

JUDGMENT OF THE COURT (FIRST CHAMBER)
OF 9 OCTOBER 1980 ¹

**Criminal proceedings against Giovanni Carciati
(preliminary ruling requested
by the Tribunale Civile e Penale, Ravenna)**

“Free movement of goods — Temporary importation of motor vehicles”

Case 823/79

Free movement of goods — National rules prohibiting residents from using vehicles admitted under a scheme for temporary importation — Compatibility with the EEC Treaty

The rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to

criminal penalties, on the use of motor vehicles admitted under a scheme for temporary importation and thus exempt from payment of value added tax.

In Case 823/79,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Civile e Penale [Civil and Criminal Court], Ravenna, for a preliminary ruling in the criminal proceedings pending before that court against

GIOVANNI CARCIATI

on the interpretation of the Community rules applicable in respect of the free movement of goods,

¹ — Language of the Case: Italian.

THE COURT (First Chamber)

composed of: T. Koopmans, President of Chamber, A. O'Keefe and G. Bosco, Judges,

Advocate General: F. Capotorti
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted in accordance with Article 20 of the Statute of the Court of Justice of the EEC may be summarized as follows.

I — Facts and written procedure

A — The facts of the case and the question submitted for a preliminary ruling

Mr Fink, a German national, had entrusted a motor car registered in Germany in the name of his company Fink GmbH, to Mr Carciati, an Italian national residing in Ravenna, for him to use in Italy on his frequent business visits. In March 1978 Mr Carciati was seen driving the car; as a result he was charged with smuggling on the ground that, being a resident, he had in his possession and used within the Italian

customs territory a motor car registered abroad in infringement of the provisions governing temporary importation.

In the course of the proceedings against Mr Carciati the Tribunale di Ravenna decided by an order dated 26 November 1979 to suspend the proceedings and to ask the Court under Article 177 of the EEC Treaty to give a ruling on the compatibility of the Italian rules prohibiting Italian residents from using cars brought in under the temporary importation arrangements and providing penal sanctions for breach of that prohibition, with the provisions on the free movement of goods. The question referred to the Court by the Tribunale for a preliminary ruling is as follows:

“Are Articles 25, 216, 282, 287 and 339 of the Decree of the President of the Republic No 43 of 23 January 1973, in conjunction with Law No 1163 of 27 October 1957 ratifying and

implementing the International Convention of New York of 4 June 1954, and Articles 67, 69, 70 and 71 of the Decree of the President of the Republic No 633 of 26 October 1972 in conflict with the Community rules in relation to the free movement of goods?"

persons normally resident outside its territory."

That Convention has been ratified by all the Member States of the European Communities.

The Geneva Convention of 18 May 1956 (United Nations Treaty Series, Volume 339, p. 3) on the taxation of private road vehicles in international traffic exempts vehicles registered in the territory of one of the Contracting Parties and imported duty-free into another State from taxes and charges levied on the circulation or possession of vehicles with the exception, however, of tolls or of taxes or charges on consumption. The Convention does not define directly the conditions to be met in order to gain exemption, but refers to the provisions of the New York Customs Convention. It was ratified by all the Member States of the European Communities, with the exception of Belgium and Italy.

B — The legislation applicable

(a) The international conventions

The customs and fiscal facilities relating to journeys by private car are governed at international level by two agreements made under the auspices of the United Nations.

The Customs Convention of New York of 4 June 1954 (United Nations Treaty Series, Volume 282, p. 249) provides that vehicles belonging to persons normally resident outside the country may be granted admission without payment of taxes and customs duties and all dues and payments payable on importation if they are imported and utilized, on the occasion of a temporary visit, by their owners or by other persons resident outside the territory. According to Article 2 (1) of that Convention:

"Each of the Contracting States shall grant temporary admission without payment of import duties and import taxes and free of import prohibitions and restrictions, subject to re-exportation and to the other conditions laid down in this Convention, to vehicles owned by persons normally resident outside its territory which are imported and utilized, for their private use on the occasion of a temporary visit, either by the owners of the vehicles or by other

Those Conventions apply only to foreign vehicles imported and utilized by persons who are resident abroad.

(b) The Italian rules governing the temporary importation of motor vehicles

Decree of the President of the Republic No 43 of 23 January 1973 contains the consolidated text of the legislative provisions on customs matters. Article 216 concerns the temporary importation of vehicles for private use and provides, in particular, in relation to the utilization on the territory of the State of vehicles admitted under the arrangements for temporary importation, that the penalties prescribed in respect of the offence of smuggling remain applicable when the

conditions laid down in the New York Convention, referred to above, are lacking or are no longer present.

Decree of the President of the Republic No 633 of 12 October 1972 concerns the introduction and administration of value added tax (VAT).

(c) The proposal for a Community directive

On 30 October 1975 the Commission submitted to the Council a Proposal for a Directive on tax exemptions for certain means of transport temporarily imported into one Member State from another (Official Journal C 267 of 21 November 1975, p. 8). The proposal is at present being considered by the Council.

The purpose of the proposal is to improve intra-Community travel. Compared with the international agreements, it provides for various improvements, in particular the extension of the exemptions to utilization of the vehicle for business purposes, the abolition of temporary importation papers, the determination of common rules for establishing residence and the fixing of a uniform duration for the exemption (six months in any twelve months).

Article 3 of the Proposal for a Directive provides that the individual importing the vehicle must have his principal residence in a Member State of the Community other than that of temporary importation and that the means of transport must not be disposed of or hired out in the Member State of temporary importation, or lent to a resident of that State. The only exception allowed concerns cars belonging to a

car-hire firm having its head office in the Community, which may be brought back into the Member State where it was originally hired by an employee of the car-hire firm even if such employee is resident in the Member State of temporary importation.

C — Procedure

The order of the Tribunale di Ravenna was received at the Court Registry on 21 December 1979.

The Italian Government, represented by Dante d'Avanzo, Avvocato dello Stato, and the Commission of the European Communities, represented by Eugenio de March, a member of its Legal Department, acting as Agent, submitted written observations under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry and to assign the case to the First Chamber of the Court.

II — Written observations submitted to the Court

A — Admissibility

In its observations the *Commission* notes that although the Court has no jurisdiction under Article 177 of the Treaty to rule on the compatibility of a provision of national law with Community law, it is a matter of settled case-law that it may elicit from the

wording of the question which has been referred to it by the national court, in the light of the information supplied by the latter, such matters as are relevant to the interpretation of Community law.

The case-file reveals, according to the Commission, that a solution to the dispute in the main proceedings turns on the compatibility of national rules prohibiting residents from using motor vehicles subject to the temporary importation arrangements and prescribing penal sanctions for contravention of that prohibition with the provisions on the free movement of goods.

E — Substance

The *Commission* and the *Italian Government* maintain in their observations that the temporary importation scheme in force in Italy is not incompatible with the provisions of the Treaty on the free movement of goods.

The *Commission* states that the prohibition against the use by residents of a vehicle registered abroad is merely a means of preventing tax frauds and of guaranteeing, in particular, that taxes will in fact be paid in the country of destination of the goods. The only principle concerned with the free movement of goods which Member States are bound to respect is that which prohibits discrimination between national products and imported products and is expressed in Articles 13 and 95 of the Treaty. Hence the Italian provisions referred to in the order of the Tribunale di Ravenna are not contrary to the Treaty provisions on the free movement of goods. Furthermore, the Commission points out that the harmonization of

temporary importation arrangements which is the subject of the proposal for a Community directive is intended not so much to encourage trade in goods as to facilitate the movement of persons and services, that is to say, of the residents of a Member State who intend to use their car in another Member State and for whom the national tax provisions might cause grave problems (commercial agents, frontier workers and so on).

The *Italian Government* states that the mere fact that all the Member States of the EEC have ratified the international Convention at present applicable in respect of private vehicles travelling between the Member States of the Community is clear evidence that there is no conflict such as that perceived by the Italian court between the Italian rules and the Community provisions applicable on the subject.

Furthermore, penal provisions (including the provisions in Articles 25, 216, 282, 287 and 339 of Decree of the President No 43 of 1973) lie within the exclusive competence of the Member States, whose sovereign right it is to lay down the constituent elements of an offence, including that of smuggling, together with the type and extent of the penalties attaching thereto.

At the sitting on 19 June 1980 the Italian Government, represented by Dante d'Avanzo, *Avvocato dello Stato*, and the Commission, represented by Eugenio de March, a member of its Legal Department, acting as Agent, presented oral argument.

The Advocate General delivered his opinion at the sitting on 10 July 1980.

Decision

1 By an order of 17 December 1979 which was received at the Court Registry on 21 December 1979, the Tribunale Civile e Penale di Ravenna referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to the compatibility of certain provisions of Italian legislation with the Community rules on the free movement of goods.

2 The facts which gave rise to the dispute before the Tribunale di Ravenna are as follows. Mr Carciati, an Italian national residing in Ravenna, was stopped by the Guardia di Finanza [the Italian revenue enforcement officers] while driving on Italian territory a car registered in Germany. He stated that a national of the Federal Republic of Germany had entrusted him with the car in order to have it at his disposal in Italy when making his frequent business visits. Mr Carciati was charged with smuggling in that he, being an Italian resident, had in his possession and had used within the national customs territory a motor-car registered abroad, in contravention of the provisions governing temporary importation.

3 In the course of the proceedings the Tribunale di Ravenna decided to refer the following question to the Court for a preliminary ruling:

“Are Articles 25, 216, 282, 287 and 339 of the Decree of the President of the Republic No 43 of 23 January 1973, in conjunction with Law No 1163 of 27 October 1957 ratifying and implementing the International Convention of New York of 4 June 1954, and Articles 67, 69, 70 and 71 of the Decree of the President of the Republic No 633 of 26 October 1972 in conflict with the Community rules in relation to the free movement of goods?”

4 Whilst the Court has no jurisdiction in proceedings under Article 177 of the Treaty to decide on the compatibility or otherwise of national legislative provisions with Community law it may, when presented with an imprecisely formulated reference, identify the question of Community law in such terms

as enable it to give a ruling. In this case, the question to be determined is whether the principles in the Treaty concerning the free movement of goods prevent the adoption of national rules which, whilst subjecting the normal importation of vehicles to payment of value added tax, prohibit the residents of the State in question, subject to criminal penalties, from using vehicles which have been brought in under the temporary importation arrangements and are thus exempted from that tax.

- 5 Article 2 of the New York Convention of 4 June 1954 which has been ratified by all the Member States of the European Community governs the temporary tax-free importation of motor vehicles. Paragraph (1) of that article provides that each of the Contracting States shall "grant temporary admission without payment of import duties and import taxes . . . to vehicles owned by persons normally resident outside its territory which are imported and utilized, for their private use on the occasion of a temporary visit, either by the owners of the vehicles or by other persons normally resident outside its territory".
- 6 Article 216 of the Decree of the President of the Italian Republic No 43 of 23 January 1973 (Consolidated Text of the Legislative Provisions in Customs Matters) governs the temporary importation of road vehicles for private use by referring to the New York Convention and provides in paragraph (2) that the penalties prescribed for the offence of smuggling apply when the conditions laid down by that Convention are lacking or are no longer present. The same enactment also lays down the fine to be imposed on anyone who is in possession of foreign goods without being able to show that they were lawfully obtained (Article 282 in conjunction with Article 85), or who uses foreign goods which have been imported duty-free and at a reduced rate of tax wholly or partly for a purpose other than that for which the tax exemption or reduction was granted (Article 287).
- 7 As regards the amount of tax not paid, upon which the amount of the fine is based, Decree of the President No 633 of 26 October 1972 on the introduction and administration of value added tax provides that the tax in

question applies, *inter alia*, to imports effected by any person, and goes on to determine specifically, in Articles 67 to 70, the arrangements regarding the tax on imports.

- 8 It should be noted that the application of value added tax to the importation of goods is expressly provided for in Article 2 of the Second Council Directive of 11 April 1967 (No 67/228/EEC) on the harmonization of legislation of Member States concerning turnover taxes (Official Journal, English Special Edition, 1967, p. 16). Article 14 of the Sixth Council Directive of 17 May 1977 (No 77/338/EEC) on this subject (Official Journal 1977, L 145, p. 1) provides that, without prejudice to other Community provisions, Member States are to exempt, under conditions to be laid down by them for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any possible evasion, avoidance or abuse, *inter alia*, importations of goods declared to be under temporary importation arrangements.

- 9 Member States thus retain broad powers to take action in respect of temporary importation, specifically for the purpose of preventing tax frauds. It follows that if the measures adopted to that end are not excessive, they are compatible with the principle of the free movement of goods.

- 10 As regards the prohibition imposed by a Member State on persons resident in its territory on the use of vehicles imported temporarily tax-free, it is an effective way of preventing tax frauds and ensuring that taxes are paid in the country of destination of the goods. In fact the Proposal for a Council Directive on tax exemptions for certain means of transport temporarily imported into one Member State from another submitted by the Commission on 30 October 1975 (Official Journal C 267, p. 8) recognized the need for such a measure in proposing in Article 3 (concerning the temporary importation of certain means of transport for private use) the condition that "(a) the individual importing such goods: (aa) has his principal residence in a Member State of the Community other than that of temporary importation, . . ." and that "(b) the said means of transport is not disposed of or hired out in the Member State of temporary importation, or lent to to a resident of that State".

- 11 Provided that provisions such as those contained in the national legislation in question in this instance are found to be compatible with the rules of the Community legal order, there is no argument capable of calling in question the power of a Member State to impose criminal penalties for contravening the national rules.
- 12 The reply to the question which has been submitted by the Tribunale di Ravenna should therefore be that the rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to criminal penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value added tax.

Costs

- 13 The costs incurred by the Italian Government and by the Commission of the European Communities which have submitted observations to the Court are not recoverable. As this case is, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings before the national court, the decision as to costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Tribunale Civile e Penale di Ravenna by an order dated 26 November 1979, hereby rules:

The rules of the EEC Treaty relating to the free movement of goods do not preclude the imposition by national rules on persons residing in the territory of a Member State of a prohibition, subject to criminal

penalties, on the use of motor vehicles admitted under temporary importation arrangements and thus exempt from payment of value added tax.

Koopmans

O'Keefe

Bosco

Delivered in open court in Luxembourg on 9 October 1980.

J. A. Pompe
Deputy Registrar
For the Registrar

T. Koopmans
President of the First Chamber

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 10 JULY 1980¹

*Mr President,
Members of the Court,*

1. I shall begin by briefly summarizing the facts which lie at the origin of this reference for a preliminary ruling.

In 1976 Gerhard Fink, a national of the Federal Republic of Germany, entrusted to Giovanni Carciati, an Italian national residing in Ravenna, a motor-car licensed in Germany and registered in the name of the Hermann Fink undertaking, in order to be able to make use of it in Italy when making his frequent business visits. In March 1978 Mr Carciati was stopped by members of the Guardia di Finanza [Italian revenue enforcement officers] while driving the

motor-car in question and was charged with importing a motor-car into Italy without paying the appropriate taxes and dues. As a consequence, he had to appear before the Tribunale di Ravenna to answer a charge of smuggling, together with an infringement of the provisions governing value added tax.

In the context of those proceedings the Tribunale referred the following question to the Court of Justice by an order of 23 November 1979:

“Are Articles 25, 216, 282, 287 and 339 of the Decree of the President of the Republic No 43 of 23 January 1973, in conjunction with Law No 1163 of 27 October 1957 ratifying and

¹ — Translated from the Italian.