ORDER OF THE COURT (Fifth Chamber)

10 December 2007 *

In Case C-134/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Sąd Rejonowy w Jaworznie (Poland), made by decision of 6 February 2007, received at the Court on 7 March 2007, in the proceedings

Piotr Kawala

v

Gmina Miasta Jaworzna,

THE COURT (Fifth Chamber),

composed of A Tizzano, President of the Chamber, M. Ilešič (Rapporteur) and E. Levits, Judges,

Advocate General: E. Sharpston,
Registrar: R. Grass,

* Language of the case: Polish.

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Polish Government, by E. Ośniecka-Tamecka, acting as Agent,

— the Commission of the European Communities, by D. Triantafyllou and K. Herrmann, acting as Agents,

proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

Order

1 This reference for a preliminary ruling concerns the interpretation of Article 25 EC and the first paragraph of Article 90 EC.

2 The reference was made in the course of proceedings between Mr Kawala and the Gmina Miasta Jaworzna (Municipality of Jaworzno) regarding a charge of PLN 500 paid on 18 August 2005 to obtain a certificate of first registration for a second-hand motor vehicle imported into Poland from another Member State ('the charge in question').

Legal context

Community legislation

3 Article 23 EC provides:

'1. The Community shall be based upon a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.

2. The provisions of Article 25 and of Chapter 2 of this title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.'

4 Article 25 EC provides:

'Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.'

5 Article 28 EC states:

'Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.'

6 Article 30 EC provides:

'The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.'

7 The first paragraph of Article 90 EC states:

'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.'

National legislation

8 Article 77 of the Polish Law on road traffic (Prawo o ruchu drogowym) of 20 June 1997 (Dz. U 2003, No 58, Pos. 515, No 124, Pos. 1152, No 130, Pos. 1190, and No 137, Pos. 1302) states:

'1. The manufacturer or importer of new vehicles shall be required to issue a registration certificate for each new motor vehicle marketed on the territory of the Republic of Poland.

2. The registration certificate shall be issued to the owner of the vehicle.

3. The registration certificate of a motor vehicle other than those referred to in paragraph 1 shall be issued, after payment of a registration charge, by the Starost responsible for registration, for the first registration of the vehicle on the territory of the Republic of Poland, with the exception of vintage vehicles and those vehicles referred to in Article 73(4).

4. The Minister for Transport:

...

(2) shall fix, by regulation, the amount of the charges for the registration certificate.'

9 The Regulation of the Polish Minister for Infrastructure of 28 July 2003 on the amount of the charges for a vehicle registration certificate (Dz. U 2003, No 137, Pos. 1310) ('Regulation of 28 July 2003') provided in Paragraph 1(1) and (2):

'1. For the issue of a vehicle registration certificate on the first registration of a vehicle in the territory of the Republic of Poland, the registration authority shall levy a charge amounting to PLN 500.

2. For the issue of a duplicate registration certificate, the registration authority shall levy a charge amounting to PLN 75.'

10 Subsequently to the facts of the dispute in the main proceedings, the Trybunał Konstytucyjny (Constitutional Court), by judgment of 17 January 2006, declared that Paragraph 1(1) of the Regulation of 28 July 2003 was, in essence, contrary to the provisions of the Law on road traffic and to the Polish Constitution. According to that judgment, that paragraph ceased to have binding force from 1 May 2006.

11 Subsequently, the Polish Minister for Transport and Construction adopted the Regulation of 28 March 2006 on the amount of the charges for a vehicle registration certificate, which entered into force on 15 April 2006, under which for both the issue of a certificate of first registration (Paragraph 1(1) of that regulation) and that of a duplicate registration certificate (Paragraph 1(2) of that regulation) the registration authority is to levy a single charge of PLN 75.

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

12 On 9 May 2005, Mr Kawala purchased a second-hand Mercedes-Benz motor vehicle in Germany and imported it into Poland in the same month.

13 On 18 August 2005, Mr Kawala paid the Gmina Miasta Jaworzna a charge of PLN 500 in order to obtain the certificate of first registration of the vehicle in Poland.

14 It is clear from the order for reference that, without registration of the vehicle, Mr Kawala would not have been able to drive the vehicle legally in Poland.

15 On 9 October 2006, Mr Kawala brought an action before the Sąd Rejonowy w Jaworznie (District Court, Jaworzno) against the Gmina Miasta Jaworzna for payment of the sum of PLN 425, which is the difference between the charge which he paid for the issue of the certificate of first registration and the amount he would have had to pay for the issue of a duplicate of that certificate, namely PLN 75.

16 The Sąd Rejonowy w Jaworznie observes that, in so far as Article 90 EC precludes the application of Paragraph 1 of the Regulation of 28 July 2003, it should, in the case before it and in accordance with Article 10 EC and the principle of primacy of Community law, set aside the provisions of that regulation which are contrary to Community law, including for the period prior to the date on which the Trybunał Konstytucyjny declared, in its judgment, that they would cease to have binding force.

17 The Sąd Rejonowy w Jaworznie notes that had Mr Kawala bought a new vehicle in Poland he would not have had to pay any charge to the Gmina Miasta Jaworzna in order to obtain the certificate of first registration, since that would have been supplied by the vehicle's manufacturer or the importer, who would have paid an amount of PLN 9.71 net (excluding VAT) for the certificate.

18 In those circumstances, the Sąd Rejonowy w Jaworznie decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does Article 90 EC prevent the application of Paragraph 1 of the [Regulation of 28 July 2003] on the amount of the charges for a vehicle registration [certificate] to the extent that it makes registration of a vehicle imported into the Republic of Poland, from another Member State, dependent upon payment of a charge for issue of a vehicle registration [certificate] amounting to PLN 500?'

19 The referring court also points out, without formally referring a second question, that, should the first question referred be answered in the negative, it may be necessary to interpret Article 25 EC in order to determine whether that provision precludes the application of Paragraph 1 of the Regulation of 28 July 2003, to the extent that the charge in question constitutes a charge having equivalent effect to a customs duty.

The question referred for a preliminary ruling

20 Under the first subparagraph of Article 104(3) of the Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law of the Court, it may, after hearing the Advocate General, give its decision by reasoned order.

21 By its question, the referring court asks, in essence, whether the first paragraph of Article 90 EC should be interpreted as precluding the imposition of the charge in question, which is levied, in practice, on the first registration of a second-hand motor vehicle imported from another Member State, and not on the purchase of a second-hand motor vehicle in Poland in so far as the latter vehicle is already registered there.

22 Given that, on the one hand, the Polish Government considers that the requirement to obtain a registration certificate for a second-hand motor vehicle imported from another Member State does not come within the scope of Article 90 EC, but within that of Articles 28 EC and 30 EC, as a measure having equivalent effect to a quantitative restriction on imports and exports which is nevertheless necessary, proportionate and justified on grounds of public policy and, on the other hand, the

referring court raises the possibility that the charge in question falls within the scope of Articles 23 EC and 25 EC, that is, the prohibition on customs duties and charges having equivalent effect, it is necessary to determine, first, under which provision of the EC Treaty the charge in question should be assessed.

23 It is settled case-law that the scope of Article 28 EC does not extend to barriers to trade covered by other specific provisions and that barriers of a fiscal nature or having an effect equivalent to customs duties, which are covered by Articles 23 EC, 25 EC and 90 EC, do not fall within the prohibition laid down in Article 28 EC. Furthermore, as regards the respective scopes of application of Articles 25 EC and 90 EC, it is settled case-law that provisions relating to charges having equivalent effect and those relating to discriminatory internal taxation cannot be applied together, with the result that, under the system established by the Treaty, the same charge cannot belong to both categories at the same time (see, inter alia, Case C-383/01 *De Danske Bilimportører* [2003] ECR I-6065, paragraphs 32 and 33 and case-law cited).

24 As regards the issue of whether a charge such as the charge in question is a 'charge having equivalent effect' within the meaning of Articles 23 EC and 25 EC, it is settled case-law that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect (Case C-313/05 *Brzeziński* [2007] ECR I-513, paragraph 22 and case-law cited).

25 A charge such as that at issue in the main proceedings is not levied on account of the crossing of the border of the Member State which has imposed it. It is clear from the information provided both by the referring court and by the Polish Government that the charge in question is levied on second-hand motor vehicles only for their first registration in Poland, with the exception of vehicles which, for whatever reason, are

not intended to be registered. In addition, according to the information provided by the Polish Government, the charge could also affect the first registration of certain, limited categories of vehicles already in Poland but which have not yet been registered there.

26 Therefore, to the extent that a charge on the first registration of motor vehicles, such as the charge in question, is clearly fiscal in nature and is levied not on account of the crossing of the border of the Member State which imposed it, but upon the first registration of a motor vehicle on the territory of that Member State, it must be held that it comes within a general system of internal dues on goods and therefore falls to be assessed in the light of Article 90 EC.

27 It must be borne in mind in that regard that the Court has held that, within the system of the EC Treaty, Article 90 EC supplements the provisions on the abolition of customs duties and charges having equivalent effect. Its aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation that discriminate against products from other Member States (*Brzeziński*, paragraph 27 and case-law cited).

28 In relation to the taxation of imported second-hand motor vehicles, Article 90 EC seeks to ensure the complete neutrality of internal taxation as regards competition between products already on the domestic market and imported products (Case C-74/06 *Commission* v *Greece* [2007] ECR I-7585, paragraph 24 and case-law cited).

29 A system of taxation may be considered compatible with Article 90 EC only if it is so arranged as to exclude any possibility that imported products are taxed more heavily than similar domestic products, so that it cannot in any event have discriminatory effect (*Brzeziński*, paragraph 40 and case-law cited).

30 The question which arises, in the present case, is therefore whether the charge in question is imposed, in practice, in the same way for imported second-hand motor vehicles as for those bought in Poland, those two categories of vehicles constituting similar products within the meaning of the first paragraph of Article 90 EC.

31 In that regard, it is common ground that, under Paragraph 1(1) of the Regulation of 28 July 2003, the first registration of a second-hand motor vehicle imported from another Member State costs, on account of the charge in question, PLN 500.

32 By contrast, according to the referring court and the Polish Government, the purchase of a similar vehicle in Poland does not normally give rise to the payment of a charge in so far as that vehicle is already registered there.

33 According to the referring court and to the Polish Government, in the case of the purchase of a new motor vehicle in Poland, it is for the manufacturer or importer of the vehicle to provide the certificate of first registration on a form which it obtains at the price of PLN 9.71 net. That price together with other expenses incurred by the relevant operator and linked to the issue of that certificate are included in the final price of the vehicle.

34 The Polish Government and the Commission of the European Communities point out, in that regard, that once it has been issued for a new motor vehicle, the registration certificate is given to each of the successive owners of the vehicle.

35 It follows that the purchase of a second-hand motor vehicle imported from another Member State and registered for the first time in Poland is subject to a charge of PLN 500, while the purchase of a similar vehicle in Poland normally has no registration charge levied on it.

36 Therefore, it is clear that the charge in question falls within the scope of the prohibition in the first paragraph of Article 90 EC.

37 In the light of the foregoing, the answer to the question referred must be that the first paragraph of Article 90 EC must be interpreted as precluding a charge, such as that provided for in Paragraph 1(1) of the Regulation of 28 July 2003, which, in practice, is levied on the first registration of a second-hand motor vehicle imported from another Member State and not levied on the purchase of a second-hand motor vehicle in Poland in so far as the latter is already registered there.

Costs

38 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 (Fifth Chamber) hereby orders:

The first paragraph of Article 90 EC must be interpreted as precluding a charge, such as that provided for in Paragraph 1(1) of the Regulation of the Polish Minister for Infrastructure of 28 July 2003 on the amount of the charges for a vehicle registration certificate, which, in practice, is levied on the first registration of a second-hand motor vehicle imported from another Member State and not levied on the purchase of a second-hand motor vehicle in Poland in so far as the latter is already registered there.

[Signatures]