Reports of Cases

OPINION OF ADVOCATE GENERAL
SZPUNAR
delivered on 2 March 2017[1]

Case C-552/15

European Commission
v

Ireland

(Failure of a Member State to fulfil obligations — Freedom to provide services — Motor vehicles — Rental or leasing of a motor vehicle by a person resident in one Member State from a supplier established in another Member State — Registration tax — Payment of the full amount of tax at the time of registration — Rules on the repayment of tax — Proportionality)

Introduction

1. Registration taxes on motor vehicles are not harmonised in EU law. Therefore, the Member States essentially have the right to shape that type of tax as they see fit. However, they cannot do so in a manner contrary to the general principles of EU law, including, in particular, the freedoms of the single market. This case concerns the extent of the Member States' freedom in this field.

2. Ireland, which was requested by the European Commission to adjust its system of registration taxes to satisfy the requirements of the freedom to provide services in relation to motor vehicle rental and leasing services, made appropriate amendments to its national law. However, the Commission takes the view that, in relation to motor vehicles imported into Ireland from other Member States for use for a fixed period, the adjustments made in Irish law are insufficient and that that law remains contrary to the freedom to provide services. Since Ireland takes a different view, the dispute will have to be resolved by the Court.

Irish legal framework

3. Section 131(4) of the Finance Act 1992 introduces a prohibition on the use in the territory of Ireland, other than in exceptional situations provided for in separate provisions,[2] of motor vehicles not registered in Ireland. The registration obligation must be fulfilled within one month of the date on which the motor vehicle is placed in circulation in the territory of Ireland.

4. Section 132(1) of the Finance Act 1992, as amended by Section 83(1)(d) of the Finance Act 2012, establishes an excise duty on motor vehicles, referred to as 'registration tax'. The liability to registration tax arises at the time a motor vehicle is registered. The amount of the tax is calculated as a percentage of the market value of the motor vehicle at the time of registration, having regard to the

1 Original language: Polish.

2 Those exceptions primarily concern motor vehicles brought into the territory of Ireland on a temporary basis by persons not resident in Ireland or persons engaged in employment in another Member State.

level of carbon dioxide emissions. In respect of motor vehicles with the highest emissions, the amount of the tax can be up to 36% of their market value. Registration is preceded by an examination of the motor vehicle at a vehicle testing station. That examination is intended inter alia to enable the market value of the motor vehicle to be determined.

5. The registration and registration tax obligation also concerns motor vehicles rented or leased pursuant to a contract concluded by persons resident in the territory of Ireland with service providers from other Member States.

6. Where a motor vehicle is exported from the territory of Ireland and is deregistered, Article 135D of the Finance Act 1992, incorporated by Article 83(1)(j) of the Finance Act 2012, which entered into force on 8 April 2013, provides for repayment of part of the registration tax. The amount of the repayment is calculated on the basis of the market value of the motor vehicle at the time it is exported. In order to establish that value, it is necessary to carry out an additional technical examination, which must be carried out no earlier than one month before the date of export. Administrative costs are deducted from the amount of repayment at a flat rate of EUR 500.

7. From 1 January 2016, the amount of repayment was increased by percentages calculated pursuant to the regulation implementing Section 135D of the Finance Act 1992. Also from 1 January 2016, the deduction for administrative costs was reduced to EUR 100 pursuant to Section 49 of the Finance Act 2015.

Procedure, pleas and arguments of the parties

Procedure

8. In 2003 and 2006, the Commission requested Ireland to provide clarification regarding the compatibility of the registration tax in force in that State with the freedom to provide services in the light of the Court's judgments in *Cura Anlagen*[3] and *Commission* v *Denmark*.[4] After a consultation meeting and subsequent request for the provision of clarification in 2010, the Commission issued Ireland, on 27 January 2011, a letter of formal notice in which it stated that Ireland had failed to fulfil its obligations under Articles 56 to 62 TFEU by requiring persons resident in Ireland, who bring motor vehicles into that Member State on a temporary basis, to pay the full amount of the registration tax on those vehicles with no possibility of it being reduced or refunded. Since the Commission considered the response provided by Ireland to be unsatisfactory, it issued Ireland, on 28 October 2011, a reasoned opinion containing essentially the same criticisms.

9. As a result of those actions, Ireland introduced the possibility of part of the registration tax being repaid where the motor vehicle is exported from the territory of Ireland. The repayment system entered into force on 8 April 2013.

10. On 10 July 2014, the Commission issued Ireland an additional letter of formal notice and, on 26 February 2015, an additional reasoned opinion. In those documents the Commission stated that, in its view, the system for levying the registration tax in force in Ireland is still contrary to the freedom to provide services, since it requires payment of the full amount of the tax from persons who bring motor vehicles into the territory of Ireland for a predetermined period, only later allowing them to recover part of the amount paid. The Commission considered that this approach was unacceptable in the light of the order of the Court in the case of *VAV-Autovermietung*.[5] In addition, the Commission noted that

3 Judgment of 21 March 2002, *Cura Anlagen* (C-451/99, EU:C:2002:195).

4 Judgment of 15 September 2005, *Commission* v *Denmark* (C-464/02, EU:C:2005:546).

5 Order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558).

the provisions of Irish law do not provide for payment of interest on the repaid part of the registration tax and also that they provide for a large deduction from the repaid amount for administrative costs. The Commission requested Ireland to comply with the additional reasoned opinion within a time limit of two months from receipt thereof.

11. By letter of 27 April 2015, Ireland replied to the reasoned opinion. In that letter it stated that, in its view, the system for levying the registration tax is now essentially consistent with EU law. It announced that interest would be paid on the part of that repaid tax when the motor vehicle is exported and that the deduction for administration costs would be reduced to EUR 100.

12. Since the Commission considered that Ireland had failed to comply with the reasoned opinion within the prescribed period,[6] it brought the action in the present case on 26 October 2015. Ireland lodged its defence on 8 January 2016. The parties lodged their reply and rejoinder on 18 February 2016 and 31 March 2016 respectively. By letter of 14 April 2016, Ireland requested that the case be determined in the Grand Chamber. The hearing took place on 22 November 2016.

Criticisms and arguments of the Commission

13. The Commission claims that Ireland failed to fulfil its obligations under Article 56 TFEU by requiring payment of the full amount of the registration tax from persons resident in Ireland who bring into the territory of that Member State motor vehicles hired or leased in another Member State, without taking account of the planned period of use of the vehicle in the territory of Ireland where those vehicles are not intended to be used, and in practice are not used, on a permanent basis in that territory, and by setting conditions for a refund of that tax which go beyond what is strictly necessary and proportionate.

14. The Commission takes the view that the system for levying registration tax in force in Ireland means that the rental or leasing of a motor vehicle in another Member State for temporary use in Ireland is substantially less favourable than rental or leasing of a motor vehicle in Ireland. Consequently, the Irish legislation constitutes a restriction on the freedom to provide motor vehicle rental and leasing services and thus infringes Article 56 TFEU.

15. As regards the levying of the full amount of the registration tax regardless of whether the motor vehicle is registered in Ireland on a permanent basis or for temporary use, the Commission claims that in the light of the Court's case-law[7] such legislation is impermissible. In its view, while the system for repaying part of the tax when the motor vehicle is exported may be sufficient in respect of vehicles whose period of use in the territory of Ireland is not known at the time they are imported, where importation is for a predetermined period, in particular pursuant to a rental or lease agreement, levying the full amount regardless of that factor is disproportionate. That system subjects the temporary importation of a motor vehicle to the same tax liability as importation for an indefinite period.

16. In addition, persons bringing motor vehicles into the territory of Ireland on a temporary basis do not receive compensation in the form of interest for the period during which they are wrongfully deprived of the amount of registration tax unduly paid, since Irish legislation does not provide for the repayment thereof with interest. Furthermore, administrative costs of EUR 500 are deducted from that amount of repayment and that amount is substantial and disproportionate.

6 It should be recalled that the provisions on repayment of the registration tax plus interest and the reduction of the administrative costs only entered into force on 1 January 2016.

7 Order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, operative part).

Ireland's arguments

17. Firstly, Ireland contends that the Commission changed its position during the pre-litigation procedure. Whilst initially it appeared to accept the system for repaying part of the tax where the motor vehicle is exported from Ireland and deregistered, it subsequently changed its view and now does not permit at all levying of the full amount of the registration tax on vehicles imported for a predetermined period. In that respect the Commission refers to the order in *VAV-Autovermietung*, but Ireland submits that that order was made before the Commission issued the first letter of formal notice in January 2011. Ireland considers that that change of position constitutes an infringement of the principle of sincere cooperation laid down in Article 4(3) TEU, the principle of good administration, and Ireland's right to be heard.

18. Secondly, Ireland submits that the Commission's action was brought prematurely since at the time it was lodged the Commission had been informed that the changes to the law permitting the payment of interest on repaid amounts of tax and reducing the amount deducted for administrative costs to EUR 100 would enter into force on 1 January 2016. Ireland considers that those changes could not have been brought into force earlier since tax legislation is amended once a year, always on 1 January.

19. Finally, Ireland contends that the Commission's position is unclear since it is not known whether it is making a single global criticism or two or three separate criticisms, and whether the separate pieces of Irish legislation contested by the Commission constitute a restriction on the freedom to provide services, since they go hand in hand, or whether each of them constitutes such a restriction individually.

20. Essentially, Ireland contends that its legislation on registration tax is now entirely consistent with EU law. In particular, it considers that the system for levying the full amount of that tax when the motor vehicle is registered and for the possible repayment of part thereof in the event the vehicle is exported and deregistered is permissible in the light of the Court's case-law, and does not constitute a restriction on the freedom to provide motor vehicle rental and leasing services.

21. In Ireland's view, the order in *VAV-Autovermietung* was made in respect of the particular legal situation which existed in the Netherlands in which the amount of the tax depended on the period of use of the motor vehicle in the territory of that Member State. However, under the Irish system, the amount of the registration tax is calculated on the basis of the value of the motor vehicle at the time of registration and the amount of the repayment is calculated the same way at the time of export. The value of the motor vehicle depends not only on its age but also on other factors, in particular mileage, and therefore cannot be determined in advance. Therefore, the Irish system makes it possible to determine the amount of tax on the basis of the actual intensity of the use made of the motor vehicle in the territory of Ireland, unlike a system in which the amount of tax depends solely on the period of use in the territory of the country concerned.

22. Changing the system for levying the registration tax in the manner recommended by the Commission would give rise to substantial administrative difficulties and would inevitably necessitate a change to the method of calculating the amount of the repayment and thus essentially a change to the tax base. That would constitute unjustified interference with the freedom of Member States to determine their system of taxation on motor vehicles.

23. In addition, the period of use of the motor vehicle in the territory of Ireland is never known for certain in advance since a rental contract can be terminated, extended or otherwise changed in such a way that the motor vehicle continues to be registered and used in the territory of Ireland after the period subject to taxation. However, any systems for additional payments would entail precisely the same burdens as the system of repayment at the time the motor vehicle is exported currently in force.

24. As regards the criticism concerning non-payment of interest on the amount of tax repaid and the excessively large deduction for administrative costs, Ireland points out that those problems were resolved with the incorporation of the changes to the law which entered into force on 1 January 2016.

Analysis

25. In its application, the Commission essentially raises three problems: the problem of levying the full amount of registration tax on registration of motor vehicles intended for use in the territory of Ireland for a predetermined period, the problem of non-payment of interest on repayment of part of the registration tax where the motor vehicle is exported and deregistered, and the problem of deducting EUR 500 for administration costs in that event. These problems, of which the first is, of course, the most significant, must be examined in turn. However, before that it is necessary to consider Ireland's reservations as to the procedure.

Procedural objections put forward by Ireland

26. Ireland contends that the Commission changed its position during the proceedings, that the criticisms are unclear in nature and that the action before the Court of Justice was brought prematurely.

27. Firstly, even though Ireland is not directly raising a plea alleging that the action is inadmissible, I would like to point out that, in my view, it is not possible to find any infringement on the part of the Commission which would justify such a plea. The criticisms contained in the application correspond to those which the Commission made in the additional letter of formal notice of July 2014 and the additional reasoned opinion of February 2015. Therefore, in the application, the Commission did not expand or change its criticisms in relation to those it made in the pre-litigation procedure.

28. The fact that the Commission made those criticisms, formally speaking, in an infringement procedure initiated previously, in which it made criticisms of a more general nature, does not alter that assessment. The original procedure was initiated when the Irish system for repayment of registration tax made no provision at all for limiting the amount of that tax on motor vehicles used in Ireland on a temporary basis, either by way of repayment or otherwise. Therefore, it is logical that the Commission's criticisms at that stage concerned generally the failure to adapt the Irish legislation to meet the requirements of the freedom to provide services in the light of the Court's case-law.

29. An infringement procedure does not end when the Member State takes action to comply with EU law. The Commission still has to satisfy itself that that action will actually and effectively result in those provisions being consistent with EU law. If, in the Commission's view, the Member State's action does not ensure complete conformity with EU law, it has the right to make more specific criticisms of as yet unresolved issues. In my view, the fact that specific case-law of the Court, in this case the order in *VAV-Autovermietung*, was already known at the time the first letter of formal notice was issued, is irrelevant in that regard. The Court's case-law is equally well known to the Commission and the Member States, which are required to comply with it regardless of whether they are called on to do so by the Commission. In any event, the case-law of the Court is merely an interpretation of the provisions of EU law, in this case the provisions of the Treaty, and, consequently, the Commission is in no way required to indicate specific judgments with which the Member States must comply. It is sufficient for the Commission to indicate the relevant rule of EU law, and the Member State, if it accepts the Commission's criticisms, must adapt its legislation to comply with that rule, having regard to the entire case-law of the Court which may apply in that case.

30. Therefore, I consider that the pre-litigation procedure in this case was carried out correctly and that the application is not vitiated by any defect which could render it inadmissible. For the same reasons, I do not consider that the Commission infringed the duty of sincere cooperation, the principle of good administration, or Ireland's right to be heard.

31. As regards the plea that the Commission's position set out in the application is unclear, suffice it to say that it is clear from the application that the basic criticism concerns the requirement to pay the full amount of the registration tax in advance, whereas the non-payment of interest and the large amount of the deductions when the undue part of the tax is repaid are, in the Commission's view, elements which reinforce the negative effects of that requirement on the freedom to provide motor vehicle rental and leasing services. However, for reasons which are set out below, I consider that even if the tax repayment system were regarded as essentially consistent with the freedom to provide services, those two other elements could constitute, each individually, a failure to fulfil the obligations arising from that freedom. Therefore, they must be considered individually.

32. Finally, as regards the plea that the action was brought prematurely, it should first be pointed out that, formally speaking, the Commission has the right to bring an action following a failure to fulfil an obligation set out in the reasoned opinion. The situation which prevailed at the end of the period laid down is also the reference point for assessing whether a Member State has failed to fulfil its obligations.[8] Otherwise the Member States could endlessly delay the Commission bringing an action by announcing new periods for complying with a reasoned opinion.

33. With regard to the present case, it is also worth adding that the obligation to repay unduly levied taxes plus interest and the prohibition on laying down rules for such repayment that are inconsistent with the principle of effectiveness were known to Ireland long before the action was brought in this case. Therefore, there is nothing to prevent it since ultimately Ireland acknowledged that the abovementioned criticisms were well founded and that relevant legislation should be brought into effect together with a system for repaying part of the registration tax, which did occur in 2013.

34. It is further worth pointing out that the main aim of an infringement procedure is to have the Member State comply with EU law, not to penalise it. However, it is the settled case-law of the Court that taxes levied in breach of EU law must be refunded with interest.[9] A judgment of the Court finding that there has been such a breach can form the basis for claiming such a refund. There is therefore a public interest in the Commission bringing an action and having the Court deliver a judgment even when there is the prospect of the failure to fulfil obligations being remedied before that judgment is delivered.[10]

35. For the above reasons, Ireland's pleas and arguments concerning the Commission's disloyal and incorrect conduct must, in my view, be regarded as unfounded.

Criticism regarding levying the full amount of the registration tax

36. It should be recalled that the Commission claims that Ireland restricts the freedom to provide motor vehicle rental and leasing services because the full amount of registration tax is levied (with the possibility of subsequent repayment of part thereof) on such motor vehicles at the time of their registration, which is compulsory where they are used for longer than one month, even where the planned period of use of the motor vehicle in the territory of Ireland is predetermined. That

8 See inter alia judgments of 6 October 2009, *Commission* v *Spain* (C-562/07, EU:C:2009:614, paragraphs 23 and 24), and of 5 February 2015, *Commission* v *Belgium* (C-317/14, EU:C:2015:63, paragraph 34).

9 Judgment of 30 June 2016, *Câmpean* (C-200/14, EU:C:2016:494, paragraph 37).

10 See, to that effect, as regards liability for breach of EU law, judgments of 7 February 1973, *Commission* v *Italy* (39/72, EU:C:1973:13, paragraph 11), and of 19 March 1991, *Commission* v *Belgium* (C-249/88, EU:C:1991:121, paragraph 41).

legislation, which does not draw a proper distinction between importation of a motor vehicle for a fixed period and permanent importation, means that use of motor vehicle rental or leasing services provided by suppliers from other Member States is less attractive than use of the services of domestic operators. It entails a significant financial burden — that is to say, the need to cover the full amount of the registration tax in advance even though the amount due may actually be considerable lower — and an administrative burden in terms of the need to carry out a technical examination of the vehicle before it is exported in order to determine its market value and the resulting amount of tax to be repaid.

37. Taxes such as the Irish registration tax are not harmonised in EU law and consequently the Member States are free to exercise their tax powers in that regard, provided that they comply with EU law.[11] In the light of EU law it is necessary to draw a distinction between a situation in which a motor vehicle is to be, or de facto is, used on a permanent basis in the territory of a particular Member State, from a situation in which that condition is not satisfied and the vehicle is used in that Member State only on a temporary basis. In the first situation, the Member State can essentially tax use of the vehicle, for example by means of a registration tax. However, in the second situation, taxation of use of the vehicle, as a potential restriction on single market freedoms, requires additional justification. In that respect the taxation must be designed in a manner which is proportionate to the aim that it is intended to pursue.[12]

38. The Court has repeatedly held, in relation to taxes such as the Irish registration tax, that the aim thereof can be attained, as regards motor vehicles hired or leased in a Member State other than the State of taxation, through taxes the amount of which depends on the period of use of the motor vehicle in their territory.[13] Therefore, levying the full amount of the tax as in the case of motor vehicles used on a permanent basis in the territory of the Member State of taxation does not satisfy the condition of proportionality and is contrary to the principle of the freedom to provide services currently expressed in Article 56 TFEU.[14]

39. The Court has also ruled that, where a motor vehicle rental or leasing contract has been entered into for a fixed period, the mere possibility of repayment of part of the tax after the motor vehicle has been exported from the territory of the Member State is not sufficient to ensure compliance with the principle of freedom to provide services where, from the time the vehicle is entered into circulation in the territory of a given Member State, an obligation arises to pay an amount of tax which takes no account of the planned period of use of the vehicle in the territory of that State.[15]

40. It is on that case-law that the Commission relies in this case to show that, like the Netherlands legislation under consideration in the case of *VAV-Autovermietung*, the Irish legislation does not satisfy the requirement of proportionality as it requires payment of the full amount of the registration tax where the period of the use of the motor vehicle in the territory of Ireland is predetermined.

11 Judgment of 26 April 2012, *van Putten and Others* (C-578/10 to C-580/10, EU:C:2012:246, paragraph 37 and the case-law cited).

12 See to that effect judgment of 26 April 2012, *van Putten and Others* (C-578/10 to C-580/10, EU:C:2012:246, paragraphs 46, 47 and 53 and the case-law cited).

13 Judgment of 21 March 2002, *Cura Anlagen* (C-451/99, EU:C:2002:195, paragraph 69); and orders of 27 June 2006, *van de Coevering* (C-242/05, EU:C:2006:430, paragraph 30); of 22 May 2008, *Ilhan* (C-42/08, not published, EU:C:2008:305, paragraph 22); and of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, paragraph 26).

14 See inter alia judgment of 21 March 2002, *Cura Anlagen* (C-451/99, EU:C:2002:195, final indent of the operative part); order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, paragraph 21).

15 Order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, paragraphs 26 to 28 and the operative part).

41. The order in *VAV-Autovermietung* reflected the rules laid down earlier in a specific situation. In the main proceedings in that case, the taxable person was required to pay, for a two-month lease, tax amounting to almost half the list price of the motor vehicle.[16] It is in the light of those facts that the Court held that the rules on levying tax on motor vehicles in force in the Netherlands were disproportionate. However, I do not consider that the findings which the Court made in *VAV-Autovermietung* could not be regarded as having more general application.

42. Aside from the fact that similar situations can occur under the Irish legislation,[17] the very levying in cross-border situations of tax in an amount which is known beforehand to exceed, potentially significantly, the amount due, is bound to discourage service recipients from using cross-border services and service providers from providing them. In addition, it should be noted, as the Commission also noted in its pleadings, that such an approach equates taxation on the rental or leasing of a motor vehicle with taxation on the purchase thereof. Therefore, that reduces the attractiveness of rental and leasing services, including those of a cross-border nature. Finally, it also entails the freezing of substantial funds, which is an additional inconvenience, particularly for operators engaged in economic activity for whom funds which cannot be invested in those activities constitute a loss.

43. Therefore, in my view, there is no doubt that not only the non-repayment of tax unduly levied, but also the obligation to pay the full amount of the tax where the motor vehicle is not intended to be used and is not actually used on a permanent basis in the State of taxation, constitute a restriction on the freedom to provide motor vehicle rental and leasing services which is prohibited in principle under Article 56 TFEU. That restriction could be justified only by imperative requirements in the general interest, provided that they are proportionate to the aim.

44. In response to the Commission's criticism referring to the order in *VAV-Autovermietung*, Ireland puts forward two arguments. First, it contends that the Netherlands legislation referred to provided for a refund of part of the tax without interest. Secondly, that legislation provided, in respect of motor vehicles used on a temporary basis, for tax calculated on the basis of the duration of that use, whilst the Irish tax is calculated on the basis of the value of the vehicle and also the mileage thereof, which is intended to reflect the actual intensity of the use made of the motor vehicle in the territory of Ireland.

45. As regards interest, it should first be noted that, at the time material to the assessment of Ireland's purported failure to fulfil its obligations, that is to say, the date on which the period set out in the reasoned opinion ended, the Irish legislation likewise made no provision for the payment of interest. Secondly, and even more importantly, there is nothing in the order in *VAV-Autovermietung* to indicate that the non-payment of interest was the reason why the Court ruled that the Netherlands legislation was contrary to the principle of the freedom to provide services. It is not the interest which was the main problem in that case but rather the need to pay the tax in an amount which took no account of the planned period of use of the motor vehicle in the territory of the Netherlands. Therefore, the issue of interest does not distinguish *VAV-Autovermietung* from the present case in such a way that the conclusions from the former could not be applied in the latter. Consequently, it is necessary to consider the second argument put forward by Ireland.

46. Ireland contends that the Court's previous case-law concerns either systems in which the repayment of tax was not possible at all or, in the case of *VAV-Autovermietung*, a system in which the amount of the repayment was calculated on the basis of the period of use of the motor vehicle in the territory of the Netherlands. In the Irish system, on the other hand, the amount of the repayment is calculated on the basis of the current market value of the motor vehicle at the time it is exported,

16 Order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, paragraphs 5, 8 and 12).

17 Registration of the motor vehicle, and thus payment of the registration tax, is obligatory where the motor vehicle is used for a period of over one month and the maximum rate of that tax can amount to 36% of the value of the vehicle (see points 3 and 4 of this Opinion).

which depends inter alia on its mileage, as a result of which, after comparing that value with the value at the time of registration, the taxation is proportionate to the actual use made of the vehicle in the territory of Ireland. Since the market value of the motor vehicle at the time of export is not known, as it depends not only on its age but also its mileage, the aim of the Irish system, in terms of taxing the actual intensity of the use made of the vehicle, cannot be attained by means of a tax in an amount calculated solely on the basis of the planned period of its use in Ireland.

47. However, in my view that argument is based on a misunderstanding which arises from the failure to draw a distinction between the aims of the tax and the means of its levying.

48. In response to the Court's question, the agent for Ireland noted at the hearing that the aim of the registration tax is to compensate for the public costs of the use of motor vehicles, in particular the environmental costs and social costs, and the costs of maintaining road infrastructure and the system of traffic control and vehicle licensing. He added that the tax is structured in such a way that users of more expensive motor vehicles pay more also to encourage the purchase of less environmentally harmful motor vehicles.

49. Taxation of the use of motor vehicles usually serves similar aims in all Member States.[18] Those aims certainly constitute imperative requirements in the general interest which justify that taxation. According to the case-law cited above, it is also necessary to ascertain whether or not those aims can be attained by means of a tax which takes account, at the time it is paid, of the planned period of the use of the motor vehicle in the territory of Ireland.

50. In the case of taxes such as the Irish registration tax, which are payable once only, the aim of compensating for the public costs of the motor vehicles' use can only be attained globally, which means that the total amount of the taxes levied on all motor vehicles registered in the country must cover the total amount of the costs arising from the use thereof. Unlike, for example, tax included in the price of fuel, a one-off tax does not take account of mileage or, generally speaking, the intensity of the use made of the motor vehicle after registration and payment of the tax. Therefore, tax on a motor vehicle which is used more intensely contributes significantly less to compensating for the costs actually caused by the use of that vehicle than tax paid on a vehicle which is used occasionally. The rapid drop in the value of a motor vehicle where it is used more intensely does not compensate for that, since that drop does not depend solely on mileage, but also on age and a number of other factors.

51. A similar reasoning can be applied to motor vehicles intended for use in the territory of a given Member State for a fixed period. As in the case of motor vehicles intended for use in that State on a permanent basis, the amount of tax potentially covers the entire duration of the motor vehicle's 'life' (unless it is exported from the country), so the amount of tax on a motor vehicle registered for a fixed period is intended only to cover the period of the use in the territory of the Member State of registration. That amount is entered into a pool of resources intended to cover the costs of the use of all motor vehicles registered in the country in general. Therefore, they do not necessarily reflect precisely the intensity of the use made of that specific motor vehicle, just as the amount of the tax on a motor vehicle registered permanently does not reflect the intensity of its later use. That does not prevent the aims of the taxation from being attained since they are by nature attained globally and not in relation to each specific motor vehicle individually.

18 See for example judgment of 21 March 2002, *Cura Anlagen* (C-451/99, EU:C:2002:195, paragraph 66) which refers to the aims of Austrian legislation.

52. As is clear from the foregoing, the aims of the Irish registration tax can be attained by means of a tax calculated having regard to the planned period of use of the motor vehicle in the territory of Ireland. Where that period is known in advance, levying that tax in an amount such as that in the case of registration of the motor vehicle on a permanent basis is therefore disproportionate to the aim stated above as it restricts the freedom to provide motor vehicle rental and leasing services, just as in *VAV-Autovermietung*.

53. Nor does that prevent the users of more expensive motor vehicles from paying relatively more or the use of low-emission vehicles from being encouraged. The tax base remains the market value of the motor vehicle and the level of its emissions, but there is an additional factor in the form of the planned period of the use thereof in the territory of Ireland.

54. Having said that, I do not believe that that approach encroaches on the power of the Member States to tax the use of motor vehicles to a greater degree than results from the requirement to comply with EU law, in this case the freedom to provide services.

55. That approach does not restrict the freedom of the Member States to determine the aims of the tax or its fundamental features, such as the amount or the tax base. However, the obligation to tax motor vehicles intended for use in the territory of a given Member State for a period set in manner proportionate to that period arises from the requirements of the single market interpreted in the light of the case-law of the Court discussed above. Consequently, the Member States cannot lay down the methods for determining that proportion in a manner which largely eliminates the benefits arising from the possibility of paying only part of the tax proportionate to the period of use of the motor vehicle, for example, by demanding payment of an amount substantially, and sometimes many times, greater than the amount actually due,[19] even if the difference will be repaid later and even if that repayment will include interest.

56. Nor am I persuaded by Ireland's argument that levying the registration tax in an amount proportionate to the planned period of use of the motor vehicle in the territory of Ireland serves its purpose, since that period may be changed, in particular extended, for example, as a result of a change to the rental or leasing contract. Since the obligation to pay the registration tax entails an obligation to register a motor vehicle, registration of a motor vehicle intended for use on a temporary basis can be carried out on a temporary basis for the planned period of use of the motor vehicle in the territory of the country. Thus, where a rental or lease is extended, the user will have to effect a new registration and a further payment of the tax. However, if the period of use is shortened, it will be in the user's interest to claim a refund of overpaid tax. Therefore, it does not appear to me to be a problem which is insurmountable.

57. It is possible to imagine situations where, either on account of the extended duration of the use of the motor vehicle or the substance of the contract under which the use is made, use of the motor vehicle for a period which, formally speaking, is predetermined, becomes so similar to use thereof on a permanent basis that it may justify levying the full amount of the tax. However, the provisions of Irish law at issue in this case do not make such a distinction on the basis of the duration or substance of the contract underlying the use of the motor vehicle in the territory of Ireland. Nor did that issue form the subject matter of discussion between the parties since, during the proceedings, Ireland defended its legislation *in toto*. Therefore, I also see no possibility of the Court carrying out that analysis in the judgment in this case.

19 The Commission provides calculations by way of example in its pleadings. Even if, as Ireland contends in its rejoinder, the Commission's calculations are exaggerated, it itself comes to a conclusion in which the amount of the registration tax initially levied exceeds the amount actually due by a factor of two and a half.

58. In the light of the foregoing, I consider that Ireland failed to fulfil its obligations under Article 56 TFEU by demanding payment of the full amount of the registration tax from persons resident in Ireland who bring into that Member State motor vehicles rented or leased in another Member State regardless of the period of use of the motor vehicle in the territory of Ireland where those motor vehicles are not intended to be used, and in practice are not used, on a permanent basis in that territory.

Criticisms concerning non-payment of interest and the amount of the deduction

59. As mentioned above, Ireland complied with the Commission's reasoned opinion in relation to the criticism concerning non-payment of interest and the excessively large amount of the deduction for administrative costs on repayment of the unduly levied part of the registration tax, but that did not happen until 1 January 2016 and, therefore, beyond the time limit laid down in the reasoned opinion and even after the action was brought in this case. Since the date on which the time limit laid down in the reasoned opinion is material to the assessment of the Member State's failure to fulfil its obligations, the criticism concerning those two issues must be examined.

60. In this respect I consider that those criticisms are separate from the decision on the criticism concerning the levying of the full amount of the registration tax on motor vehicles brought into the territory of Ireland on a temporary basis.

61. Regardless of whether or not the Court finds that the obligation to pay the full amount of the registration tax on motor vehicles brought into the territory of Ireland on a temporary basis is inconsistent with EU law, or finds that the system for repaying part of that tax is sufficient from the point of view of that law, the part exceeding the amount due for the period of actual use of the motor vehicle in Ireland will constitute tax levied in breach of EU law. That is unequivocally clear from the case-law of the Court discussed above. [20]

62. According to the Court's settled case-law, the Member States are required to repay, with interest, taxes levied in breach of EU law. That requirement is the consequence and complement of the rights conferred on individuals by that law. [21] Non-payment of interest on the amount of tax levied in breach of the freedom to provide services therefore constitutes a failure by the Member State to fulfil the obligations arising from that freedom.

63. Naturally, if the Court rules that the Commission's criticism concerning the obligation to pay the full amount of the registration tax on motor vehicles registered on a temporary basis is well founded, it will not be possible to apply the repayment system at all in relation to motor vehicles registered for a predetermined period and therefore the problem of interest will also disappear. However, even in that situation, the Court's judgment on this matter will be fundamental to the ability of persons prejudiced by the non-payment of interest to make claims.

64. The Commission also claims that Ireland failed to fulfil the obligations arising from the freedom to provide services in that an amount of EUR 500 for administrative costs is deducted from the repayable part of the unduly levied tax. In the Commission's view, that deduction is excessive and unjustified and, in certain situations, can consume a substantial part of the repaid amount and, in addition, discourage persons resident in Ireland from using motor vehicle rental and leasing services offered by providers from other Member States. However, Ireland contends that the funds obtained from that deduction were intended to finance the construction of a system of repayment of unduly levied registration tax.

20 See inter alia judgment of 21 March 2002, *Cura Anlagen* (C-451/99, EU:C:2002:195, paragraph 69), and order of 29 September 2010, *VAV-Autovermietung* (C-91/10, not published, EU:C:2010:558, paragraph 26).

21 Judgment of 30 June 2016, *Câmpean* (C-200/14, EU:C:2016:494, paragraph 37).

65. In this connection, I have to agree with the Commission's arguments. The obligation to repay taxes levied in breach of EU law essentially concerns the total amount of the undue tax (and interest) and the procedure for repaying it is governed, inter alia, by the principle of effectiveness, according to which obtaining repayment of tax cannot be excessively difficult or impossible in practice.[22] Therefore, the Member States cannot arbitrarily restrict the actual amount of the repayment, for example by introducing, on any pretext, a substantial deduction, since that renders it impossible in practice for the taxable person to obtain a substantial part of the unduly paid tax.

66. I am not persuaded by Ireland's arguments in this connection. The obligation to repay taxes levied in breach of EU law lies with the Member States under that law. They cannot make fulfilment thereof contingent on the financing, by taxable persons entitled to repayment, of financial expenditure which the Member State has to incur in order to fulfil that obligation. That is even more the case where the Member State organises the system for levying the tax in such a way that repayment of part thereof is inevitable in certain situations. All the expenditure connected with the organisation of that system must be financed from taxes levied in accordance with the law and not from a deduction from amounts due to persons entitled to repayment.

67. The Member States may levy taxes for administrative activities connected with fulfilment of their obligations arising from EU law but those taxes must not exceed the actual costs of carrying out a particular activity in relation to a specific person and cannot be used to cover the costs of organising the entire administrative system. Furthermore, on no account can there be taxes in an amount that would substantially restrict the benefits which individuals derive from their rights under EU law.

68. In the light of the foregoing I consider that both by refusing to pay interest on repaid amounts of registration tax and deducting on that occasion an amount of EUR 500 for administrative costs, Ireland failed to fulfil its obligations under Article 56 TFEU.

Conclusions

69. In the light of all the foregoing considerations, I propose that the Court finds that the action brought by the Commission in this case is well founded and rules in accordance with the form of order sought by it. Under Article 138(1) of the Rules of Procedure, Ireland must bear the costs.

22 Judgment of 30 June 2016, *Câmpean* (C-200/14, EU:C:2016:494, paragraph 39).