JUDGMENT OF THE COURT (Fourth Chamber)
3 October 1985 *

In Case 249/84

REFERENCE to the Court under Article 177 of the EEC Treaty by the Cour d'appel [Court of Appeal], Brussels, for a preliminary ruling in the proceedings pending before that court between

Ministère public [Public Prosecutor] **and Ministry of Finance**

and

Venceslas Profant

on the interpretation of the provisions of the EEC Treaty on the free movement of goods and freedom to provide services in order to enable the national court to judge the compatibility therewith of the Belgian law on value-added tax,

THE COURT (Fourth Chamber)

composed of: G. Bosco, President of Chamber, P. Pescatore, T. Koopmans, K. Bahlmann and T. F. O'Higgins, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of:

Venceslas Profant, the accused in the main proceedings, by J. A. Hardy, of the Liège Bar,

the Government of the Kingdom of Belgium by Mr Van Helshoecht, acting as Agent,

* Language of the Case: French.

the Commission of the European Communities by D. R. Gilmore, a member of its Legal Department,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 July 1985,

gives the following

JUDGMENT

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

Decision

1 By a judgment of 26 September 1984, which was received at the Court on 16 October 1984, the Cour d'appel, Brussels, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the provisions of the Treaty on free movement of goods for the purpose of judging the compatibility with the Treaty of the Belgian provisions on value-added tax.

2 That question was raised in criminal proceedings brought against Venceslas Profant for refusing to pay value-added tax on the importation of two cars purchased in the Grand-Duchy of Luxembourg and registered there but used in Belgian territory.

3 Mr Profant, a Luxembourg national, was living with his mother in Diekirch in Luxembourg when in 1976 he began his zoology studies at the University of Liège. During the time he studied which ended in 1981 he had an address in Liège which was recorded in the Liège aliens' register and was also registered in the municipality of Diekirch as living with his mother to whom he returned regularly. After finishing his studies he settled in Luxembourg. From 1976 to 1981 Mr Profant used successively the two vehicles in question; the first was an Alfa Romeo which he already had in 1976 and sold in 1979 and the second was a Volkswagen. The two cars were bought in Luxembourg, where value-added tax was paid on them, and they were registered there. Between 1976 and 1981 they were in particular

used for the journey between Liège and Diekirch and for travelling in and around Liège. The Alfa Romeo was sold to a Luxembourg purchaser living in Luxembourg; Mr Profant kept the Volkswagen when he settled in Luxembourg after finishing his studies.

4 In 1980 the Belgian tax authorities informed Mr Profant that he had been normally resident in Liège since his marriage in 1978 and that he must therefore pay value-added tax on the importation of both vehicles. On 15 September 1978 in Luxembourg Mr Profant had married Charlotte Kaiser, a French national, now a naturalized Luxembourger, who had been working as a nurse in Liège since January 1978. The couple lived together in a students' room in Liège until they returned to Luxembourg; their address was entered in the Liège aliens' register.

5 Article 40 of the Belgian Code on Value-Added Tax provides for exemption from value-added tax in respect of the temporary importation of certain goods. On the basis of that provision Royal Decree No. 7 of 27 December 1977 on the application of value-added tax on the importation of goods (*Moniteur Belge* of 31 December 1977) provides for exemption from value-added tax for the temporary importation, *inter alia*, of 'means of transport' subject to the conditions laid down in the provisions governing exemption from customs duties. The latter provisions laid down by the Ministerial Order of 17 February 1960 grant exemption for means of transport 'imported by natural persons normally resident in another country for their personal use'. In the application of those provisions, persons *inter alia* who work in Belgium, but who return at least once a month to a place outside the territory where their family home is situated or where, if they have no family home, they are entered in the population registers, are treated as having their normal residence abroad. According to Article 25 (3c) (a) 'family home' means in the case of married persons the matrimonial home.

6 It is apparent from the file that as a general rule the Belgian tax authorities grant Luxembourg students who are normally resident in Luxembourg and attend an educational establishment in Belgium the benefit of exemption in respect of their motor vehicles registered in Luxembourg, but the benefit is not granted to married

students who are treated as having their family home in Belgium. During the written procedure before the Court the Belgian Government originally confirmed that practice and explained that the conditions for exemption were satisfied by Mr Profant until the date of his marriage from when his family home was treated as being at the place of the matrimonial home. At the hearing however it stressed that the Belgian authorities refused the benefit to foreign students only if it appeared that they had established 'the home of the new family unit created by the marriage' on Belgian territory.

7 When Mr Profant refused to pay the value-added tax demanded on the two cars, criminal proceedings were brought against him in the Tribunal correctionnel [Criminal Court], Liège, seeking, principally, the confiscation of the two cars and, alternatively, payment of their value, BFR 61 565 and 168 950 respectively. The Tribunal correctionnel upheld the claim and its judgment was confirmed by the Cour d'appel [Court of Appeal], Liège. However the Cour de cassation [Court of Cassation] quashed the judgment of the Cour d'appel on the ground that the judgment did not mention the relevant legal provisions. The case was remitted to the Cour d'appel, Brussels, which first of all entered judgment in default in July 1984 having regard to the judgment of the Cour de Cassation. The application by the accused to have that judgment set aside gave rise to the judgment requesting a preliminary ruling.

8 In that judgment the Cour d'appel, Brussels, first of all held that the claim by the tax authorities was inadmissible in so far as it related to the use in Belgium of the Alfa Romeo since criminal proceedings in relation thereto had become time-barred. As regards the use of the Volkswagen the Cour d'appel found that there were considerations which led it to request the Court of Justice for a preliminary ruling.

9 The Cour d'appel first of all expressed doubts about an interpretation of the law which in its opinion was immoral, under which, as the Ministry of Finance conceded at the hearing, there would have been no offence if the couple had not married but merely lived together. It then held that before dealing with the issue of residence and the possibility of exemption on the ground of temporary importation it had to take note that the vehicle in question was bought in Luxembourg where the general consumer tax had been paid, called, as in Belgium, 'value-added tax', and, as in Belgium, was not refundable. In those circumstances the Cour d'appel considered that the question arose whether such double taxation imposed on a

Luxembourg national who bought a car in his own country and used it temporarily, but principally, in Belgium was contrary to the principles envisaged by the international treaties.

10 The Cour d'appel raised the question whether there might be in those circumstances an obstacle to the free movement of goods, since the Belgian value-added tax appeared in this case to be very akin to a disguised customs duty, inasmuch as the fact which gave rise to liability for the tax was the importation into Belgium of an article coming from Luxembourg, although there was no longer any customs frontier between the two countries.

11 Since it took the view that the case raised problems concerning the interpretation of Community law, the Cour d'appel stayed the proceedings until the Court of Justice should have given a preliminary ruling on the following question:

'Are the provisions of the Belgian Law of 3 July 1969 establishing the Code of Value-Added Tax, as interpreted by the Ministry of Finance, not, in the present case, contrary to the Community rules on the free movement of goods and services, inasmuch as those provisions, in particular Articles 23 and 24, have created, under the name of value-added tax, a veritable customs duty?'

12 The Court has no jurisdiction under Article 177 of the Treaty to determine whether the manner in which the tax authorities of a Member State interpret their national law is compatible with the Treaty. It can, however, from the wording of the question as framed by the national court, and in view of the particulars supplied by that court, ascertain which aspects concern the interpretation of the rules of Community law.

13 It is apparent from the wording of the question in conjunction with the considerations put forward by the national court and the facts found by it that the question is intended to ascertain whether the rules of Community law on free movement of goods, and in particular those relating to the abolition of customs duties within the Community, preclude the levying by a Member State of value-added tax on the importation of a car purchased in another Member State, where value-added tax was paid and the car was registered, when the car is used by a national of the second Member State resident in that State but studying in the first

Member State, where for the period of his studies his name is entered in the aliens' register.

14 The accused in the main proceedings considers that the tax demanded of him serves exclusively as a tax on the importation of goods and must therefore be regarded as a disguised customs duty. The Belgian Government and the Commission on the other hand contend that the levying of value-added tax on importation cannot be treated as a customs duty or a charge having an equivalent effect within the meaning of Articles 9, 12 and 13 of the Treaty.

15 In that respect it follows from the case-law of the Court, and in particular its judgment of 5 May 1982 in Case 15/81 *Gaston Schul* v *Inspecteur der Invoerrechten en Accijnzen* [1982] ECR 1409, that value-added tax which a Member State levies on the importation of products from another Member State is part of the common system of value-added tax the structure of which, and the essential terms governing its application, have been laid down by the Council in harmonizing directives which have established a uniform taxation procedure covering systematically and according to objective criteria both transactions carried out within the territory of a Member State and import transactions. Such a tax must therefore be considered as an integral part of a general system of internal taxation for the purposes of Article 95 of the Treaty and its compatibility with Community law must be considered in the context of that article and not of that of Article 12 *et seq.* of the Treaty.

16 Consequently, value-added tax which a Member State levies on the importation of a motor vehicle from another Member State is not a customs duty on importation or a charge having an effect equivalent to such a duty within the meaning of Articles 12 and 13 of the Treaty.

17 Under the system of the Treaty free movement of goods within the Community under normal conditions of competition is governed by the provisions on the abolition of customs duties and charges having an equivalent effect in conjunction with those relating to internal taxation including in particular Article 95. Accordingly, in the aforementioned judgment of 5 May 1982 the Court considered the effect on the free movement of goods of the overlapping of taxes involved in the levying of value-added tax on the importation of goods on which value-added tax had already been paid in the exporting Member State and was not refunded.

18 The Commission maintains that the same problem could arise in the present case since the levying of value-added tax on imports is compatible with Article 95 only to the extent that the residual value-added tax already paid in the exporting Member State is taken into account. However, it considers that the problem would not arise if the applicable Community law precluded any levying of value-added tax on importation in a case such as the present. The Commission considers that such a case is covered by the exemption for temporary importations provided by Article 14 (1) of the Sixth Council Directive, of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax (Official Journal 1977, L 145, p. 1).

19 In order to provide the national court with comprehensive guidance to enable it to resolve the case before it, it is appropriate to consider first that argument advanced by the Commission.

20 Article 14 of the Sixth Directive governs exemptions from value-added tax on the importation of goods. It distinguishes between final and temporary importation; in particular, Article 14 (1) (c) exempts importation of goods declared to be under temporary importation arrangements, which thereby qualify for exemption from customs duties, or which would so qualify if they were imported from a third country. Article 14 (2) provides that subsequent directives must lay down Community tax rules clarifying the scope of the exemptions referred to in Article 14 (1). Until the entry into force of those rules, Member States may 'maintain their national provisions in force on matters related to the above provisions' while adapting them to minimize double imposition of value-added tax within the Community.

21 The Commission infers from Article 14 as a whole that temporary importation is a Community notion of which Member States must take due account when they implement exemptions. In order to establish the scope of that Community notion it is necessary to refer to Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported (Official Journal 1983, L 105, p. 59). Although that Directive is subsequent to the facts of the case it is nevertheless capable of clarifying the concepts on which the system of exemptions provided for by the Sixth Directive is based.

The Commission maintains that it is apparent from Articles 5 and 7 of Directive 83/182 that a student who leaves his country of origin does not lose his personal ties and the presumption that he has retained his normal residence there is not affected by virtue of the fact that he resides in another Member State for the greater part of the year in order to pursue his studies there; furthermore that position is not altered by the student's marriage.

22 The Belgian Government states first of all that Article 10 of Directive 83/182 provides that Member States have to take the measures needed to comply therewith before 1 January 1984. That Directive moreover grants exemption in the case of the temporary importation of a motor vehicle by a student when he resides in the territory of the Member State in question solely for the purpose of his studies. Mr Profant's case concerns a couple who are resident in Belgium although they also reside in the Grand-Duchy of Luxembourg. The Belgian Government considers that as a result of their marriage such a couple becomes independent of their respective parents, the new family unit is thus independent and the former ties to the Luxembourg family are broken.

23 It must first of all be observed that in providing for exemption from value-added tax on importation Article 14 of the Sixth Directive uses terms, such as 'temporary' importation, which need to be defined. It is for that reason that Article 14 (2) contemplates that Community rules should subsequently be laid down and that pending their entry into force the national provisions of the Member States should continue to apply. It follows that the national provisions which continue in force must observe the limits set by the rules of Community law which they serve to implement.

24 Furthermore, it should be noted that according to Article 14 the national provisions in question are to be maintained in force 'on matters related to' the exemptions provided for by the Community rules and are to be adapted to minimize cases of double imposition of value-added tax within the Community. Those requirements must in turn be viewed in the light of one of the objectives of the harmonization of value-added tax which is, as stated in the third recital in the preamble to the Sixth Directive, to make further progress in the effective removal of restrictions on the movement of persons and goods and the integration of national economies.

25 Those considerations show that the authorities of the Member States do not enjoy a complete discretion in implementing the exemptions under Article 14 of the Sixth Council Directive, for they have to observe the fundamental objectives of the harmonization of value-added tax such as, in particular, to facilitate the free movement of persons and goods and to prevent cases of double taxation.

26 It follows that in applying their national provisions on exemptions from value-added tax to motor vehicles used by students from another Member State the tax authorities of a Member State are required to apply the concept of temporary importation in such a way as to avoid derogating, by taxing their vehicles twice, from the freedom of nationals of Member States to pursue their studies in the Member State of their choice.

27 The fact that a student from another Member State marries cannot of itself affect that position. It would be otherwise if the couple in question settled in the host Member State in such a way as to manifest their intention of not returning to the Member State of origin. But that situation is not contemplated by the judgment of the national court and there is nothing in the file to suggest that such was the position in the present case.

28 The question must therefore be answered to the effect that the rules of Community law, and in particular those laid down by the Sixth Directive, preclude the levying by a Member State of value-added tax on the importation of a motor vehicle purchased in another Member State, where value-added tax was paid and the vehicle is registered, when the vehicle is used by a national of the second Member State resident in that State but studying in the first Member State, where for the period of his studies his name is entered in the aliens' register. Whether or not the person in question is married is irrelevant.

Costs

29 The costs incurred by the Belgian Government and the Commission of the European Communities, which have submitted observations to the Courtare not recoverable. Since these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds

THE COURT (Fourth Chamber)

in answer to the question referred to it by the Cour d'appel, Brussels, by judgment of 26 September 1984, hereby rules:

(1) **The value-added tax which a Member State levies on the importation of a motor vehicle from another Member State is not a customs duty on importation or a charge having equivalent effect within the meaning of Articles 12 and 13 of the EEC Treaty.**

(2) **The rules of Community law, and in particular those laid down by Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value-added tax: uniform basis of assessment (Official Journal 1977, L 145, p. 1) preclude the levying by a Member State of value-added tax on the importation of a motor vehicle purchased in another Member State, where value-added tax was paid and the vehicle is registered, when the vehicle is used by a national of the second Member State resident in that State but studying in the first Member State, where for the period of his studies his name is entered in the aliens' register. Whether or not the person in question is married is irrelevant.**

Bosco Pescatore

Koopmans Bahlmann O'Higgins

Delivered in open court in Luxembourg on 3 October 1985.

P. Heim
Registrar

G. Bosco
President of the Fourth Chamber