categorised as 'property intended … for meeting … household needs' for the purposes of Article 1(2)(c) of Regulation No 918/83. It is for the referring court to ascertain whether, in the case before it, the member of the importer's family concerned meets the above conditions.

37 As regards, in the second place, the question whether the use of a private motor vehicle such as that at issue in the main proceedings may cause entitlement to relief from import duties to be lost pursuant to Article 7 of Regulation No 918/83, it should be noted that the aim of that article is to penalise – through the loss of relief – transactions whereby the personal property is no longer used by its owner because it has been transferred, hired out, lent or given as security within 12 months of being imported. Since the property imported is no longer used for the personal use of the importer or for the needs of his household, the relief from import duty which attaches to those uses may no longer be applied to it.

38 The situation governed by Article 7(1) of Regulation No 918/83 can be distinguished from the situation in the case before the referring court, where the property concerned is used by a member of the importer's family for household needs in the circumstances outlined in paragraph 36 above, because the importer in that case has not relinquished use of his property for meeting household needs, regardless of the manner in which his making that property available for the benefit of a member of his family might be characterised in legal terms. Consequently, where a private motor vehicle, imported free of duty, is used by a member of the importer's family, that is by a person living under the same roof as the importer or mainly dependent on him, entitlement to that relief is not lost as a result of such use.

39 It follows from all the foregoing considerations that the answer to the question referred is that Articles 2 and 7(1) of Regulation No 918/83 must be interpreted as meaning that a private motor vehicle imported from a third country into the customs territory of the European Union may be imported free of import duties provided that the importer has actually transferred his normal place of residence to the customs territory of the European Union, which is a matter for the national court to determine. A motor vehicle used free of charge by a member of that importer's family, that is by a person living under the same roof as the importer or mainly dependent on him, a matter for the national court to determine, is to be regarded as being intended for meeting the needs of the importer's household, and that use does not result in loss of entitlement to the relief in question.

## Costs

40 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

**Articles 2 and 7(1) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty must be interpreted as meaning that a private motor vehicle imported from a third country into the customs territory of the European Union may be imported free of import duties provided that the importer has actually transferred his normal place of residence to the customs territory of the European Union, which is a matter for the national court to determine. A motor vehicle used free of charge by a member of that importer's family, that is by a person living under the same roof as the importer or mainly dependent on him, a matter for the national court to determine, is to be regarded as being intended for meeting the needs of the importer's household, and that use does not result in loss of entitlement to the relief in question.**

[Signatures]