

OPINION OF ADVOCATE GENERAL

GEELHOED

delivered on 14 September 2006¹

I — Introduction

1. In this case the Commission of the European Communities requests the Court to find that the Hellenic Republic has failed to fulfil its obligations under Article 90 EC and Article 1 of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another² ('Directive 83/182' or 'the Directive'). The Commission seeks a ruling by the Court to the effect that the Greek State has not fully complied with its obligations under Article 90 EC and Article 1 of Directive 83/182, in that Greek administrative practice relating to the temporary importation of certain means of transport breaches those provisions. In practice, this case concerns the temporary importation of motor vehicles.

2. The case is based on a number of complaints received by the Commission and the European Parliament about the manner in which the Greek authorities detect infringements and impose penalties in the event of breaches of the legislation on the temporary importation of motor vehicles.

3. It is not, moreover, the first time that Greek practice relating to the temporary importation of motor vehicles has been scrutinised by the Court.³ As long ago as 1991 the Commission initiated infringement proceedings, the Court eventually finding against the Hellenic Republic. In addition, a number of questions have been referred by national Greek courts for preliminary rulings. In particular, the proportionality of the system of penalties applied by the Greek authorities when provisions are breached has been a recurrent issue.⁴

1 — Original language: Dutch.

2 — OJ 1983 L 105, p. 59.

3 — See inter alia the judgments in Case C-9/92 *Commission v Greece* [1993] ECR I-4467, Case C-389/95 *Klattner* [1997] ECR I-2719, and Case C-262/99 *Louloudakis* [2001] ECR I-5547.

4 — See, in particular, the judgment in *Louloudakis*.

II — Legislative background

A — Article 90 EC

4. Article 90 EC provides:

‘No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.’

B — Directive 83/182

5. Directive 83/182 was adopted to remove the obstacles in each Member State to the freedom of movement of residents of the Community which arise from the tax rules applied when certain means of transport are temporarily imported for private or business use, including motor vehicles. Under the

Directive motor vehicles may be temporarily imported into another Member State for private use under certain conditions. In such cases, Member States grant exemption from turnover tax, excise duties and the taxes referred to in the Annex to the Directive.⁵

6. A tax exemption is granted if three conditions are satisfied. First, the individual importing the means of transport must have his normal residence in a Member State other than the Member State of temporary importation. Second, the means of transport must be employed for private use and therefore not for activities undertaken for consideration or for profit. Third, the means of transport must not be disposed of or hired out in the Member State of temporary importation or lent to a resident of that State.⁶

7. To qualify for tax exemption, individuals must provide proof of their place of normal residence. In general, an identity card or some other valid document will suffice. However, where the competent authorities of the Member State of importation have doubts concerning the validity of a statement as to normal residence, they may request additional information or evidence.⁷

5 — Article 1 of Directive 83/182.

6 — Article 3 of Directive 83/182.

7 — Article 7 of Directive 83/182.

8. The provisions of the Directive of relevance to the present case are reproduced below.

Where a private vehicle, caravan, pleasure boat, private aircraft, tricycle or bicycle is imported temporarily, the item imported shall be exempt from the taxes specified in Article 1 for a period, continuous or otherwise, of not more than six months in any 12 months, provided that:

9. Article 1 stipulates:

'1. Member States shall, under the conditions laid down below, exempt temporary imports from another Member State of motor-driven road vehicles (including their trailers), caravans, pleasure boats, private aircraft, bicycles, tricycles and saddle-horses from:

— turnover tax, excise duties and any other consumption tax,

— the taxes listed in the Annex hereto.

...'

(a) the individual importing such goods:

(aa) has his normal residence in a Member State other than the Member State of temporary importation;

(bb) employs the means of transport in question for his private use;

(b) the said means of transport is not disposed of or hired out in the Member State of temporary importation or lent to a resident of that State. ...'

10. Article 3 reads as follows:

'Temporary importation of certain means of transport for private use

11. Article 7 of Directive 83/182 stipulates:

'1. 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.

graph 2, or for the purpose of certain specific controls, they may request any additional information or evidence.’

12. Article 9 of the Directive lays down a number of special rules. One of those rules, set out in paragraph 1, reads as follows:

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. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.

‘Member States may maintain and/or introduce more liberal arrangements than those provided for in this Directive. In particular, they may, at the request of the importer, permit temporary importation for a period longer than those referred to in Articles 3 and 4(2). In the latter event, Member States may levy the taxes mentioned in the Annex for periods exceeding those laid down by this Directive. ...’

2. Individuals shall give proof of their place of normal residence by any appropriate means, such as their identity card or any other valid document.

13. Article 10 contains the final provisions of the Directive. Paragraph 2 of that article stipulates:

3. Where the competent authorities of the Member State of importation have doubts as to the validity of a statement as to normal residence made in accordance with para-

‘Where the practical application of this Directive gives rise to difficulties, the competent authorities of the Member States concerned shall take the necessary decisions

by mutual agreement, particularly in the light of the Conventions and Community Directives on mutual assistance.’

arrival of the vehicle has been submitted, but the person liable to tax does not notify the customs authority within three months of the date on which the registration fee is due with a view to regularising the situation of the vehicle.

C — The applicable Greek legislation

14. Article 137 of the Customs Code, as introduced by Law No 2960/2001, Named Offences and Penalties, consists of Parts A — Community vehicles, B — Vehicles from non-member countries, and C — Community vehicles and vehicles from non-member countries. The provisions of Parts A and C read as follows:

A. Community vehicles

1. The possession or use of Community vehicles by persons resident in Greece without one of the formalities referred to in Articles 129 and 130 of this Code having been observed constitutes a simple customs offence within the meaning of Article 142(1) of this Code. In the aforementioned cases a fine determined in accordance with the amount of the fiscal charges applicable to the vehicle shall be imposed.

2. The provisions of the previous paragraph shall also apply where the declaration of the

3. The provisions of paragraph A1 shall not apply where, before the detection of the aforementioned offence by the competent authorities, the persons concerned report voluntarily to the customs authority to complete the appropriate formalities. In such cases the fines referred to in paragraph A4 of this article shall be imposed. If the person concerned fails to submit documents from which the date of arrival of the vehicle in the country is apparent, a fine of EUR 1 500 shall be imposed instead of the fine referred to in paragraph A4 of this article.

4. The commission of the aforementioned offences shall be deemed a simple customs offence and shall give rise to the following fines in proportion to the circumstances.

(a) For failure to submit the declaration referred to in Article 129(1) and (2), a fine of EUR 300 per vehicle.

(b) For using the vehicle after the time-limit referred to in Article 129(3), a fine of

EUR 1 500, which shall be reduced by one fifth if the owner of the vehicle is entitled to a permanent exemption under the provisions of Article 132.

— lorries regardless of cylinder capacity, EUR 20.

— motorcycles regardless of cylinder capacity, EUR 10.

(c) For failure to comply with the conditions referred to in Article 136(2), a fine of EUR 150.

(d) For the late submission of the special declaration referred to in Article 130(2) of this Code, the late return or exportation or abandonment or destruction or immobilisation of the vehicle, a fine for each day of delay determined as follows:

(e) For failure to comply with the condition referred to in Article 136(4) or for exceeding the time-limit on the presence or movement of the vehicle for which provision is made by the movement permit referred to in Article 139(1) and (2) of this Code, the fine referred to in paragraph A4(d) of this Code shall be imposed, if appropriate, for each day after the expiry of the temporary movement permit.

Passenger cars and Jeep-type vehicles:

— up to 1 600 cc, EUR 30;

— from 1 601 to 2 000 cc, EUR 30;

— from 2 001 cc, EUR 60,

(f) For the late payment of the registration fee which relates to the special declaration referred to in Article 130(2) of this Code, which has been submitted late or within the time-limit, the fine referred to in the aforementioned subparagraph (d) shall be imposed for each day following the expiry of the period. The fine shall not be imposed if the recipient of the vehicle is not to blame for the late payment of the registration fee.

(g) If the vehicle used in the country under Article 133(2) of this Code is driven by another, unauthorised person, a fine of EUR 700 shall be imposed where the

authorised person was in the country at the time when the offence was committed. The use of the aforementioned vehicle by another, unauthorised person means that the vehicle is withdrawn from the scheme governed by Article 133 of this Code if, at the time of the detection of the offence, the authorised person is not in the country; the provisions of paragraph A1 of this article shall apply to the unauthorised person. None of the fines referred to in paragraph A4 of this article may exceed the fiscal charges applicable to the vehicle concerned.

also be subject to temporary seizure by the customs authority detecting the offence. Vehicles shall be released on payment of the fines and any other charges owed. If the vehicle is not collected within six months of the act leading to the imposition of the fines becoming final, it shall become, as of right, the property of the State and the fines imposed shall be reduced by 100%.

5. It shall be for the interested parties to prove to the customs authorities that the conditions to which the enjoyment of the advantages defined in Articles 132 and 133 of this Code is subject have been satisfied.

2. If the vehicles referred to in Article 125(1) of this Code are used before payment of the registration fee due, the competent customs authority shall impose on the owners or holders thereof a fine equivalent to five times the road tax applicable to those vehicles.

B. Vehicles from non-member countries

...

3. The provisions concerning customs offences and smuggling contained in Article 142 et seq. of this Code shall also apply in the event of the submission of incorrect declarations or the falsification of the documentary evidence indicating the year in which vehicles were first registered and the environmentally friendly technology with which they are equipped, with the aim of avoiding payment of the registration fee or of paying a reduced fee.

C. Community vehicles and vehicles from non-member countries

1. In addition to the fines referred to in paragraphs A1, A4, B4 and B5, vehicles shall

4. The offences referred to in Article 155(2)(g) and (h) of this Code shall apply

analogously to the registration fee and shall give rise to penalties in accordance with the provisions of this Code concerning smuggling.

Greek authorities with respect to motor vehicles temporarily imported from other Member States. Those complaints concern in particular:

5. The provisions of the present article shall also apply to offences which were detected before the date of the publication of this Code in the Official Gazette and are pending before the administrative or criminal courts or before the customs or other competent authorities, provided that, within six months of receiving the official summons, those concerned submit a request to have these provisions applied to them, refrain from seeking remedies at law and pay the fines or increased fees referred to in the provisions of these articles.

- seizure of vehicles by the authorities of the Ministry of Finance, followed by confiscation by the tax authorities;
- heavy fines for offences relating to the use of temporarily imported motor vehicles, immediate payment being required of taxes which are normally levied in the event of permanent importation;

6. By order of the Minister of Finance, any additional internal control measures considered necessary for the correct application of this Code may be adopted.'

- initiation of criminal proceedings, individuals being prosecuted on suspicion of smuggling, for which custodial sentences of several years may be imposed;

III — The pre-litigation procedure

15. The Commission has received various complaints about measures taken by the

- the assumption that the nationality of individuals determines their place of residence; the Greek authorities impose on individuals of Greek nationality a disproportionate burden of proving that they are residents of another Member State.

16. The complaints described above led the Commission to send to the Hellenic Republic on 17 May 1999 a letter of formal notice stating that that Member State had not fulfilled its obligations under Article 90 EC and Directive 83/182. The Greek authorities replied on 1 September 1999.

17. As it took the view that the Hellenic Republic had not taken effective measures to terminate the infringement, the Commission sent it a reasoned opinion on 29 November 2000. In its written reply of 21 February 2001 the Greek Government explained the evolution of Greek legislation and administrative practice.

18. After examining that reply and taking account of the relevant Greek legislation as amended after the expiry of the period set in the reasoned opinion, the Commission decided to bring the present action, maintaining only the complaints set out in the reasoned opinion.

19. The Commission and the Greek Government stated their respective positions at the hearing on 22 June 2006.

IV — Preliminary observations

20. The Commission's action is based on a number of complaints received by the Commission and the European Parliament concerning irregularities occurring in Greece. At the hearing the Commission emphasised that it intends to demonstrate that what is involved here is a more general practice and not isolated incidents. It therefore asks the Court not to rule on the individual cases but on the problems which continue to arise on a regular basis in Greek administrative practice in the application of its customs legislation.

21. The Greek Government objects to the Commission's approach, claiming that the existence of administrative practice inconsistent with the Directive cannot be demonstrated on the basis of a number of complaints received by the Commission from individuals. The Commission cannot request the Court to rule on individual disputes. In any case, the Hellenic Republic takes the view that the assessment of the facts falls within the exclusive jurisdiction of the competent national authorities of each Member State, subject to review by national courts. The Greek Government also disputes the representativeness of the examples cited by the Commission.

22. In setting out its request in this way, the Commission is seeking a declaration that

administrative practice in Greece is inconsistent with the outcome intended by the Directive in general and structural terms. The Commission appears to be asking the Court to deliver a ruling analogous to the judgment in the case of *Commission v Ireland* on compliance with the waste directive.⁸

in an attempt to prove the existence of an administrative practice, it must be borne in mind that the request voiced by the Commission in this case is not an isolated one. On several occasions in the past the Court has been asked to rule on similar administrative practices. It is clear from those rulings that the Greek system and the practice of applying and upholding the rules raise certain misgivings in the light of the relevant Community law (see point 3).

23. If the ruling sought by the Commission is to be obtained from the Court, the conditions defined in the aforementioned judgment in *Commission v Ireland* must be satisfied. According to the Court, it must be shown that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive.⁹ Above all, it must be a more general practice or a pattern of non-compliance, which is likely to recur time and again. Furthermore, the non-compliance must have persisted for some considerable time after the relevant Community obligation became effective. Finally, the non-compliance must have had an adverse effect on attainment of the objectives of the Community measure.¹⁰ The cases presented by the Commission must provide an adequate basis for concluding that there is a structural shortcoming.

25. The Commission's action essentially comprises the four complaints listed below, which will be examined in the order indicated:

- the problems associated with determining normal residence;
- the disproportionate penalties imposed for infringing the provisions;
- the systematic collection of the fee payable for the permanent importation of vehicles in the event of a second theft of vehicles imported temporarily;

24. In the assessment of the facts and circumstances presented by the Commission

8 — Judgment in Case C-494/01 *Commission v Ireland* [2005] ECR I-3331.

9 — Judgment in *Commission v Ireland*, paragraph 47.

10 — See also my Opinion relating to the judgment in *Commission v Ireland*, cited in footnote 8, points 43 to 48.

- the problems associated with the application of Directive 83/182.

27. The Greek Government denies that the competent authorities impose a heavier burden of proof than that permitted by Directive 83/182. Nor, it claims, is the burden of proof reversed in practice or the presumption of innocence adversely affected. The authorities are merely taking legitimate advantage of the options provided by Article 7(3) of the Directive in respect of the burden of proof. In case of doubt — for instance, in the case of individuals of Greek nationality who maintain close links with Greece — the competent authorities may request additional information or documentary evidence under the aforementioned provision.

V — Analysis

A — *Proof of normal residence*

26. The Commission claims that the Greek practice is inconsistent with Article 7(2) of Directive 83/182 and the presumption of innocence in so far as an increased burden of proving normal residence is imposed. The Greek authorities systematically regard the owners of vehicles registered in another Member State as Greek residents having their normal residence in Greece. It is particularly difficult for Greeks resident in another Member State to demonstrate that their normal residence is not in Greece. The Commission has also received a variety of complaints from individuals who do not have Greek nationality and have similarly experienced difficulties in proving their normal residence. Certificates issued by administrative authorities in other Member States, for example, have not been accepted as proof of normal residence.

28. From the system laid down in Article 7 it follows that, in principle, the national authorities must content themselves with the documents referred to in paragraph 2. Only in cases where objective facts give rise to reasonable doubt may they request more detailed evidence. In other words, national authorities may not proceed from the assumption that the evidence furnished in accordance with paragraph 2 is inadequate. Article 7 is, after all, based on the principle that credence should be attached to declarations issued by the competent authorities of another Member State. Otherwise, the movement of persons, services and goods between Member States would be seriously hampered. The application of the option for

which Article 7(3) of Directive 83/182 provides should therefore be subject to the strict requirement of reasonable doubt raised by objective facts.

competent Greek authorities paid no attention to these documents. Mr Modinos, who was born in Cyprus, is a British national and, at the time of the disputed incidents, was resident in Germany, was similarly unable to convince the competent Greek authorities that he was not resident in Greece.

29. The facts and circumstances presented by the Commission lead to the conclusion that in Greek administrative practice the more onerous burden of proof pursuant to Article 7(3) of Directive 83/182 is imposed more or less systematically, especially in relation to persons of Greek nationality. Furthermore, documentary evidence obtained from competent authorities in other Member States is rejected as evidence. In this instance, the cases cited by the Commission serve as illustrations.

31. The complaints made by Mr Louloudakis and Mr Modinos, among others, bear witness to a practice in which the Greek authorities proceed from the assumption that the nationality of individuals or that of their family members determines their place of residence. The Greek authorities impose a disproportionate burden of proof in this regard.

32. This complaint raised by the Commission is accordingly well founded.

30. There are, for example, the cases of Mr Louloudakis and Mr Modinos. During a check their cars were seized as having been smuggled, on the ground that the competent officials believed that they had their places of normal residence in Greece. They also imposed fines on them, Mr Modinos's amounting to EUR 147 000. In both cases, documents proving that they were not normally resident in Greece were completely ignored. Mr Louloudakis had submitted inter alia documentary evidence from Italy containing information on his and his family's residence and employment situation. The

B — *The system of penalties*

33. The Commission contends that the entire range of penalties imposed in the event of contravention of the system of temporary importation established by the Directive is unreasonable. It is clear from the complaints received that the fines imposed

may amount to tens of thousands of euros. The scale of the penalties is therefore disproportionate, given the seriousness of the offence, namely an infringement relating to the temporary importation of motor vehicles.

34. Furthermore, the vehicles concerned are seized until the fines have been paid. This may take years where proceedings are pending before the administrative or criminal courts or before the customs or other competent authorities. This, in the view of the Commission, is unacceptable and inconsistent with the fundamental right of ownership.

35. The Commission goes on to take issue with the fact that, when penalties are imposed, no account is taken of the offender's good faith.

36. Finally, the Commission complains about Article 137C(5) of the Customs Code, as introduced by Law No 2960/2001, which stipulates that the system of lighter penalties may be applied in the case of offences which were detected before the date of publication of Law No 2960/2001 and are pending before the administrative or criminal courts or before the customs or other competent authorities, provided that the applicant

refrains from seeking remedies at law. The Commission maintains that this is inconsistent with the principle of effective legal protection.

37. Responding to the Commission's objections, the Greek Government argues that, in the absence of harmonisation in this field, the Member States are themselves empowered to set the level of fines. Where a Community regulation does not stipulate a specific penalty for an offence, the Member States are free to choose the penalties to be imposed.

38. The Greek Government also takes the view that the penalties are not inconsistent with the principle of proportionality. Severe penalties are needed to combat fraud. It maintains that the registration fee in Greece is very high compared with other Member States, which gives rise to the danger of vehicles being imported under the Directive to evade tax and other fees payable. Heavy fines are therefore justified as a means of combating fraudulent practices.

39. As Community law now stands, the Member States are empowered to adopt suitable arrangements concerning penalties for importation offences with a view, in particular, to combating tax evasion. They must, however, exercise that power in

accordance with Community law and its general principles.¹¹ The Court has already specified in a number of judgments the requirements which measures under administrative or criminal law must meet if they are not to become an obstacle to the freedoms enshrined in the Treaty.¹²

40. I believe that the Court's case-law should be interpreted as follows. With regard to purely administrative provisions — concerning notification and time-limits, for example — which have inadvertently not been observed, the penalty imposed must be proportionate to the comparatively minor nature of the offence. Only if the failure to comply with those provisions was clearly intentional, with the obvious aim of evading national tax legislation, are proportionately heavier penalties possible.

41. It also follows from existing case-law that the system of penalties must be transparent. In other words, a combination of penalties, each comparatively light when

viewed in isolation, must not result in the penalty ultimately imposed being disproportionate to the seriousness of the offence.

42. Finally, it is evident from the case-law that minor offences detected should be dealt with so expeditiously that the situation of the individual concerned returns to normal within a reasonable period, with sufficient guarantees in respect of the rights which he is able to derive from Community law.

43. It must be considered whether, as the Commission contends, the penalties imposed by the Greek authorities are so disproportionate to the seriousness of offences as to jeopardise the arrangement for the temporary importation of vehicles.

44. The whole range of penalties includes in particular:

— a flat-rate fine,¹³

11 — See the judgment in *Louloudakis*, cited in footnote 3, paragraph 67, and the case-law cited therein.

12 — See inter alia the judgments in Case 203/80 *Casati* [1981] ECR 2595, paragraph 27, Joined Cases 286/82 and 26/83 *Luisi and Carbone* [1984] ECR 377, Case 68/88 *Commission v Greece* [1989] ECR 2965 and Case C-210/91 *Commission v Greece* [1992] ECR I-6735, paragraph 20.

13 — See, for example, Article 137A(4)(b) of the Customs Code, as introduced by Law No 2960/2001.

- a fine based on the cylinder capacity of the vehicle,¹⁴
- an increased charge, which may amount to five times the registration tax concerned.¹⁵

also exceptionally high, since in practice penalties are cumulative. To this must be added long-term uncertainty about the outcome of the procedure; once seized, cars are returned only after a considerable delay.¹⁷ Such a concurrence of penalties is particularly distressful where they are imposed for simple administrative offences.

45. In addition to such fines being imposed, vehicles are subject to temporary seizure by the customs authority which has detected the offence. The vehicle is returned only after the fines and any other charges owed have been paid.¹⁶

46. In itself, the way in which the system of penalties is structured gives no cause to maintain that it represents an obstacle to the freedoms enshrined in the Treaty. However, it is clear from the complaints cited by the Commission that the aforementioned provisions are so used in practice that they are disproportionate in their application. Car owners are given little opportunity to prove their innocence and their good faith. Where they are suspected of having committed an offence, they are immediately exposed to all manner of measures, such as the seizure of their cars. The fines eventually imposed are

47. In addition, the many complaints about the disproportionate penalties indicate that in the Greek practice of setting administrative penalties no account is taken of the good faith of persons taking advantage of the freedom of movement. According to the Court, however, account must be taken of the offender's good faith when the penalty actually imposed on him is determined, where determination of the arrangements applicable has given rise to difficulties.¹⁸

48. Finally, it must be considered whether Article 137C(5) of the Customs Code, as introduced by Law No 2960/2001, meets the standards set by Community law for effective legal protection.

14 — See, for example, Article 137A(4)(d) of the Customs Code, as introduced by Law No 2960/2001.

15 — See, for example, Article 137C(2) of the Customs Code, as introduced by Law No 2960/2001.

16 — See Article 137C(1) of the Customs Code, as introduced by Law No 2960/2001.

17 — Mr Louloudakis's car, for example, had still to be returned after more than eight years.

18 — See judgment in *Louloudakis*, cited in footnote 3, paragraph 76.

49. The principle of effective legal protection is a general principle of Community law.¹⁹ On the one hand, it embraces the requirement that legal protection must be ensured by an independent, impartial court established by law in fair and public proceedings and, on the other hand, it obligates the national courts to cooperate in ensuring that legal protection.

50. Article 137C(5) of the Greek Customs Code does not meet the requirement of judicial review, since no further legal remedies are available to the individual. It prescribes that the system of lighter penalties may be applied in the case of offences which were detected before the date of the publication of Law No 2960/2001 and are pending before the administrative or criminal courts or before the customs or other competent authorities, on condition that the offender refrains from seeking remedies at law. That provision presents the offender with the dilemma of having either to submit to the previous system of penalties, which was disproportionate, or to refrain from seeking legal remedies, meaning that he in fact renounces effective legal protection. Whatever choice he makes, the application of the relevant Greek rules of law leads to an infringement of Community law in either case.

51. Consequently, the Commission's complaint must be upheld.

C — The systematic collection of the fee payable for the permanent importation of vehicles in the event of a second theft of vehicles imported temporarily

52. The Commission criticises the Greek Government for requiring individuals who are the victims of a second theft of temporarily imported vehicles to pay registration tax as if the vehicles had been permanently imported. According to the Commission, this is inconsistent with Article 90 EC. Each case should be considered on its merits when the circumstances in which vehicles are stolen are being determined. Any fee can then be more closely attuned to the actual situation.

53. In its statement in defence the Greek Government explains that such a measure is applied not only to imported products but to all products governed by a conditional regime. In the case of the theft of a vehicle, whether or not imported, on which tax has been paid and which has been registered in Greece, no tax is required since it has already been paid. In the case of products on which tax has not yet been paid and which are stolen in Greek territory, no tax exemption is granted.

¹⁹ — Judgment in Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19.

54. The Greek Government argues that Directive 83/182 does not provide for permanent exemption in the event of theft. The Greek authorities may therefore require the payment of the registration tax at the time of the first theft, but do so only in the event of a second theft. This in no way amounts to unequal treatment of Community nationals, but is a preventive measure designed to combat fraud.

55. The provision at issue here is Article 12(1) of Ministerial Order D. 247/1988, which reads as follows:

‘The interested party who reports the theft of the passenger car which he has received under the temporary importation arrangement, in accordance with the provisions of this order or the provisions to which reference is made in Article 18 of this order, shall not be required to pay the customs duties and other charges relating to the stolen passenger car, and the coercive measures laid down in Statutory Decree No 346/74 shall not be applied, on condition that it is not established in the future that the interested party is participating in the unlawful use of the passenger car in Greece and provided that all the following conditions are satisfied.

...

(d) the interested party has not in the past reported the theft of another passenger car which he had received under the temporary importation arrangement.’

56. From the observations of the parties it is clear that the background to this provision is as follows: where the second theft of a motor vehicle is reported, it is assumed that fraud has been committed. It is supposed that in such a case a deliberate attempt is being made to avoid payment of the registration fee and other charges. The consequence of this supposition is that the customs duties and other charges relating to the stolen passenger car must be paid.

57. In themselves, reasonable measures taken by the Member States to prevent tax fraud are justified. However, those measures must not be such as to form an obstacle to persons acting entirely in good faith as they take advantage of free movement. The lack of an opportunity for the individual to demonstrate his good faith constitutes an obstacle. Anyone whose vehicle has been stolen in Greece — and it can be assumed that car theft is no less frequent a phenomenon there than in any other Member State — will not be so ready to enter Greek territory again with a vehicle registered elsewhere in the Community, since not only will he have lost his vehicle if a second case of theft occurs, but he will also have to pay Greek customs duties and other charges in full. Thus, in the absence of a proper opportunity for self-exculpation, freedom of movement is impeded.

58. Consequently, the Commission's complaint must be upheld.

D — The Greek authorities do not apply Directive 83/182

59. The Commission criticises the Greek Government for applying the provisions on the temporary importation of vehicles from non-member countries to vehicles registered in other Member States, rather than the provisions of Directive 83/182. In support of its complaint, the Commission refers to Article 133(2) of the Greek Tax Code.

60. The Greek Government rejects the Commission's submission. It argues that the favourable rules applicable to Community vehicles have been extended to include vehicles from non-member countries. In both cases the system prescribed by Directive 83/182 thus applies where vehicles are imported temporarily.

61. First of all, reference must be made to Article 133(2) of the Greek Tax Code, which stipulates the following:

'Community vehicles may remain in the country temporarily without payment of

the registration fee or value added tax (VAT) being required. For the award of temporary exemption from the registration fee and VAT the terms and conditions laid down in the provisions of the customs arrangement for temporary importation shall apply by analogy, on condition that vehicles from non-member countries which are temporarily imported into the country are re-exported.'

62. It does not in principle follow from that provision that the Greek authorities apply provisions on the temporary importation of vehicles from non-member countries, rather than the provisions of Directive 83/182. Article 133(2) of the Greek Tax Code as such does not therefore infringe Directive 83/182. However, if the Greek arrangement is, in its further application and enforcement, more restrictive than Directive 83/182 — and that is what the aforementioned infringements unambiguously indicate — placing the provisions on the temporary importation of vehicles from non-member countries on a par with the provisions of Directive 83/182 does indeed constitute an infringement.

63. Consequently, the Commission's complaint must again be upheld.

VI — Conclusion

64. In view of the foregoing I propose that the Court should:

(1) uphold the Commission's complaints in respect of:

- the determination of normal residence within the meaning of Article 7 of Council Directive 83/182/EEC of 28 March 1983 on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another;
- the application of the Greek system of penalties in the event of infringement of the provisions concerning the temporary importation of motor vehicles;
- the infringement of the principle of effective legal protection;
- the systematic collection of the fee payable for the permanent importation of vehicles in the event of a second theft of vehicles imported temporarily; and
- the application of Directive 83/182;

(2) order the Hellenic Republic to pay the costs.