

FERON

JUDGMENT OF THE COURT (First Chamber)

17 March 2005^{*}

In Case C-170/03,

REFERENCE for a preliminary ruling under Article 234 EC from the Hoge Raad der Nederlanden (Netherlands), made by decision of 11 April 2003, received at the Court on 14 April 2003, in the proceedings

Staatssecretaris van Financiën

v

J.H.M. Feron,

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Rosas, K. Lenaerts, S. von Bahr (Rapporteur) and K. Schiemann, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 18 March 2004,

^{*} Language of the case: Dutch.

after considering the observations submitted on behalf of:

- the Netherlands Government, by S. Terstal, acting as Agent,

- the Commission of the European Communities, by R. Lyal and H. van Vliet, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 May 2004,

gives the following

Judgment

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 1(2)(c) and 3(a) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty (OJ 1983 L 105, p. 1).

- 2 The reference was made in proceedings between Mr Feron and the Staatssecretaris van Financiën (State Secretary for Finance), who refused to grant Mr Feron an exemption from duty in respect of a car made available to him by his employer.

The dispute in the main proceedings and the legal framework

- 3 According to the decision making the reference, Mr Feron worked in Austria as an employee of Océ Österreich GmbH ('the employer'). From 18 October 1996 to 14 December 1997 the employer put a car at the exclusive disposal of Mr Feron both for private use and in connection with his work for that employer. During that period the employer was the owner of the car. However, in connection with his transfer to the Netherlands, Mr Feron, on 15 December 1997, exercised an option granted to him when the car was delivered to him and bought the car from his employer. In January 1998, Mr Feron left his place of residence in Austria and, on 10 February 1998, registered as a resident of the municipality of Venlo (Netherlands). The Netherlands authorities refused to grant him exemption from the duty on cars and motorcycles ('belasting van personenauto's en motorrijwielen'; 'BPM') in respect of the car. The Gerechtshof te 's-Hertogenbosch (Regional Court of Appeal, Hertogenbosch), which heard his appeal, annulled the decision refusing exemption and granted Mr Feron exemption from the BPM. The Staatssecretaris van Financiën appealed in cassation to the Hoge Raad der Nederlanden (Supreme Court of the Netherlands).

- 4 The Hoge Raad states that, by virtue of Article 1(2) of the Wet op de belasting van personenauto's en motorrijwielen (Law on duty on cars and motorcycles) of 24 December 1992, the BPM is payable on registration of cars and motorcycles in the register of registration numbers kept under the Wegenverkeerswet (Road Traffic Law) of 1994. It follows from the provisions of Article 14 of that law, in conjunction with Articles 2(2) and 4(1) and (4) of the Uitvoeringsbesluit belasting van personenauto's en motorrijwielen (Decree implementing the duty on cars and motorcycles) of 24 December 1992, as amended by the Decree of 14 November 1997, that relief from the duty payable on registration of cars and motorcycles originating abroad, and in particular in another Member State, is granted where the vehicle, at the time of its release for free circulation, was entitled to relief from customs duty under Regulation No 918/83.

- 5 The referring court observes that, pursuant to Article 2 of that regulation, exemption from the BPM is granted in respect of a private motor vehicle, within the

meaning of Article 1(2)(c) of the regulation, which is imported from abroad by a natural person who is transferring his normal place of residence to the Netherlands, provided that the vehicle has been in possession of and used by the person concerned for a minimum of six months before the date on which the person ceased to have his normal place of residence in the country of origin, as provided for in Article 3(a) of Regulation No 918/83, and provided that the vehicle in question is intended to be used for the same purpose at the new normal place of residence of the person concerned, in accordance with Article 3(b) of the regulation.

- 6 According to the Hoge Raad, the combined effect of Articles 2 and 3 of Regulation No 918/83 is that the exemption applies to property which has been in the possession of the person concerned, as that person's personal property, for a minimum of six months.
- 7 The national court considers the question arises, first, as to whether property used for both professional and private purposes is to be regarded as personal property.
- 8 It notes that a question also arises as to the significance to be attached to the notion of 'possession' within the meaning of Article 3(a) of Regulation No 913/83. It asks, *inter alia*, whether that notion includes the case in which the property concerned may be used by one person pursuant to a legal arrangement with another person, who is the owner of the property and who has made it available in the context of his business at the same time as authorising private use of it.

The questions referred for a preliminary ruling

- 9 By decision of 11 April 2003, the Hoge Raad der Nederlanden stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

- (1) Must a car which is made available to a natural person by his employer and is used by him for both business and private purposes be regarded as personal property within the meaning of Article 1(2)(c) of ... Regulation No 918/83 ...?
- (2) Must Article 3(a) of that regulation, requiring property to have been in the possession of the person concerned at least six months before the date on which he gave up his normal place of residence in the country of origin, be interpreted as meaning that the person concerned who has had property made available to him, even free of charge, in the context of his employment by the owner of the property in question, is to be deemed to have been in possession of the property for the purposes of the abovementioned provision?
- (3) Is it material to the reply to be given to Question 2 that during the whole period of six months the person concerned had the right to buy the car?'

Concerning the questions referred to the Court

- ¹⁰ Regulation No 918/83, to which the questions referred to the Court allude, concerns relief from Community duties on importation from third countries and does not apply directly to the case before the national court. The provisions of the regulation apply to this case only by reason of Netherlands law, which refers to the Community law provisions.
- ¹¹ In that respect, it is sufficient to recall that the Court has repeatedly held that it has jurisdiction to give preliminary rulings on questions concerning Community

provisions in situations where the facts of the cases being considered by the national courts were outside the scope of Community law but where those provisions had been rendered applicable by domestic law (see, in particular, Case C-28/95 *Leur-Bloem* [1997] ECR I-4161, paragraph 27, Case C-130/95 *Giloy* [1997] ECR I-4291, paragraph 23, and Case C-247/97 *Schoonbroodt* [1998] ECR I-8095, paragraph 14).

- 12 Thus, the Court must reply to the questions referred.
- 13 By its three questions, which it is appropriate to examine together, the Hoge Raad der Nederlanden is asking whether a car such as that at issue in the main proceedings can be regarded as personal property, in accordance with Article 1(2)(c) of Regulation No 918/83, and thus eligible for relief from customs duty under Articles 2 and 3 of the regulation.
- 14 A combined reading of those provisions shows that, in order to qualify for relief from customs duty, the personal property must, as a general rule, have been in the possession of, and used by, the person concerned, as personal property, for at least six months before the date on which he ceased to have his normal place of residence in the country of origin. Furthermore, the personal property must be intended to be used for the same purpose at the new normal place of residence of the person concerned.
- 15 Under Article 1(2)(c) of Regulation No 918/83, ‘personal property’ means property intended for the personal use of the persons concerned or for meeting their household needs and includes private motor vehicles.

- 16 In this instance, the car was made available to Mr Feron by his employer from 18 October 1996 until 14 December 1997, both for his personal use and for the purposes of his work for that employer.
- 17 The question as to whether property used for both those purposes during a six month period before Mr Feron transferred his place of residence can be regarded as personal property is not an issue expressly settled by Regulation No 913/83.
- 18 Such an eventuality is not incompatible with the scheme and purpose of the regulation.
- 19 First, Article 1(2)(c) of Regulation No 918/83 specifically provides that certain property required by the person concerned for the pursuit of his trade or profession can be regarded as personal property.
- 20 Second, by virtue of the same provision, what is really essential is that the personal property is not such as might indicate, by its nature or quantity, that it is being imported for commercial reasons.
- 21 In the absence of any express provision to that effect, exclusive personal use cannot therefore be considered necessary in all circumstances for property to be regarded as personal property for the purposes of Regulation No 918/83.
- 22 A car such as that at issue in the main proceedings which is used for both private and professional purposes must also be capable of being regarded as personal property.

- 23 Moreover, the car at issue in the main proceedings was purchased by Mr Feron from his employer on 15 December 1997 and, according to the decision making the reference, was used exclusively by him for personal purposes following its importation into his new State of residence.
- 24 It follows that a car such as that at issue in the main proceedings must be regarded as personal property used by the person concerned for a minimum of six months before the date on which that person ceased to have his normal place of residence in the country of origin, and intended to be used for the same purpose in that person's new normal place of residence, for the purposes of Regulation No 918/83.
- 25 It is necessary to consider whether a car such as that at issue in the main proceedings can be regarded as having been in the possession of the person concerned for the relevant six month period.
- 26 It follows from the need for uniform application of Community law and the principle of equality that the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the Community (Case 327/82 *Ekro* [1984] ECR 107, paragraph 11; Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43, and Case C-357/98 *Yiadom* [2000] ECR I-9265, paragraph 26).
- 27 Accordingly, the term 'possession' in Article 3 of Regulation No 918/83 must be given an autonomous interpretation.

- 28 As the Advocate General states at point 81 of his Opinion, in the various legal systems the notion of 'possession' is characterised by the control exercised by a person over a thing, irrespective of whether the person is its owner.
- 29 The use of that term in Regulation No 918/83 implies that the relief need not be limited to property forming part of the assets owned by the person concerned for at least six months before his transfer of residence but also concerns other property over which the person concerned exercised effective and genuine control throughout the same period.
- 30 In this instance, the employer had put the car at issue wholly and exclusively at Mr Feron's disposal and had given him an option to purchase the car.
- 31 In view of those circumstances, it is clear that Mr Feron was exercising effective and genuine control over the car and that it was therefore in his possession for at least six months before the date on which he ceased to have his normal place of residence in the country of origin.
- 32 In the light of the foregoing, the answer to the questions referred must be that a car such as that at issue in the main proceedings is to be regarded as personal property within the meaning of Article 1(2)(c) of Regulation No 918/83 and thus eligible for relief from import duty under Articles 2 and 3 of the regulation.

- 33 In view of the answer to the questions referred, it is not necessary to consider the applicability of Council Directive 83/183/EEC of 28 March 1983 on tax exemptions applicable to permanent imports from a Member State of the personal property of individuals (OJ 1983 L 105, p. 64), to which the Commission has alluded.

Costs

- 34 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) rules:

A car such as that at issue in the main proceedings is to be regarded as personal property within the meaning of Article 1(2)(c) of Council Regulation (EEC) No 918/83 of 28 March 1983 setting up a Community system of reliefs from customs duty and thus eligible for relief from import duty under Articles 2 and 3 of the regulation.

[Signatures]