JUDGMENT OF THE COURT (Sixth Chamber)

12 July 2001 *

In Case C-262/99,

REFERENCE to the Court under Article 234 EC by the Trimeles Dioikitiko Protodikeio Irakleiou (Greece) for a preliminary ruling in the proceedings pending before that court between

Paraskevas Louloudakis

and

Elliniko Dimosio,

on the interpretation of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59),

* Language of the case: Greek.

THE COURT (Sixth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken, Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— the Greek Government, by P. Mylonopoulos and M. Apessos, acting as Agents,

— the Commission of the European Communities, by H. Michard and M. Patakia, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Louloudakis, represented by G. Stylianakis, dikigoros; of the Greek Government, represented by M. Apessos; and of the Commission, represented by M. Patakia, at the hearing on 3 October 2000,

after hearing the Opinion of the Advocate General at the sitting on 16 November 2000,

gives the following

Judgment

1 By judgment of 30 June 1999, received at the Court on 19 July 1999, the Trimeles Dioikitiko Protodikeio Irakleiou (Administrative Court of First Instance (three judges), Heraklion) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59, hereinafter 'the directive').

2 Those questions were raised in a dispute between Mr Louloudakis and the Elliniko Dimosio (Greek State) concerning taxes and fines imposed on him in connection with the importation, into Greece, of three motor vehicles registered in Italy.

The legal background to the main proceedings

Community legislation

3 Article 1(1) of the directive provides that, under the conditions laid down in the directive, Member States are to exempt temporary imports from another Member

State of motor-driven road vehicles from, in particular, turnover tax, excise duties and any other consumer tax.

4 Article 1(3) of the directive excludes from the exemption commercial vehicles, which are defined in Article 2(a) as being, in particular, any road vehicle which, by its design or equipment, is suitable for and intended for transporting, whether for payment or not, more than nine persons, including the driver, or goods.

5 As regards private vehicles, the exemption applies, under Article 3 of the directive, to their temporary importation for private use for a period, continuous or otherwise, of not more than six months in any 12 months.

6 Under Article 4 of the directive, the exemption applies, as regards those same vehicles, to their temporary importation for business use, for a period, whether continuous or not, in principle of six months in any 12 months.

7 Both Articles 3 and 4 of the directive make entitlement to the exemption subject to the condition that the individual importing the vehicle has 'his normal residence in a Member State other than the Member State of temporary importation'. In addition Article 4 requires an individual importing a vehicle for business use not to use that vehicle within the Member State of temporary importation in order to carry passengers for hire or material reward of any kind, or for the industrial and/or commercial transport of goods, whether for reward or not.

8 Article 7 of the directive states:

'1. 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. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

2. Individuals shall give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

3. Where the competent authorities of the Member State of importation have doubts as to the validity of a statement as to normal residence made in accordance with paragraph 2, or for the purpose of certain specific controls, they may request any additional information or evidence.'

9 Article 9(1) provides that Member States may, in particular, at the request of the importer, permit temporary importation for a period longer than those referred to in Articles 3 and 4(2).

10 Article 10(2) provides:

'Where the practical application of this directive gives rise to difficulties, the competent authorities of the Member States concerned shall take the necessary decisions by mutual agreement, particularly in the light of the conventions and Community directives on mutual assistance.'

National legislation

11 Law No 2127/93 on the tax on motor vehicles, in force at the time material to the main proceedings but subsequently repealed by Law No 2682/99, applied to motor vehicles dispatched or transported to Greece from other Member States of the Community.

12 Article 75 thereof provides that such vehicles are to be subject to the special consumer tax which is imposed on imported or equivalent domestically-produced vehicles.

13 Article 79 imposes an obligation to declare to the customs authorities, within the period prescribed therein, the importation of the vehicles referred to in Article 75, with the exception of those covered by Article 84(2). Article 80(2) requires,

within a period which it prescribes, for the purpose of assessment and collection of the special consumer tax, the submission of a special declaration to the customs authorities.

14 Under Article 84(2), vehicles imported with a view to temporary use within Greece are exempt from the special consumer tax.

15 According to Article 87, subject to Article 84, persons domiciled in Greece are not allowed to possess vehicles covered by Article 75 beyond the time-limit laid down by Article 80(2) or to use them beyond the time-limit laid down by Article 79(3).

16 Pursuant to Article 88(1), any form of evasion or attempted evasion of payment of the tax and other charges owed or failure to observe the formalities laid down by law with the intention of non-payment are to be dealt with and punished in accordance with Article 89 et seq. of Law No 1165/18 concerning the Customs Code.

17 Article 88(2)(a) and (g) provide that, without prejudice to the application of Article 88(1), the following fines are also to be imposed:

— for failure to submit a declaration under Article 79, a fine of GRD 100 000 for each vehicle;

— for possession or use of a vehicle covered by Article 75 by a person who does not enjoy a temporary exemption under Article 84(2), a fine set according to

the cubic capacity of the vehicle, that is, in particular, for vehicles up to 1 300 c.c., GRD 1 000 000 and for vehicles of 2 001 c.c. and above, GRD 5 000 000.

18 Article 89(2) of the Customs Code treats any form of evasion or attempted evasion of payment of duties and charges owing to the State and failure to observe the other formalities set out in Article 100 of that code as customs contraventions. It provides that customs contraventions will result in the imposition of increased duty on the persons responsible, even if the competent authorities find that it has not been proven that the crime of smuggling has been committed.

19 Article 97(3) of the Customs Code provides that increased duty amounting to between two and ten times the customs duties, taxes and charges payable on the subject-matter of the contravention is to be imposed jointly and severally on each person who participates in any way in a customs contravention under Article 89(2) of that code.

20 Article 1 of Order No D-247/13 of 1 March 1988 of the Minister for Finance, amended by Law No 2187/94, permits the temporary importation, exempt from corresponding customs duties and other taxes, of means of transport for private use, commercial vehicles being excluded from that scheme.

21 Article 3 thereof defines the concept of 'normal residence' in terms substantially identical to those of Article 7(1) of the directive.

22 Article 4, relating to temporary importation for private use of a means of transport other than a commercial vehicle, sets at six months, whether continuous or not, in a 12-month period, the period during which that means of transport may remain in the country. It provides that that period may be extended by an additional nine months, unless the person concerned engages in business activity in Greece, in which case such extension is limited to a maximum of three months.

23 Article 5 sets, in principle, at six months, whether continuous or not, the period for temporary importation of a private vehicle for business use during which such a vehicle may remain in Greece. The exemption does not apply if the vehicle is used to transport persons or for the industrial or commercial transport of goods, whether for payment or not.

24 Both Article 4 and Article 5 make the granting of the exemption subject to the condition that the person concerned have his normal residence outside Greece.

25 The third and fourth paragraphs of Article 15 reproduce, in identical or substantially identical terms, Article 7(2) and (3) of the directive, relating to proof of 'normal residence'.

The dispute in the main proceedings

The circumstances of the applicant in the main proceedings according to the information contained in the file

26 Mr Louloudakis is a Greek national born in Chania (Greece) in 1956. He moved to Italy in 1974, and has Italian nationality as well.

27 At the material time, he held a Greek passport and an Italian identity card. He had a house in Florence (Italy). Mr Louloudakis is an architect by profession and in 1986 he set up, together with his wife, who is an Italian national, the limited partnership 'Studio Fiorentino SAS' (hereinafter 'Studio Fiorentino'), established in Florence. The statutory objects of that partnership were property restoration and building projects, property brokering and trading in machinery and olive oil. Studio Fiorentino submitted income tax returns for the financial years 1992, 1993 and 1994 in which it declared income of ITL 27 779 000, ITL 19 950 000 and ITL 14 371 000. For the 1995 financial year, the year material to the main proceedings, it submitted a tax return showing losses of ITL 348 000.

28 In September 1993, Mr Louloudakis, with his wife, founded a business in Chania whose object was the packaging of olives and fats. That business submitted an income tax return for the financial year 1994 showing income from the sale in Italy of olive oil of GRD 3 686 355.

29 In November 1994, Mr Louloudakis founded the public limited company 'Kritiki Viomichania Elaioladou AE' ('Krivel'), whose registered office was in Chania and whose objects were wholesale trade, import and export, representation, processing, sorting and packing in relation to all kinds of oils and agricultural products.

30 From 1993, Mr Louloudakis submitted, together with his wife, income tax returns in Greece. Since 1982 he had been insured with the Pension Fund for Public Works Engineering Contractors, which, in Greece, is an institution of principal insurance for architects in particular, but he had not drawn up a single project in that Member State.

31 In 1992, the Chania prefecture issued him with a car driving licence. He was also in possession of an Italian driving licence, renewed in 1991 and 1995.

32 Mr Louloudakis was resident in Kounoupidiana, Chanion (Greece), in a house which he rented. His two children were pupils in a private school in Chania. More specifically, his older son had attended the first year during the school year 1993/94 and the second year during 1994/95. According to Mr Louloudakis, his children attended a Greek school in order to learn Greek and were looked after mainly by their grandmother. At the same time, however, it was claimed that they also attended school in Florence. The Hygiene and Public Health Service of the Municipality of San Severo (Italy) certified that one of the children had received inoculations in that municipality on 18 August 1994, 24 September 1994 and 25 February 1995.

33 Moreover, Mr Louloudakis was registered on the electoral roll of the town of San Severo where he voted in the elections of 21 April 1996, subsequent to the facts material to the main proceedings.

Facts in the main proceedings

34 On 13 March 1995, at the Port of Heraklion, an employee of Krivel was caught driving a private Fiat Iveco van, owned by Studio Fiorentino, bearing Italian plates.

35 He stated that the vehicle had already been in circulation in Greece four months earlier, when he had begun to work for Krivel.

36 The vehicle was impounded as smuggled goods, as were two other vehicles owned by Studio Fiorentino, namely a BMW 728 and a Ford Fiesta, both registered in Italy, which were found at the address of Mr Louloudakis in Kounoupidiana, Chanion, when the customs inspectors carried out a night-time check.

37 Taking the view that Mr Louloudakis was normally resident in Greece, the director of the Idiki Ypiresia Teloniakon Erevnon Kritis (Special Customs Investigation Service), Crete, imposed on Mr Louloudakis, by decision of 8 January 1996:

— increased duty of GRD 72 216 960, amounting to double the customs charges in respect of the three vehicles in question, under Article 97(3) of Law No 1165/18, for wilful failure to pay duties due;

— fines of GRD 100 000 for each of the three cars, that is to say GRD 300 000 in total, under Article 88(2)(a) of Law No 2127/93, for failure to make a declaration on entry into Greece;

— fines of GRD 5 000 000 each in respect of the BMW and the Fiat Iveco, as vehicles exceeding 2 000 c.c., and a fine of GRD 1 000 000 in respect of the Ford Fiesta car, as a vehicle not exceeding 1 300 c.c., totalling GRD 11 000 000, under Article 88(2)(g) of Law No 2127/93, for possession and use of vehicles whilst not entitled to a temporary exemption.

38 On 7 February 1996 Mr Louloudakis brought an action against that decision before the Trimeles Dioikitiko Protodikeio Irakleiou, claiming that the court should annul or vary that decision.

39 Before that court, he submitted that:

— the three vehicles had been imported into Greece and were located there for, and to serve the business needs of, Studio Fiorentino, which owned and used them.

— they had been used on numerous occasions in various Member States and, from the end of 1994, they were driven mainly in Greece, the Fiat Iveco being used to transport goods in or to Italy, whilst the other two vehicles were used to transport Mr Louloudakis himself or members of the partnership's staff in or outside Italy, for the purpose of business meetings, negotiations, the signing of contracts in countries outside Italy and so forth;

— in the period from September 1994 to February 1995, that is to say the six months prior to their seizure, all those vehicles were continuously used for journeys and haulage within Italy and across borders and it was therefore not possible for them to be continuously in Greece during that period;

— the vehicles were in Greece between 1 and 8 March 1995;

— consignment notes issued by Studio Fiorentino show that those vehicles entered Greece just a few days before their seizure on 13 March 1995;

— the total value of the three vehicles did not exceed GRD 4 000 000;

— he himself lived permanently in Italy, where he was engaged in business for Studio Fiorentino and came to Greece only temporarily, at the time of the olive harvest;

— his activities in Greece did not amount to a transfer of his normal residence within the meaning of Article 7(1) of the directive;

— by requiring that he register the three vehicles in Greece and pay exorbitant fiscal charges, the Greek State had infringed the EC Treaty and the directive.

40 The national court observes, in particular, that the temporary importation of the Fiat Iveco for business use was permissible since, by reason of its cubic and carrying capacity, as a small open pick-up truck, it could not be regarded as a commercial vehicle, that is to say intended for the carriage of goods. It accordingly takes the view that if, following temporary importation into the country, it had not been used to carry goods, bearing in mind that collection of olive oil samples could not be regarded as such carriage, the vehicle in question could have been imported duty-free, as a private vehicle for business use, subject

to the sole proviso that the person using it had his normal residence in another Member State.

41 It points out that settlement of the dispute in the main proceedings therefore depends on the answer to the question of Mr Louloudakis' normal residence, in particular because the imposition of the contested fines is based on the fact that Mr Louloudakis used the three Italian-registered vehicles for his personal and business needs in Greece, not those of Studio Fiorentino, established in Italy. According to the national court, the issue is thus raised as to which criteria are to be used to determine his normal residence having regard to facts such as those of the main proceedings.

42 In view of all the circumstances of the present case, the Trimeles Dioikitiko Protodikeio Irakleiou decided to stay proceedings and refer to the Court of Justice for a preliminary ruling the following questions:

'1. Is the second subparagraph of Article 7(1) of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another to be interpreted as meaning that the normal residence of a national of State A is in State A, where he successfully carries on business for many years both as an architect and in commerce through a limited partnership, retains a residence and spends most of his working time, or is in State B, of which he is also a national and where, simultaneously, he starts up an independent business with a similar or at least related object, leases a house and begins to spend part of his time, while also complying with his fiscal obligations, assisted by his wife who participates in all the above activities in both State A and State B and takes shares in those businesses?

Apart from the abovementioned provision, do other criteria exist on the basis of which, in cases where it is difficult to determine normal residence, it is possible for that determination to be made?

2. In the case of possession or use of private vehicles by a person not entitled to a temporary exemption, which under national law constitutes a simple customs contravention, is it consistent with the Community principle of proportionality to impose, on the basis of the sole criterion of the cubic capacity of the vehicle, a special administrative penalty, in particular a fine (such as the fine under Article 88(2)(g) of Law No 2127/93) of an amount from GRD 1 000 000 to GRD 5 000 000 per vehicle, where that fine exceeds the current market value of the vehicle having regard also to its age?

3. Is it permissible for the administrative measures as a whole — including those arising from the charge of smuggling — which are decided on as appropriate in the field of customs contraventions by Member State B which is competent in that regard (in view of the absence of harmonisation of national laws) to lead to penalties which amount to many (ten) times the original purchase price of the article in Member State A, without impeding the free movement of goods and persons?

   If the answer is in the negative, do criteria exist as to the limits of what is strictly necessary in order to achieve the objectives pursued?

4. Does Directive 83/182/EEC or another provision give rise to an obligation on the Member States to take into account, when imposing administrative penalties in cases with which that directive is concerned, the good faith of the persons concerned and the absence of fraudulent intent (for example ignorance)?'

Question 1

43 By its first question, the national court is seeking to ascertain, in substance, the criteria according to which Article 7(1) of the directive must be interpreted so far as concerns the definition of 'normal residence', where a person has both personal and occupational ties in two Member States.

44 At the hearing, Mr Louloudakis denied that his normal residence was in Greece at the time material to the main proceedings, criticising the analysis of his circumstances made by the Greek authorities and referring specifically to certain aspects of that analysis. So far as concerns his children's schooling, he claims that, according to the directive, attendance at a university or school does not imply transfer of normal residence.

45 The Greek Government, making reference to Case C-297/89 *Ryborg* [1991] ECR I-1943, maintains that normal residence is the place where the person concerned has established the permanent centre of his interests, so that all the relevant factual circumstances of the particular case must be taken into consideration in order to identify it.

46 It takes the view that, in the main proceedings, Mr Louloudakis's intention to establish in Greece the permanent centre of his interests, that is to say his normal residence, is clear from the established facts. It points out that the court making the reference should, in any event, ask the person concerned to prove that he was actually present in Greece or in Italy during at least 185 days per calendar year,

before making a finding as to the place in which he spent the greater part of the time dedicated to his business.

47 The Commission is of the view that normal residence corresponds to the place where the person concerned lives during most of the year, as is confirmed by the reference made in Article 7 to a period of at least 185 days. Where the total duration of 185 days is not attained in any Member State, it is necessary to take account of the duration of the longest stay in a State, by reference to other qualitative criteria and by giving preference to the place where the person concerned has intended to create some stability, as a result of continuity arising from a way of life and the development of normal social and occupational relationships. Consequently, Article 7 of the directive provides for the taking into account of both the occupational and personal ties which the person concerned may have with a given place, the emphasis being on personal ties in cases where they do not coincide with occupational ones.

48 The Commission adds that, where the implementation of the applicable criteria does not make it possible to determine normal residence, on account of the increasing mobility, both at the occupational and social level, of Community residents, it is necessary to apply Article 10(2) of the directive, under which the competent authorities of the Member States concerned are to take the necessary decisions by mutual agreement, in order to avoid findings of two normal places of residence, resulting in double taxation.

49 It should be recalled at the outset that, according to settled case-law, in proceedings under Article 234 EC, the Court has no jurisdiction to apply the rules of Community law to a specific case. It may, however, provide the national court with an interpretation of all relevant provisions of Community law which might be useful to it in assessing the effects of its national provisions (see, *inter*

alia, Case 37/86 *Van Gastel* v *Rijksdienst and Rijkskas* [1987] ECR 3589, paragraph 8, and Case C-385/96 *Goerres* [1998] ECR I-4431, paragraph 14).

50 Next, it must be observed that a situation such as that described by the national court, namely the existence of both personal and occupational ties in two Member States, is not expressly provided for by Article 7(1) of the directive. None the less, it is covered implicitly by the first subparagraph of that provision which, by stating that '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, does not preclude the same person from living in another place for the remainder of the calendar year, also because of personal and occupational ties.

51 The criteria for determining 'normal residence' defined by Article 7 of the directive refer both to a person's occupational and personal ties with a particular place and to the duration of those ties. Consequently they must be examined in conjunction with each other. Normal residence must, accordingly, be regarded as the place where a person has established his permanent centre of interests (*Ryborg*, cited above, paragraph 19).

52 It follows from Article 7(1) of the directive that that provision gives priority to personal ties where the person concerned does not have personal and occupational ties concentrated in a single Member State. Indeed, the second subparagraph gives primacy to personal ties over occupational ties where the latter are in a different place and the person concerned consequently lives in turn in two or more Member States and returns regularly to the State of his personal ties.

53 Thus, Article 7(1) of the directive provides for both occupational and personal ties to a given place to be taken into account and must be interpreted as meaning that, in the event that an overall assessment of occupational and personal ties does not suffice to locate the permanent centre of interests of the person concerned, primacy must be given, for the purposes of locating it, to personal ties.

54 In all the cases governed by Article 7 of the directive, and pursuant to Article 7(2), the person concerned may submit proof, by any appropriate means, of his place of normal residence and therefore of personal and/or occupational ties as well as of a duration of stay of at least, in principle, 185 days per calendar year in the Member State where he has such ties.

55 In that respect, all the relevant facts must be taken into consideration in determining normal residence as the permanent centre of interests of the person concerned (*Ryborg*, cited above, paragraph 20), namely, 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.

56 So far as concerns the aspect of attendance at an educational establishment, it must be pointed out that although, according to the second subparagraph of Article 7(1) of the directive, this does not imply transfer of normal residence as regards the person concerned himself, it may none the less, considered in a family context, be evidence of such transfer as regards his children.

57 The national court must undertake an overall assessment of the data relating to ties having regard to all the evidence submitted to it.

58 Such assessment must be carried out in the light of the objective pursued by the directive. In that regard, it must be borne in mind that, according to its preamble, the directive is aimed at encouraging freedom of movement of Community residents within the Community and that the elimination of the obstacles resulting from the taxation arrangements applied to the temporary importation of certain means of transport for private or business use is particularly necessary if an economic market having features similar to those of a domestic market is to be established (Case C-389/95 *Klattner* [1997] ECR I-2719, paragraph 25).

59 Contrary to what the Commission suggests in its written observations, Article 10(2) of the directive must not be applied where determination of normal residence meets with difficulties in a particular case. That provision, which requires the competent authorities of the Member States, where the practical application of the directive gives rise to difficulties, to take the necessary decisions by mutual agreement, is intended to enable them to cope with any future difficulties which may arise in individual specific cases. It does not require them to cooperate in each individual case in which the application of that directive raises difficulties (*Ryborg*, cited above, paragraphs 34 and 35).

60 The answer to the first question must therefore be that Article 7(1) of the directive must be interpreted as meaning that, where a person has both personal and occupational ties in two Member States, his normal residence, determined in the context of an overall assessment by reference to all the relevant facts, is that where the permanent centre of interests of that person is located; in the event that such an overall assessment does not result in its determination, primacy must be given to personal ties.

Questions 2 and 3

61 By its second and third questions, which it is appropriate to examine together, the national court is asking essentially whether national legislation which provides, in the event of infringement of the temporary importation arrangements laid down by the directive, for a series of penalties including, in particular:

— fines set at a flat rate on the basis of the sole criterion of the vehicle's cubic capacity, without taking its age into account,

— increased duty which can amount to up to ten times the taxes in question

is compatible with the principle of proportionality.

62 Mr Louloudakis claims that measures such as those at issue in the main proceedings curtail free movement inasmuch as they dissuade anyone from moving from one country to another with one or more motor vehicles.

63 The Greek Government states that strict penalties are necessary, in that it is neither advisable nor possible to check systematically all the vehicles in circulation in Greece bearing registration plates issued in other Member States. The risk of importation taking place with a view to evading payment of taxes and

other charges due is significant, because there are considerable disparities between the Member States as regards motor vehicle tax and also because of the possibilities of tax evasion. Consequently, the threat of heavy penalties is aimed at avoiding loss of Community and national revenue and ensuring the proper functioning of the temporary vehicle importation arrangements. It is therefore not contrary to the principle of proportionality. In particular, the threat of progressive fines by reference to the cubic capacity of the vehicle in question is undeniably commensurate with its commercial value.

64 The Commission makes reference to the judgment in Case C-210/91 *Commission* v *Greece* [1992] ECR I-6735, paragraphs 19 and 20. It takes the view that, in circumstances such as those of Mr Louloudakis, the objective pursued may be attained by means of the payment of the taxes and duties due. According to the Commission, additional penalties do not appear to be justified, bearing in mind the extreme difficulty of determining normal residence. It submits that additional penalties such as those mentioned in the second and third questions are disproportionate.

65 It must be pointed out that, in the context of the directive, the question of penalties arises where the person concerned has failed to comply with the conditions to which that directive subjects the benefit of the exemption for which it provides and where, furthermore, he does not fulfil, where appropriate, the conditions for exemption under 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 (OJ 1983 L 105, p. 64).

66 It must also be observed that the conformity with Community law of a penalty imposed in the context of the temporary importation arrangements implies that the tax or taxes on which such a penalty is based are themselves in conformity with Community law. It is for the national court to verify whether that is the case, in the light, in particular, of the judgment in Case C-375/95 *Commission* v *Greece*

[1997] ECR I-5981, which concerned, *inter alia*, the special consumer tax at issue in the case now before the court.

67 Subject to those observations, it must be borne in mind that, in the absence of harmonisation of the Community legislation in the field of the penalties applicable where conditions laid down by arrangements under such legislation are not observed, the Member States are empowered to choose the penalties which seem appropriate to them. They must, however, exercise that power in accordance with Community law and its general principles, and consequently with the principle of proportionality (see, in particular, Case C-210/91 *Commission* v *Greece*, cited above, paragraph 19, and the case-law cited therein; Case C-36/94 *Siesse* [1995] ECR I-3573, paragraph 21; and Case C-213/99 *De Andrade* [2000] ECR I-11083, paragraph 20). The administrative measures or penalties must not go beyond what is strictly necessary for the objectives pursued and a penalty must not be so disproportionate to the gravity of the infringement that it becomes an obstacle to the freedoms enshrined in the Treaty (see, to that effect, Case C-210/91 *Commission* v *Greece*, cited above, paragraph 20).

68 As may be seen in paragraph 58 of the present judgment, the objective of the directive is to encourage freedom of movement for Community residents and goods within the Community.

69 In that connection, although overriding requirements of enforcement and prevention may justify national legislation setting penalties at a certain level of severity, it is nevertheless possible that penalties determined in accordance with rules such as those applicable in the main proceedings may prove to be disproportionate and constitute an obstacle to the said freedom, inasmuch as they include flat-rate penalties fixed solely on the basis of the vehicle's cubic capacity, without account being taken of the vehicle's age, and increased duty which may be as much as ten times the charges at issue. A penalty based on the sole criterion of cubic capacity could be disproportionate to the gravity of the infringement, in

particular where it is associated with another heavy penalty, imposed in respect of the same infringement. The same could be true of a penalty amounting to a multiple of the charges at issue, for example ten times such charges.

70 In that regard, it is for the national court to assess whether, in view of the overriding requirements of enforcement and prevention, as well as of the amount of the taxes in question and the level of the penalties actually imposed, those penalties do not appear so disproportionate to the gravity of the infringement that they become an obstacle to the freedoms enshrined in the Treaty.

71 The answer to the second and third questions must therefore be that national legislation which provides, in the event of infringement of the temporary importation arrangements laid down by the directive, for a series of penalties including, in particular:

— fines set at a flat rate on the basis of the sole criterion of the vehicle's cubic capacity, without taking its age into account,

— increased duty which can amount to up to ten times the taxes in question

is compatible with the principle of proportionality only in so far as it is made necessary by overriding requirements of enforcement and prevention, when the gravity of the infringement is taken into account.

Question 4

72 By its fourth question, the national court asks essentially whether, in proceedings concerning infringements relating to temporary importation of certain means of transport, the directive or any other rule of Community law requires account to be taken of the good faith of the persons concerned, so far as concerns the principle or the level of the penalty.

73 The Greek Government submits that neither the directive nor any other provision of Community law provides for penalties for offenders, and neither is provision made for exoneration from such penalties on account of the good faith of the offenders because they were unaware of the applicable legislation. That question must therefore be regulated by national law. However, it is a general principle of law that everyone is presumed to know the law.

74 According to the Commission, in circumstances such as those of the case in the main proceedings, which give rise to difficulties in determining the arrangements applicable, it is appropriate to presume that the offender is ignorant of the aforementioned arrangements, so that it is not necessary to impose on him any penalties other than the obligation to pay the fiscal debt.

75 It must be observed that, just as the choice of penalty when dealing with infringements relating to temporary importation of certain means of transport is

a matter of national law, so is the question of ascertaining whether account must be taken of the good faith of the offender a matter for the national law of each Member State.

76 In that regard, where national law contains, in penal matters, a general principle according to which everyone is presumed to know the law, Community law does not preclude that principle from being applied in proceedings concerning infringements relating to temporary importation of certain means of transport. None the less, in the light of the purpose of the directive, which is to promote the freedoms guaranteed by the Treaty, account must be taken of the good faith of the offender when determining the penalty actually imposed on him, where determination of the arrangements applicable has given rise to difficulties.

77 The answer to the fourth question must therefore be that, in proceedings concerning infringements relating to temporary importation of certain means of transport, neither the directive nor other rules of Community law prevent its being excluded that ignorance of the applicable rules should lead to automatic exoneration from all penalties. None the less, where determination of the arrangements applicable has given rise to difficulties, account must be taken of the good faith of the offender when determining the penalty actually imposed on him.

Costs

78 The costs incurred by the Greek Government and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Trimeles Dioikitiko Protodikeio Irakleiou by judgment of 30 June 1999, hereby rules:

1. Article 7(1) of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another must be interpreted as meaning that, where a person has both personal and occupational ties in two Member States, his normal residence, determined in the context of an overall assessment by reference to all the relevant facts, is that where the permanent centre of interests of that person is located; in the event that such an overall assessment does not result in its determination, primacy must be given to personal ties.

2. National legislation which provides, in the event of infringement of the temporary importation arrangements laid down by Directive 83/182, for a series of penalties including, in particular:

   — fines set at a flat rate on the basis of the sole criterion of the vehicle's cubic capacity, without taking its age into account,

— increased duty which can amount to up to ten times the taxes in question,

is compatible with the principle of proportionality only in so far as it is made necessary by overriding requirements of enforcement and prevention, when gravity of the infringement is taken into account.

3. In proceedings concerning infringements relating to temporary importation of certain means of transport, neither Directive 83/182 nor other rules of Community law prevent its being excluded that ignorance of the applicable rules should lead to automatic exoneration from all penalties. None the less, where determination of the arrangements applicable has given rise to difficulties, account must be taken of the good faith of the offender when determining the penalty actually imposed on him.

Gulmann Skouris Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 12 July 2001.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber