JUDGMENT OF THE COURT
9 May 1985 *

In Case 112/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunal de grande instance [Regional Court], Belfort, for a preliminary ruling in the proceedings pending before that court between

Michel Humblot

and

Directeur des services fiscaux

on the interpretation of Article 95 of the EEC Treaty,

THE COURT

composed of: G. Bosco, President of the First Chamber, acting as President of the Court, P. Pescatore, T. Koopmans, U. Everling, K. Bahlmann, Y. Galmot and R. Joliet, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: D. Louterman, Administrator

after considering the observations submitted on behalf of:

— Michel Humblot, the plaintiff in the main proceedings, by Y. Canus of the Mulhouse Bar;
— the French Government by P. Pouzoulet, acting as Agent;
— the Commission of the European Communities, by G. Berardis, acting as Agent;

after hearing the Opinion of the Advocate General delivered at the sitting on 20 March 1985,

gives the following

* Language of the Case: French.

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By a judgment of 17 April 1984, which as received at the Court on 26 April 1984, the Tribunal de grande instance [Regional Court], Belfort, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 95 of the EEC Treaty.

2 The question was raised in proceedings between Michel Humblot and the Directeur général des impôts [Director General of Revenue] in which Mr Humblot seeks repayment of the special tax imposed on certain vehicles.

3 It appears from the documents before the Court that there are in France two different types of tax due annually on motor vehicles. First there is a differential tax to which cars rated at 16 CV [fiscal horsepower] or less are subject and secondly a special tax on vehicles rated at more than 16 CV. Whereas the amount of differential tax payable increases progressively and uniformly with the power rating for tax purposes, the special tax is levied at a single and considerably higher rate.

4 In 1981 Mr Humblot became the owner of a car rated at 36 CV. Before he could put the vehicle on the road Mr Humblot had to pay the special tax, which, at that time, amounted to FF 5 000. After paying that sum Mr Humblot brought a complaint before the tax administration with a view to obtaining a refund of the difference between that sum and the highest rate of the differential tax (at the time FF 1 100).

5 His complaint was rejected and Mr Humblot brought an action against the Directeur général des impôts before the Tribunal de grande instance, Belfort, where he argued that the imposition of the special tax was contrary to Articles 30 and 95 of the Treaty.

6 In view of that argument, the Tribunal de grande instance referred the following question to the Court of Justice for a preliminary ruling:

'Must Article 95 of the Treaty establishing the European Economic Community, in conjunction with any other provision or fundamental principle of the Treaty, be interpreted as meaning that it prevents (if so, on what terms) a Member State from imposing a specific tax on products from another Member State which it does not manufacture but which, it may be assumed, are similar to or in competition, within the meaning of previous decisions of the Court of Justice, with its own products? In particular, does Article 95 of the Treaty allow a Member State to impose specific taxes such as the special tax imposed in France on vehicles of more than 16 CV when such vehicles are not manufactured in that country but are manufactured in certain other countries of the Community?'

7 It appears from the documents in the case that the essence of the question is whether Article 95 prohibits the charging on cars exceeding a given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States.

8 In his observations submitted to the Court Mr Humblot points out that the special tax affects imported vehicles only, since no French car is rated for tax purposes at more than 16 CV. Mr Humblot argues that nevertheless vehicles of 16 CV or less and vehicles exceeding 16 CV are completely comparable as regards their performance, price and fuel consumption. As a result, he contends that the French State, by subjecting imported vehicles alone to a special tax much greater in amount than the differential tax, has created discrimination contrary to Article 95 of the Treaty.

9 For its part, the French Government considers that the special tax is contrary neither to the first nor to the second paragraph of Article 95. It argues that the special tax is charged solely on luxury vehicles, which are not similar, within the meaning of the first paragraph of Article 95, to cars liable to the differential tax. Moreover, whilst the French Government concedes that some vehicles rated at 16 CV or less and others rated at more than 16 CV are in competition and so subject to the second paragraph of Article 95, it maintains that the special tax is

not contrary to that provision, since it has not been shown that the tax has the effect of protecting domestic products. It argues that there is no evidence that a consumer who may have been dissuaded from buying a vehicle of more than 16 CV will purchase a car of French manufacture of 16 CV or less.

10 The Commission considers that the special tax is contrary to the first paragraph of Article 95 of the Treaty. It argues that all cars, irrespective of their power rating for tax purposes, are similar within the meaning of the case-law of the Court. That being so, it is no longer possible for a Member State to create discrimination between imported and domestically-produced vehicles. The only exception is where a Member State taxes products differently — even identical products — on the basis of neutral criteria consistent with objectives of economic policy which are compatible with the Treaty, whilst avoiding discrimination between domestic and imported products. The Commission contends, however, that the criterion adopted by France in this instance, namely power rating for tax purposes, is not geared to an economic policy objective, such as heavier taxation of luxury products or vehicles with high fuel consumption. Accordingly, the Commission considers that the special tax, which is almost five times the highest rate of differential tax, affects imported vehicles only and does not pursue an economic policy objective compatible with the Treaty, is contrary to the first paragraph of Article 95 of the Treaty.

11 The United Kingdom Government considers that vehicles of more than 16 CV are in a competitive relationship with some cars with a lower power rating for tax purposes, from which it follows that the special tax is contrary to the second paragraph of Article 95 of the Treaty since it diverts consumers from imported cars to French prestige models.

12 It is appropriate in the first place to stress that as Community law stands at present the Member States are at liberty to subject products such as cars to a system of road tax which increases progressively in amount depending on an objective criterion, such as the power rating for tax purposes, which may be determined in various ways.

13 Such a system of domestic taxation is, however, compatible with Article 95 only in so far as it is free from any discriminatory or protective effect.

14 That is not true of a system like the one at issue in the main proceedings. Under that system there are two distinct taxes: a differential tax which increases progressively and is charged on cars not exceeding a given power rating for tax purposes and a fixed tax on cars exceeding that rating which is almost five times as high as the highest rate of the differential tax. Although the system embodies no formal distinction based on the origin of products it manifestly exhibits discriminatory or protective features contrary to Article 95, since the power rating determining liability to the special tax has been fixed at a level such that only imported cars, in particular from other Member States, are subject to the special tax whereas all cars of domestic manufacture are liable to the distinctly more advantageous differential tax.

15 In the absence of considerations relating to the amount of the special tax, consumers seeking comparable cars as regards such matters as size, comfort, actual power, maintenance costs, durability, fuel consumption and price would naturally choose from among cars above and below the critical power rating laid down by French law. However, liability to the special tax entails a much larger increase in taxation than passing from one category of car to another in a system of progressive taxation embodying balanced differentials like the system on which the differential tax is based. The resultant additional taxation is liable to cancel out the advantages which certain cars imported from other Member States might have in consumers' eyes over comparable cars of domestic manufacture, particularly since the special tax continues to be payable for several years. In that respect the special tax reduces the amount of competition to which cars of domestic manufacture are subject and hence is contrary to the principle of neutrality with which domestic taxation must comply.

16 In the light of the foregoing considerations the question raised by the national court for a preliminary ruling should be answered as follows: Article 95 of the EEC Treaty prohibits the charging on cars exceeding a given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States.

Costs

17 The costs incurred by the French Government, the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the question referred to it by the Tribunal de grande instance, Belfort, by judgment of 17 April 1984, hereby rules:

Article 95 of the EEC Treaty prohibits the charging on cars exceeding a given power rating for tax purposes of a special fixed tax the amount of which is several times the highest amount of the progressive tax payable on cars of less than the said power rating for tax purposes, where the only cars subject to the special tax are imported, in particular from other Member States.

Bosco Pescatore Koopmans

Everling Bahlmann Galmot Joliet

Delivered in open court in Luxembourg on 9 May 1985.

P. Heim
Registrar

G. Bosco
President of the First Chamber
Acting as President