

ORDER OF THE COURT (Fourth Chamber)

27 June 2006\*

In Case C-242/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Gerechtshof te 's-Hertogenbosch (Netherlands), made by decision of 31 May 2005, received at the Court on 3 June 2005, in the proceedings

**G.M. van de Coevering**

v

**Hoofd van het District Douane Roermond van de rijksbelastingdienst,**

THE COURT (Fourth Chamber),

composed of K. Schieman, President of the Chamber, N. Colneric and K. Lenaerts (Rapporteur), Judges,

\* Language of the case: Dutch.

Advocate General: P. Mengozzi,  
Registrar: R. Grass,

the Court, proposing to give its decision by reasoned order in accordance with the first subparagraph of Article 104(3) of its Rules of Procedure,

after hearing the Advocate General,

makes the following

### **Order**

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 49 EC to 55 EC.
  
- 2 The reference was made in the course of proceedings between Mr van de Coevering ('the appellant') and the head of the Roermond Customs District of the Rijksbelastingdienst (hoofd van het District Douane Roermond van de rijksbelastingdienst) concerning a notice of additional assessment relating to tax chargeable as a result of use on the highway in the Netherlands of a passenger car leased and registered in Belgium.

## National law

3 In the version in force until 1 January 2002, Article 1 of the Law on passenger car and motorcycle tax (Wet op de belasting van personenauto's en motorrijwielen 1992, 'the Law') states:

1. A tax called "passenger car and motorcycle tax" shall be charged on passenger cars and motorcycles.
  
2. The tax shall become chargeable when a passenger car or motorcycle is registered in the register of issued registration numbers kept pursuant to the Wegenverkeerswet 1994 (1994 Road Traffic Law).

...

5. Where an unregistered passenger car or motorcycle is actually available to a natural person resident or a body established in the Netherlands, the tax shall become chargeable when the use by that motor vehicle in the Netherlands of the highway within the meaning of the Wegenverkeerswet 1994 commences.'

4 Article 5(2) of the Law is worded as follows:

'With regard to an unregistered passenger car or motorcycle, the tax shall be charged to the person to whom the vehicle is in fact available.'

5 Article 6 of the Law states:

- '1. The tax shall be paid by way of declaration.
  
2. In derogation from Article 10(2) and Article 19(3) of the Algemene Wet inzake Rijksbelastingen (General Law on State Taxes):
  - (a) the tax shall be paid
    - (i) where it is chargeable on registration, before the registration number is issued in a particular name;
  
    - (ii) where it is chargeable on commencement of use of the highway, before such use commences;
  
  - (b) the declaration shall be made at the same time as the payment.
  
3. A ministerial order may lay down rules under which the tax does not have to be paid before use on the highway commences, in derogation from paragraph 2(b).

4. Where, in a case such as that referred to paragraph 3, the person to whom an unregistered passenger car or motorcycle is actually available fails, during a check by officers of the Rijksbelastingdienst or investigation officers as referred to in Article 141 of the Wetboek van Strafvordering (Code of Criminal Procedure), to show that the tax has been paid, the tax shall be paid immediately.'

6 Article 9(1) of the Law (in the version in force until 30 June 2001) is worded as follows:

'1. In respect of a passenger car the tax shall amount to 45.2% of the net list price minus NLG 3 394 or, in the case of a passenger car powered by a compression ignition engine, 45.2% of the net list price,

(a) plus NLG 722, or

(b) where the emission from that passenger car complies with the emission limit values for the year 2005, minus NLG 478.

...'

7 Article 4(3) of the 1992 Decree on the implementation of passenger car and motorcycle tax (Uitvoeringsbesluit belasting van personenauto's en motorrijwielen 1992, 'the Decree') states:

'Exemption in respect of a passenger car or motorcycle leased abroad to a natural person resident or a body established in the Netherlands shall be granted only where

the passenger car or motorcycle is taken outside the Netherlands or delivered to a Netherlands office of the leasing company no later than the end of the day after that on which use of the Netherlands highway commenced.'

### **The dispute in the main proceedings and the order for reference**

- 8 The appellant, resident in the Netherlands, leased from a Belgian company a passenger car registered in Belgium.
- 9 Having observed, on 31 May and 21 June 2001, that that vehicle was being parked and driven in the Netherlands without registration in that Member State, the Roermond Customs District of the Rijksbelastingdienst issued, pursuant to Article 1(5) of the Law, an additional assessment to the amount of NLG 60 476 (EUR 27 565). It also imposed a fine equal to 25% of that amount, namely NLG 15 185 (EUR 6 891).
- 10 Since the objection to the additional assessment and the decision to impose a fine was not upheld, the appellant appealed to the Gerechtshof te 's-Hertogenbosch.
- 11 In its decision to refer, the Gerechtshof te 's-Hertogenbosch observes that, both as regards a car leased in the Netherlands and as regards one leased in another Member State, on commencement of a Netherlands resident's use of the highway in the Netherlands car tax is chargeable definitively and in the full amount, with no

possibility of a refund. The Gerechtshof is uncertain whether that tax does not prevent a Netherlands resident from leasing a passenger car in another Member State, in particular for a period which is longer than the period of two days laid down in Article 4(3) of the Decree, but shorter than the vehicle's economic life.

- 12 For such a period, a Netherlands national would prefer to lease a car registered in the Netherlands for which the lessor has already paid the car tax, rather than a car which is not registered in the Netherlands and in respect of which that tax has not yet been paid. If, in the former case, the lessor includes the tax paid in the leasing charge, for any lease which is shorter than the car's life the amount included in the charge will always be less than the full amount of the tax. On the other hand, in the latter case, the full amount of the tax becomes chargeable to the lessor, irrespective of the period of the lease and the duration of the use of the highway in the Netherlands. The lessor of a car which is not registered in the Netherlands is, in most cases, established outside the Netherlands.
- 13 Although it is true that a lessor who is not established in the Netherlands may carry out such registration and pay the tax in the full amount before leasing a car to a Netherlands national, he will not, however, generally be willing to do so since he will then have to either charge the lessee the tax in the full amount, as a consequence of which the price charged by him will not be competitive, or bear the tax entirely or largely himself, as a consequence of which he will be unable, for economic reasons, to lease the vehicle.
- 14 In so far as a lessor could thus find himself prevented from leasing a passenger car, in a Member State other than the Netherlands, to a Netherlands resident for a period which is longer than the period of the exemption but shorter than the car's life, the Gerechtshof considers there to be legitimate doubt as to whether the charging of the tax under Article 1(5) of the Law is consistent with the principle of freedom to provide services.

- 15 Referring to paragraph 68 of the judgment in Case C-451/99 *Cura Anlagen* [2002] ECR I-3193, the *Gerechtshof* raises the question whether such a barrier to freedom to provide services is justified by overriding reasons relating to the public interest.
- 16 In the light of paragraphs 67 to 69 of that judgment, the *Gerechtshof* considers that there is doubt as to whether that tax is consistent with the principle of proportionality in so far as, in the present case, an additional assessment was issued for the full amount of the tax merely on the basis that, at a given point in time, the appellant used the vehicle in question in the Netherlands, without it first being established what period the passenger car was actually leased for or what the exact duration was of the use by the appellant of the highway in the Netherlands in that car.
- 17 Accordingly, the *Gerechtshof* te 's-Hertogenbosch decided to stay the proceedings and refer the following question to the Court of Justice for a preliminary ruling:

'Does Community law, in particular the freedom to provide services as set out in Articles 49 EC to 55 EC, preclude the [Kingdom of the] Netherlands from charging a natural person resident in the Netherlands — who leases in another Member State, under a leasing contract with a lessor, a passenger car which is not registered in the register pursuant to the *Wegenverkeerswet* 1994 and on which no passenger car and motorcycle tax under Article 1(2) of the [Law] has been paid — passenger car and motorcycle tax under Article 1(5) of the [Law] on commencement of use in the Netherlands by that passenger car of the highway within the meaning of the *Wegenverkeerswet* 1994, where the full amount of the tax is chargeable irrespective of the period of the lease and the duration of the use of the highway in the Netherlands and where that natural person has no right at all to an exemption or a refund?'



**The question referred for a preliminary ruling**

- 18 Under the first subparagraph of Article 104(3) of the Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from the existing case-law, the Court may give its decision by reasoned order.
- 19 According to settled case-law, Article 49 EC precludes the application of any national legislation which without objective justification impedes a provider of services from actually exercising that freedom (see, in particular, *Cura Anlagen*, paragraph 29, and Case C-496/01 *Commission v France* [2004] ECR I-2351, paragraph 64). Moreover, freedom to provide services is enjoyed by both providers and recipients of services (see, in particular, Case C-134/03 *Viacom Outdoor* [2005] ECR I-1167, paragraph 35).
- 20 Article 49 EC likewise precludes the application of any national legislation which has the effect of making the provision of services between Member States more difficult than the provision of services purely within one Member State (Case C-381/93 *Commission v France* [1994] ECR I-5145, paragraph 17, and *Cura Anlagen*, paragraph 30).
- 21 In the case in the main proceedings, by requiring its own nationals who have leased a vehicle from an undertaking established in another Member State liable to pay the registration tax in the full amount on first use of the highway in the Netherlands, the Netherlands legislation dissuades them from leasing vehicles in another Member State. Since that obligation has the effect of making cross-border leasing activities more difficult (see, to that effect, *Cura Anlagen*, paragraphs 37 and 71), it constitutes a barrier to the freedom to provide services.

- 22 Such a measure is admissible only as a derogation expressly provided for by Article 46(1) EC or if justified by overriding reasons in the general interest. Even in such a case, however, the application of that derogation must be able to secure the attainment of the objective which it pursues and must not go beyond what is necessary to attain that objective (see, to that effect, *Cura Anlagen*, paragraphs 31 and 32, and the case-law cited).
- 23 Subject to certain exceptions which are not relevant here, the taxation of motor vehicles has not been harmonised. Member States are therefore free to exercise their powers of taxation in that area, provided they do so in compliance with Community law (*Cura Anlagen*, paragraph 40).
- 24 A Member State may levy a registration tax on a vehicle made available to a person residing in that State by a company established in another Member State when that vehicle is intended to be used essentially in the first Member State on a permanent basis or is in fact used in that way (see, to that effect, *Cura Anlagen*, paragraph 42, and the order in Case C-435/04 *Leroy* [2006] ECR I-4835, paragraph 14, and, in relation to company cars made available to workers, Case C-464/02 *Commission v Denmark* [2005] ECR I-7929, paragraphs 75 to 78, Joined Cases C-151/04 and C-152/04 *Nadin and Others* [2005] ECR I-11203, paragraph 41, and Case C-232/03 *Commission v Finland*, not published in the ECR, paragraph 47).
- 25 It is the task of the national court to assess the length of the leasing contract at issue in the main proceedings and how the leased vehicle has in fact been used (see *Nadin and Others*, paragraph 42, and the order in *Leroy*, paragraph 15).

- 26 If the conditions set out in paragraph 24 above are not satisfied, the connection with a Member State of the vehicle registered in another Member State is weaker, so that another justification for the restriction in question is necessary (*Commission v Denmark*, paragraph 79, and *Commission v Finland*, paragraph 48).
- 27 In any event, even if such justification exists, it is also necessary, as the Court pointed out in paragraph 69 of the judgment in *Cura Anlagen*, for the tax to comply with the principle of proportionality. In relation to an Austrian consumption tax, linked to a obligation to register vehicles leased in another Member State, the Court held that such a tax is contrary to the principle of proportionality in so far as the aim which it pursues could be achieved by introducing a tax proportionate to the duration of the registration of the vehicle in the State where it is used, which would ensure there was no discrimination with respect to amortisation of the tax against vehicle leasing undertakings established in other Member States.
- 28 The same principle applies to a national law which, without requiring the registration of a vehicle leased and registered abroad, charges a tax to be paid on first use of the vehicle on the highway of the Member State concerned, in so far as the aim which it pursues could be achieved by introducing a tax proportionate to the duration of the use of the vehicle in that State.
- 29 It follows that a national law which requires payment of a tax the amount of which is not proportionate to the use of the vehicle in the Member State concerned, even if it proves a legitimate aim compatible with the Treaty, is contrary to Articles 49 EC to 55 EC where it applies to vehicles leased and registered in another Member State which are neither intended to be used essentially in the first Member State on a

permanent basis nor in fact used in that way, except where its aim cannot be achieved by introducing a tax proportionate to the duration of the use of the vehicle in that State.

30 As to the legislation at issue in the main proceedings, it is clear that its aim can be achieved by a tax proportionate to the duration of the use of the vehicle in the Netherlands. The Netherlands Government has indeed announced that the Law will be adapted so that, for vehicles leased in another Member State, the tax will be assessed on the basis of the duration of the leasing contract.

31 In the circumstances of the main proceedings, it is apparent from the facts in the case in the order for reference that the Netherlands tax at issue was imposed on the appellant without first establishing what period the vehicle was leased for or what the duration was of its use of the highway in the Netherlands, since those facts were not relevant for the application of the existing law.

32 Consequently, in so far as it subjects a vehicle leased and registered in another Member State, neither intended to be used essentially in the first Member State on a permanent basis nor in fact used in that way, to payment of the full amount of tax, without taking account of the duration of the use of the highway in the Netherlands and without providing for any right to an exemption or a refund, the legislation at issue in the main proceedings requires payment of a tax the amount of which is not proportionate to the duration of the use of the vehicle in that State.

33 Having regard to the foregoing considerations, the reply to the question referred for a preliminary ruling must be that Articles 49 EC to 55 EC preclude national

legislation of a Member State, such as that at issue in the main proceedings, which requires a natural person established in that Member State who leases a vehicle registered in another Member State to pay the full amount of a registration tax when the vehicle is first used on the highway in the first Member State, without taking account of the duration of the use of that highway and without the person in question having any right to an exemption or a refund, where the vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor in fact used in that way.

## Costs

- <sup>34</sup> 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. The costs incurred by the Netherlands Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

**Articles 49 EC to 55 EC preclude national legislation of a Member State, such as that at issue in the main proceedings, which requires a natural person established in that Member State who leases a vehicle registered in another Member State to pay the full amount of a registration tax when the vehicle is first used on the highway in the first Member State, without taking account of**

**the duration of the use of that highway and without the person in question having any right to an exemption or a refund, where the vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor in fact used in that way.**

[Signatures]