

**Case C-508/22**

**Summary of the request for a preliminary ruling pursuant to Article 98(1) of the Rules of Procedure of the Court of Justice**

**Date lodged:**

27 July 2022

**Referring court:**

Curtea de Apel Braşov (Romania)

**Date of decision to refer:**

22 June 2022

**Appellants:**

KL

PO

**Respondent:**

Administraţia Judeţeană a Finanţelor Publice Braşov

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**Subject matter of the main proceedings**

Application for revision of a judgment brought by the appellant AX and continued by her heirs, KL and PO, against the judgment of the Curtea de Apel Braşov (Court of Appeal, Braşov) given on 5 April 2022.

**Subject matter and legal basis of the request for a preliminary ruling**

Interpretation of Article 110 TFEU is sought pursuant to Article 267 TFEU.

**Questions referred for a preliminary ruling**

Can EU law (Article 110 TFEU) be interpreted as meaning that the amount of a tax prohibited under EU law is incorporated in the value of a vehicle and may be transferred to third-party purchasers along with the right of ownership over the vehicle?

Does the interpretation of [Article] 110 TFEU preclude national rules, such as those laid down by Article 1 of OUG No 52/2017, under which a refund of a tax prohibited by EU law may be made only to the taxpayer who paid the tax and not – where the tax has not been refunded to the person who paid it – to subsequent purchasers of the vehicle in respect of which the tax was paid?

**Provisions of EU law and case-law relied on**

Article 110 TFEU

Judgment of 7 April 2011, *Tatu* (C-402/09), paragraph 40

**Provisions of national law relied on**

Ordonanța de urgență a Guvernului nr. 52/2017 din 4 august 2017 privind restituirea sumelor reprezentând taxa specială pentru autoturisme și autovehicule, taxa pe poluare pentru autovehicule, taxa pentru emisiile poluante provenite de la autovehicule și timbrul de mediu pentru autovehicule (Decree-Law No 52 of 4 August 2017, on the refund of amounts constituting the special tax on passenger cars and motor vehicles, the tax on pollution from motor vehicles, the tax on pollutant emissions from motor vehicles and the environmental vignette for motor vehicles; ‘OUG No 52/2017’), Article 1(1):

‘Taxpayers who have paid the special tax on passenger cars and motor vehicles, laid down by Articles 214<sup>1</sup> to 214<sup>3</sup> of Law No 571/2003 on the tax code, as supplemented and amended, the tax on motor vehicle pollution, laid down by Decree-Law No 50/2008, establishing the tax on motor vehicle pollution, approved by Law No 140/2011, the motor vehicle pollutant emissions tax, laid down by Law No 9/2012, regulating the motor vehicle pollutant emissions tax, as subsequently amended, as well as the motor vehicle environmental vignette laid down by Decree Law No 9/2013 regulating the motor vehicle environmental vignette, approved with amendments and additions by Law No 37/2014, as subsequently amended and supplemented, and who have not benefited from reimbursement until the entry into force of this Decree-Law, may request the relevant reimbursement, including the interest accrued in the period from the date of collection to the date of reimbursement, by means of an application submitted to the competent central tax body. The interest rate is that provided for in Article 174(5) of Law No 207/2015 on the code of tax procedure, as subsequently amended and supplemented’.

**Succinct presentation of the facts and the main proceedings**

- 1 On 3 March 2008, SC Zilex Corn SRL purchased, under a lease purchase agreement, a Toyota vehicle manufactured in 2007.

- 2 For the registration of the vehicle, the leasing company BCR Leasing IFN SA paid to the Treasury the special tax in the amount of Romanian lei (RON) 5 359.86, plus RON 1 018.37 by way of VAT; the amount of that tax was later paid to the leasing company by SC Zilex Corn SRL.
- 3 The right of ownership over the vehicle was transferred to SC Zoral SRL upon the vehicle's registration in that company's name on 12 November 2012, while AX acquired the right of ownership over the vehicle on 16 May 2016.
- 4 By an application lodged with the Administrația Județeană a Finanțelor Publice Brașov (District Finance Administration, Brașov) on 28 August 2018, AX applied for the reimbursement of the special registration tax, in the amount of RON 6 378.23, which had been paid for the registration of the vehicle in question.
- 5 By decision of 5 March 2019, AX's application was rejected on the ground that it had been submitted by a person other than the one the tax had been levied from, and an appeal against the decision of 5 March was dismissed by decision of 29 July 2019.
- 6 By action lodged before the Tribunalul Brașov (Regional Court, Brașov) on 7 February 2020, the applicants AX and YC sought with regard to the defendant, the Brașov District Finance Administration, the annulment of its decisions of 5 March and 29 July 2019, and for that defendant to be ordered to adopt a decision to refund the tax plus the accrued interest, in accordance with the applicants' request of 28 August 2018.
- 7 By judgment of 23 December 2020, the Brașov Regional Court upheld the objection whereby the applicant YC lacked standing and, as regards AX, dismissed her action, finding that she was not entitled to the reimbursement because, according to the provisions of Article 1(1), (2) and (5) of OUG No 52/2017, such a right belonged solely to the person liable for the tax, and not to subsequent purchasers.
- 8 AX lodged an appeal against that judgment before the Brașov Court of Appeal, arguing that it was incompatible with EU law. In support of her appeal, AX argued that, by virtue of paragraph 40 of the judgment of 7 April 2011, *Tatu* (C-402/09), the amount of the registration tax is incorporated in the value of the vehicle, since its market value includes the residual amount of the tax, calculated as a percentage of the initial value, based on the depreciation of that vehicle.
- 9 On 5 April 2022, the Brașov Court of Appeal dismissed the appeal on the ground that AX had not proved that, on the date of SC Zoral SRL's transfer of the ownership right over the vehicle, the right to claim the sum of RON 6 370.23 – which had been paid by SC Zilex Corn SRL by way of tax on pollutant emissions – had also been transferred.
- 10 AX brought an application for revision of the final judgment of 5 April 2022, before the Brașov Court of Appeal – which is the referring court – requesting the

amendment of the judgment appealed against, the re-examination of her appeal and, at the same time, the submission to the Court of Justice of a reference for a preliminary ruling.

### **Principal arguments of the parties to the main proceedings**

- 11 AX argued that the dismissal of her appeal was decided in breach of the principle of the primacy of EU law and was based on an erroneous interpretation of Article 110 TFEU by the Braşov Court of Appeal, in breach of the Court of Justice's case-law. She refers, in that respect, to the judgments *Amministrazione delle Finanze dello Stato v. San Giorgio* (199/82), and *Comateb and Others v. Directeur général des douanes et droits indirects* (C-192/95 to C-218/95).
- 12 According to AX, national courts should determine whether the tax prohibited by EU law has been passed on, in its entirety or in part, by an enterprise to others. She argued that in paragraph 40 of the Court's judgment in Case C-402/09, *Tatu*, the Court stated that, from the moment of the payment of a registration tax in a Member State, the amount of that tax is incorporated into the value of the vehicle and, consequently, the tax is subsequently transferred along with the right of ownership over the vehicle.
- 13 The Braşov District Finance Administration opposed the referral to the Court.

### **Succinct presentation of the reasons for the request for a preliminary ruling**

- 14 The Braşov Court of Appeal is dealing with the case as the court of final instance, in the context of the extraordinary appeal for revision of a judgment, brought under Article 21(1) of Law No 554/2004, which lays down that where judgments which have become final are given in breach of the principle of the primacy of EU law, this constitutes grounds for their revision.
- 15 Examining the provisions of OUG No 52/2017, the referring court notes, first, that, according to that decree-law's preamble, it was adopted following the judgments of 9 June 2016, *Budişan* (C-586/14, EU:C:2016:421), of 30 June 2016, *Câmpean* (C-200/14, EU:C:2016:494), and of 30 June 2016, *Ciup* (C-288/14, not published, EU:C:2016:495), in which the Court declared several pollution taxes introduced by Romania on motor vehicles to be incompatible with EU law, in particular Article 110 TFEU, therein including the tax at issue in the case at hand.
- 16 Secondly, the referring court emphasises that the wording of Article 1 of OUG No 52/2017 reveals that the Romanian State has recognised the right to reimbursement of the tax only to the taxpayer who has actually paid it, while it is clear that, in the 11 years that elapsed between the introduction in 2006 of the first tax incompatible with EU law and the adoption in 2017 of OUG No 52/2017, the ownerships of vehicles have been transferred, with the result that they are no longer the property of the taxpayer who paid the tax, and that, unless the transfer

of the right of claim to the current user is recognised, the recovery of the tax is impossible to effect.

- 17 By its nature, once paid, the tax in question is incorporated into the market value of the registered vehicle, a conclusion that follows from the Court's ruling in the *Tatu* case (C-402/2009). In practice, at the time of sale, vehicles with the tax paid were priced higher than untaxed ones, with the result that the taxpayer who had paid the tax then collected it indirectly on the sale price.
- 18 In the light also of the Court's judgment in Cases C-192/95 to C-218/95, the referring court takes the view that the manner in which OUG No 52/2017 has governed the reimbursement procedure results in a limitation of the ability to obtain that reimbursement and, therefore, makes it impossible or excessively difficult to exercise the rights conferred by EU law.
- 19 According to the Brașov Court of Appeal, such a conclusion is confirmed by recent legislative developments, in particular OUG No 93/2022, which, by repealing OUG No 52/2017, provides for a new refund procedure that includes the possibility of refunding the tax to the purchaser of a vehicle under a lease purchase agreement, although the tax had been paid by the leasing company.

WORKING DOCUMENT