



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

27 April 2016\*

(Reference for a preliminary ruling — Common Customs Tariff — Regulation (EC) No 1186/2009 — Article 3 — Relief from import duties — Personal property — Transfer of residence from a third country to a Member State — Definition of ‘normal place of residence’ — Impossible to have at the same time a normal place of residence in a Member State and in a third country — Criteria for determining the normal place of residence)

In Case C-528/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Supreme Court, Netherlands), made by decision of 14 November 2014, received at the Court on 21 November 2014, in the proceedings

X

v

**Staatssecretaris van Financiën,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, C. Lycourgos, E. Juhász, C. Vajda and K. Jürimäe (Rapporteur), Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- X, by B.J.B. Boersma, adviseur,
- the Netherlands Government, by M. Bulterman and M. Noort, acting as Agents,
- the European Commission, by L. Grønfeldt and H. Kranenborg, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 17 December 2015,

gives the following

\* Language of the case: Dutch.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty (OJ 2009 L 324, p. 23).
- 2 The request has been made in proceedings between X and the Staatssecretaris van Financiën (State Secretary for Finance) concerning the latter's refusal to allow X's personal property to be transferred from Qatar to the Netherlands free of import duties.

### Legal context

#### *Directive 83/182/EEC*

- 3 Article 7(1) of Council Directive 83/182/EEC of 29 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another (OJ 1983 L 105, p. 59), as amended by Council Directive 2006/98/EC of 20 November 2006 (OJ 2006 L 363, p. 129) ('Directive 83/182'), provides as follows:

'For the purposes of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. ...'

#### *Directive 83/183/EEC*

- 4 Article 6(1) 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), which was repealed by Council Directive 2009/55/EC of 25 May 2009 on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals (OJ 2009 L 145, p. 36), was identical in content to Article 7(1) of Directive 83/182.

#### *Regulation No 1186/2009*

- 5 Regulation No 1186/2009 repealed 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).
- 6 Recitals 3 and 4 of Regulation No 1186/2009 state as follows:
  - (3) ... in certain well-defined circumstances, where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent, ... taxation is not justified.
  - (4) It is desirable that in such circumstances arrangements be made, as they have been traditionally in most systems of customs rules, to allow goods to enjoy relief from the application of import duties to which they would normally be liable'.

7 Article 2(1)(c) of Regulation No 1186/2009 is worded as follows:

‘... Personal property must not be such as might indicate, by its nature or quantity, that it is being imported for commercial reasons.’

8 Article 3 of Regulation No 1186/2009 provides as follows:

‘Subject to Articles 4 to 11, personal property imported by natural persons transferring their normal place of residence from a third country to the customs territory of the Community shall be admitted free of import duties.’

9 Article 4 of Regulation No 1186/2009 states as follows:

‘The relief shall be limited to personal property which:

(a) except in special cases justified by the circumstances, has been in the possession of and, in the case of non-consumable goods, used by the person concerned at his former normal place of residence for a minimum of six months before the date on which he ceases to have his normal place of residence in the third country of departure;

(b) is intended to be used for the same purpose at his new normal place of residence.

...’

10 Article 5(1) of Regulation No 1186/2009 provides as follows:

‘Relief may be granted only to persons whose normal place of residence has been outside the customs territory of the Community for a continuous period of at least 12 months.’

11 Under Article 7(1) of Regulation No 1186/2009, relief is granted only in respect of personal property entered for free circulation within 12 months from the date of establishment, by the person concerned, of his normal place of residence in the customs territory of the European Union.

12 Article 9 of that regulation provides that relief may be granted in respect of personal property entered for free circulation before the person concerned establishes his normal place of residence in the customs territory of the European Union, provided that he undertakes actually to establish his normal place of residence there within a period of six months.

13 Under Article 10 of Regulation No 1186/2009, where, owing to occupational commitments, the person concerned leaves the third country where he had his normal place of residence without simultaneously establishing his normal place of residence in the customs territory of the European Union, although having the intention of ultimately doing so, the competent authorities may authorise duty-free admission of the personal property which he transfers for that purpose.

14 Article 11 of Regulation No 1186/2009 provides the competent authorities with the possibility of derogating from certain conditions for the application of the relief from import duties referred to in Article 3 of the regulation.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

15 Until 1 March 2008, the applicant in the main proceedings (‘the applicant’) resided and worked in the Netherlands. From 1 March 2008 until 1 August 2011, he worked in Qatar, where accommodation was made available to him by his employer. The applicant had both occupational and personal ties with

that third country. His wife continued to live and work in the Netherlands. She visited him six times, the total duration of her visits being 83 days. During the period in question, the applicant spent 281 days outside Qatar, during which he visited his wife, his adult children and his family in the Netherlands and went on holiday in other States.

- 16 With a view to his return to the Netherlands, the applicant requested authorisation to import his personal property into the European Union from Qatar free of import duties, pursuant to Article 3 of Regulation No 1186/2009. That request was refused by decision of the Inspector of Taxes on the ground that there was no transfer of the normal place of residence to the Netherlands within the meaning of that article. He was deemed to have maintained his normal place of residence in that Member State throughout his stay in Qatar, so that that third country had never been his normal place of residence.
- 17 The applicant brought an action challenging that decision before the Rechtbank te Haarlem (District Court, Harlem), which upheld the action. The Inspector of Taxes appealed against that court's decision before the Gerechtshof Amsterdam (Appeal Court, Amsterdam). The latter court observed that, according to the case-law of the Court of Justice, the normal place of residence is the place where the person concerned has the permanent centre of his interests. It went on to state that, having regard to the applicant's personal and occupational ties, it was not possible to determine where the permanent centre of his interests was. In those circumstances, according to that court, primacy should be given to personal ties, with the result that, during the period concerned, the applicant's normal place of residence was the Netherlands, not Qatar.
- 18 The applicant lodged an appeal in cassation before the referring court. After noting that Regulation No 1186/2009 did not provide a definition of 'normal residence', that court observed that the approach adopted by the Gerechtshof Amsterdam (Appeal Court, Amsterdam) raised the issue of whether, during the period concerned, the applicant had a normal place of residence in both the Netherlands and Qatar. It stated that the objectives of that regulation do not appear to preclude, in circumstances such as those under consideration here, either the existence of a normal place of residence in both the Netherlands and Qatar or the application of the relief from import duties provided for in Article 3 of the regulation, as the applicant gave up his place of residence in Qatar and transferred his personal property to the Netherlands.
- 19 In the event that Regulation No 1186/2009 is to be interpreted as precluding the possibility of a dual place of normal residence, the referring court seeks to ascertain the criteria to be taken into account, in circumstances such as those in the main proceedings, in determining which of the two places of residence is to be regarded as the normal place of residence for the purposes of the application of that regulation. In that regard, the referring court asks whether the criteria established by the Court in the judgments in *Louloudakis* (C-262/99, EU:C:2001:407) and *Alevizos* (C-392/05, EU:C:2007:251) are relevant for the purpose of determining the 'normal place of residence' within the meaning of Article 7(1) of Directive 83/182 and Article 6(1) of Directive 83/183, in particular the primacy to be given to personal ties in that determination.
- 20 In those circumstances, the Hoge Raad der Nederlanden (Supreme Court, Netherlands) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
  - '(1) Does Regulation No 1186/2009 include the possibility that a natural person has at the same time his normal place of residence in both a Member State and a third country and, if so, does the relief from import duties provided for in Article 3 of the regulation apply to personal property, which, when a person ceases to have his normal place of residence in the third country, is transferred to the European Union?

- (2) If Regulation No 1186/2009 precludes two normal places of residence and an assessment of all the circumstances does not suffice to determine the normal place of residence, on the basis of which rule or which criteria is it necessary to determine, for the purposes of the application of that regulation, in which country the person concerned has his normal place of residence in a case such as the present case in which that person has both personal and occupational ties in the third country and personal ties in the Member State?’

## Consideration of the questions

### Question 1

- 21 By its first question, the referring court seeks to ascertain, in essence, whether Article 3 of Regulation No 1186/2009 is to be interpreted as meaning that, for the purposes of the application of that article, a natural person may have at the same time a normal place of residence in both a Member State and in a third country. If that question is answered in the affirmative, the referring court also asks whether the relief from import duties provided for in that article is applicable to personal property imported into the European Union by such a natural person when he ceases to have a normal place of residence in the third country.
- 22 As Regulation No 1186/2009 does not provide a definition of the term ‘normal residence’ as used in Article 3 thereof, it is necessary, for the purpose of determining the scope of that provision, to take account of its wording, context and objectives (judgment in *Angerer*, C-477/13, EU:C:2015:239, paragraph 26 and the case-law cited).
- 23 As regards the wording of Article 3 of Regulation No 1186/2009, it should be noted, first, that the expression ‘normal place of residence’ is used in the singular, which would tend to confirm that a natural person can have at any one time only one normal place of residence. Second, that provision makes entitlement to relief from import duties subject to the transfer of the normal place of residence from a third country to the customs territory of the European Union. As the Advocate General observed at point 37 of his Opinion, the use of the verb ‘to transfer’ necessarily presupposes a shift in the normal place of residence from a location outside that territory to a location within it and therefore precludes any overlap during one and the same period of a normal place of residence in a Member State and another in a third country.
- 24 As regards the context of Article 3 of Regulation No 1186/2009, Articles 4, 5, 7 and 9 to 11, which specifically concern the conditions for the application of the relief from customs duty provided for in Article 3 of the regulation, also use the expression ‘normal place of residence’ in the singular. The same applies as regards other articles of the regulation in which the term ‘normal place of residence’ appears.
- 25 Moreover, the formulation of Articles 4, 7 and 9 to 11 of Regulation No 1186/2009 supports an interpretation of the term ‘normal place of residence’ to the effect that a natural person may have, at the same time, only one normal place of residence. Accordingly, first, Article 4 of the regulation provides that the relief is limited to personal property which, on the one hand, has been used by the person concerned ‘at his former normal place of residence’ for at least six months before the date on which ‘he ceases to have his normal place of residence’ in the third country of departure and, on the other, is intended to be used ‘at his new normal place of residence’. Next, Article 7, 9 and 10 of the regulation all refer to the same sequence of events in the course of which the person concerned, first, leaves his normal place of residence in a third country and then, subsequently, establishes his normal place of residence in the customs territory of the European Union. Lastly, Article 11 of the regulation repeats the verb ‘to transfer’, which is also used in Article 3, to refer to the shift of the normal place of residence from a third country to a Member State.

- 26 As regards the objectives of Regulation No 1186/2009, recital 3 of the regulation states that relief from customs duty is provided for by the regulation because, ‘in certain well-defined circumstances, where by virtue of the special conditions under which goods are imported the usual need to protect the economy is absent, ... taxation is not justified’.
- 27 It is apparent from the case-law relating to the second recital of Regulation No 918/83, the content of which is identical to that of recital 3 of Regulation No 1186/2009, that the objectives pursued by the EU legislature when Regulation No 918/83 was adopted were to make it easier to establish a natural person’s new residence in the Member State concerned and to facilitate the work of the customs authorities of the Member States (judgment in *Treimanis*, C-487/11, EU:C:2012:556, paragraph 24). Those considerations are applicable to Regulation No 1186/2009 since, by that regulation, the EU legislature codified the various provisions of the rules governing relief from customs duty, including the provisions of Regulation No 918/83.
- 28 An interpretation to the effect that a natural person may have overlapping normal places of residence for the purpose of Article 3 of Regulation No 1186/2009, one in a third country and another in a Member State, cannot be regarded as consistent with the objective of making it easier to establish a new residence in a Member State.
- 29 In the light of the foregoing considerations, the answer to the first question is that Article 3 of Regulation No 1186/2009 is to be interpreted as meaning that, for the purposes of the application of that provision, a natural person may not have at the same time a normal place of residence in both a Member State and in a third country. In view of that answer, there is no need to reply to the second part of the first question.

### Question 2

- 30 By its second question, the referring court seeks to ascertain, in essence, the criteria for determining the normal place of residence, within the meaning of Article 3 of Regulation No 1186/2009, in circumstances such as those in the case before it, in which the person concerned has both personal and occupational ties in a third country and personal ties in a Member State.
- 31 As a preliminary point, it should be noted that, according to established case-law developed in a number of areas of EU law, normal residence must be regarded as the place where the person concerned has established his permanent centre of interests (see, by analogy, judgments in *Schäflein v Commission*, 284/87, EU:C:1988:414, paragraph 9; *Ryborg*, C-297/89, EU:C:1991:160, paragraph 19; *Louloudakis*, C-262/99, EU:C:2001:407, paragraph 51; *Alevizos*, C-392/05, EU:C:2007:251, paragraph 55; *I*, C-255/13, EU:C:2014:1291, paragraph 44, and *B.*, C-394/13, EU:C:2014:2199, paragraph 26).
- 32 It has also been held that all the relevant facts must be taken into consideration in determining normal residence as the permanent centre of interests of the person concerned (see, by analogy, judgments in *Schäflein v Commission*, 284/87, EU:C:1988:414, paragraph 10; *Ryborg*, C-297/89, EU:C:1991:160, paragraph 20; *Louloudakis*, C-262/99, EU:C:2001:407, paragraph 55; *Alevizos*, C-392/05, EU:C:2007:251, paragraph 57, and *I*, C-255/13, EU:C:2014:1291, paragraphs 45 and 46).
- 33 In the judgments in *Louloudakis* (C-262/99, EU:C:2001:407) and *Alevizos* (C-392/05, EU:C:2007:251), the relevance of which is questioned by the referring court in relation to its second question, for the purpose of determining the normal place of residence within the meaning of Article 3 of Regulation No 1186/2009, the Court stated, with regard to Article 7(1) of Directive 83/182 and Article 6(1) of Directive 83/183, that the relevant facts to be taken into consideration in determining normal residence as the permanent centre of interests of the person concerned include, in particular, the actual presence of the person concerned and of the members of his family, availability of

accommodation, the place where the children actually attend school, the place where business is conducted, the place where property interests are situated and that of administrative links to public authorities and social services, inasmuch as those factors express the intention of that person to confer a certain stability on the place of connection, by reason of the continuity arising from a way of life and the development of normal social and occupational relationships (judgments in *Louloudakis*, C-262/99, EU:C:2001:407, paragraph 55, and *Alevizos*, C-392/05, EU:C:2007:251, paragraph 57).

- 34 The Court also stated in those judgments that where it is not possible on the basis of an overall assessment of all the relevant facts to locate the permanent centre of interests of the person concerned, primacy must be given, for the purposes of locating it, to personal ties (judgments in *Louloudakis*, C-262/99, EU:C:2001:407, paragraph 53, and *Alevizos*, C-392/05, EU:C:2007:251, paragraph 61).
- 35 It is apparent from the request for a preliminary ruling that the referring court is uncertain, in particular, whether the latter point, namely that primacy must be given to personal ties, may be transposed to the interpretation of the term ‘normal place of residence’ within the meaning of Article 3 of Regulation No 1186/2009, given that the Gerechtshof Amsterdam (Appeal Court, Amsterdam), whose judgment is the subject of the appeal before the referring court, considered that it was necessary, in the circumstances of the main proceedings, to give primacy to such personal ties.
- 36 It should be noted in that regard that it is clear from the judgments in *Louloudakis* (C-262/99, EU:C:2001:407, paragraph 53) and *Alevizos* (C-392/05, EU:C:2007:251, paragraph 61) that the primacy given to personal ties is based on an interpretation of Article 7(1) of Directive 83/182 and Article 6(1) of Directive 83/183. However, Regulation No 1186/2009 does not contain any equivalent provision.
- 37 Moreover, it should be observed that those directives concern tax exemptions applicable within the European Union, whereas Regulation No 1186/2009 relates to exemptions from customs duty applicable to property being imported from a third country into the European Union. Accordingly, the objective of those directives differs from that of Regulation No 1186/2009. Indeed, it follows from the preamble to those directives that their objective is to promote freedom of movement for persons within the European Union by eliminating tax obstacles to the importation of personal property and means of transport into one Member State from another. On the other hand, as is apparent from recital 3 of Regulation No 1186/2009, the objective of that regulation is to grant relief from customs duties for imports into the European Union of goods from third countries which, in accordance with Article 2(1)(c) of the regulation, do not indicate, by their nature or quantity, that they are being imported for commercial reasons, where, by virtue of the conditions under which such goods are imported, ‘the usual need to protect the economy is absent’.
- 38 Accordingly, the interpretation of the term ‘normal place of residence’ within the meaning of Article 7(1) of Directive 83/182 and Article 6(1) of Directive 83/183 to the effect that, where it is not possible to locate the permanent centre of interests of the person concerned, primacy must be given to personal ties, cannot be transposed to the term ‘normal place of residence’ within the meaning of Article 3 of Regulation No 1186/2009.
- 39 It follows that the normal place of residence within the meaning of Article 3 of Regulation No 1186/2009 must be regarded as the place where the person concerned has established the permanent centre of his interests. In order to determine whether the normal place of residence is located in a third country, for the purpose of the application of the relief from customs duty provided for in Article 3, all the relevant facts must be taken into account, including those listed by the Court in a non-exhaustive fashion in its judgments in *Louloudakis* (C-262/99, EU:C:2001:407) and *Alevizos* (C-392/05, EU:C:2007:251), as referred to in paragraph 33 above, without there being any need to give primacy to personal ties.

- 40 It should be borne in mind when carrying out that analysis that Regulation No 1186/2009 attaches particular importance to the length of the stay of the person concerned in the third country in question. Thus, according to Article 5(1) of the regulation, the relief from customs duty provided for in Article 3 of the regulation may be granted only to persons whose normal place of residence has been outside the customs territory of the European Union for a continuous period of at least 12 months. Similarly, the Customs Cooperation Council, now the World Customs Organisation (WCO), which the European Union applied to join, that application being accepted in 2007, stated in its Recommendation of 5 December 1962 concerning the free admission of removable articles imported on transfer of residence that free admission may be subject, inter alia, to the condition that the period of residence abroad is deemed to be sufficient.
- 41 In the light of all the foregoing considerations, the answer to Question 2 is that, in circumstances such as those of the main proceedings, where the person concerned has both personal and occupational ties in a third country and personal ties in a Member State, it is necessary, for the purpose of determining whether the normal place of residence of that person within the meaning of Article 3 of Regulation No 1186/2009 is in the third country, to attach particular importance to the length of that person's stay in the third country when carrying out an overall assessment of the relevant facts.

### Costs

- 42 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 (Fourth Chamber) hereby rules:

- 1. Article 3 of Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty is to be interpreted as meaning that, for the purposes of the application of that provision, a natural person may not have at the same time a normal place of residence in both a Member State and in a third country.**
- 2. In circumstances such as those in the main proceedings, where the person concerned has both personal and occupational ties in a third country and personal ties in a Member State, it is necessary, for the purpose of determining whether the normal place of residence of that person within the meaning of Article 3 of Regulation No 1186/2009 is in the third country, to attach particular importance to the length of that person's stay in the third country when carrying out an overall assessment of the relevant facts.**

[Signatures]