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Press and Information

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Judgment of the Court of Justice in Case C-140/05

Amalia Valeško v Zollamt Klagenfurt

AUSTRIAN LEGISLATION LIMITING AN EXEMPTION, ON A TRANSITIONAL BASIS, FOR CIGARETTES IMPORTED FROM SLOVENIA IS COMPATIBLE WITH COMMUNITY LAW

The difference in treatment resulting from that legislation does not constitute discrimination against imports from third countries and new Member States bordering the Republic of Austria where the level of taxation on those products is lower than that imposed by the Community legislation.

The Austrian legislation provides that the exemption from excise duty on tobacco products imported in the personal luggage of travellers who are normally resident in Austria and enter its tax territory via a land border or inland waters is to be limited, until 31 December 2007, to 25 cigarettes on entry from Slovenia.

Coming from Slovenia, Ms Valeško, an Austrian national, returned in July 2004 to the Republic of Austria, where she resides.

During a check carried out at the Austrian frontier post, she declared 200 cigarettes. Relying on the Tabaksteuergesetz¹ and the exemption limited to 25 cigarettes under that law, the Zollamt Klagenfurt (Klagenfurt Customs Office) levied tobacco tax on 175 of the 200 cigarettes imported by Ms Valeško, in the sum of EUR 16.80.

In her appeal against that decision Ms Valeško claimed that the exemption from excise duty limited to 25 cigarettes is contrary to Community law.

After the rejection of that appeal, the Unabhängiger Finanzsenat, Außenstelle Klagenfurt, the Austrian court dealing with this case, asked the Court of Justice of the European Communities whether Austria could limit the exemption from excise duty to 25 units as

¹ Tabaksteuergesetz (Law on Tobacco Duty) of 31 August 1994 (BGBl. I, 704/1994), as amended by the Abgabenänderungsgesetz (Tax Amendment Law) of 19 December 2003 (BGBl. I, 124/2003).

regards cigarettes imported from Slovenia if they are brought into Austria in the personal luggage of its residents who enter its tax territory, by a land border or inland waters, directly from Slovenia.

The Court observes, first, that under the directive relating to imports in international travel² the exemption from excise duty for travel between third countries and the Community is limited to 200 cigarettes. However, within the limits laid down by that directive, the Member States continue to have power to reduce that quantity³.

Under the Act of Accession⁴ the Member States may, on a transitional basis, maintain the same quantitative limits for cigarettes which may be brought into their territories from Slovenia without further payment of excise duty as those which applied with regard to imports from third countries.

Next, the Court notes that fiscal legislation is an important and effective instrument for discouraging consumption of tobacco products and, therefore, for the protection of public health.

It points out that the Austrian legislation, laying down the exemption limited to 25 cigarettes, was introduced in order to prevent Austrian residents from systematically evading payment of the overall minimum excise duty on cigarettes, by buying, often on repeated short journeys, cigarettes in third countries bordering the Republic of Austria where the tax level and therefore prices are considerably lower.

The Court concludes therefrom that the exemption limited to 25 cigarettes can still be based on Directive 69/169, read in conjunction with the Act of Accession⁵.

That specific risk of evasion of fiscal policy and impairment of the objective of protection of public health persists after the accession of the Republic of Slovenia to the European Union, since that new Member State may, even though it is required to raise its rates gradually, postpone the application of the overall minimum excise duty on cigarettes until 31 December 2007.

The Court holds therefore that the situation of third countries and new Member States bordering the Republic of Austria where the level of taxation on tobacco products is lower than that imposed by the Community legislation is not comparable to that of other third countries. For that reason, the difference in treatment resulting from the Austrian legislation cannot be regarded as constituting discrimination against imports from those third countries and new Member States.

² Council Directive 69/169/EEC of 28 May 1969 on the harmonisation of provisions laid down by Law, Regulation or Administrative Action relating to exemption from turnover tax and excise duty on imports in international travel (OJ, English Special Edition 1969 (I), p. 232), as amended by Council Directive 94/4/EC of 14 February 1994 amending Directives 69/169/EEC and 77/388/EEC and increasing the level of allowances for travellers from third countries and the limits on tax-free purchases in intra-Community travel (OJ 1994 L 60, p. 14).

³ See Article 5(8) of the above-cited directive.

⁴ Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic [to the European Union] and the adjustments to the Treaties on which the European Union is founded (OJ 2003 L 236, p. 33).

⁵ See Article 24 of the Act of Accession, cited above.

The Court therefore rules that the Austrian legislation limiting an exemption, on a transitional basis, to 25 cigarettes imported from Slovenia is not contrary to Community law.

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Languages available: FR CS EN DE HU IT PL SL SK

The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-140/05>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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