



## Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 November 2013\*

(Request for a preliminary ruling — Article 43 EC — Motor vehicles — Use in a Member State of a private motor vehicle registered in another Member State — Taxation of that vehicle in the first Member State when it was first used on the national road network and also in the second Member State when it was registered — Vehicle used by the citizen concerned for both private use and for going, from the Member State of origin, to the place of work situated in the first Member State)

In Case C-302/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hoge Raad der Nederlanden (Netherlands), made by decision of 6 April 2012, received at the Court on 20 June 2012, in the proceedings

X

v

**Minister van Financiën**

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the Chamber, J.L. da Cruz Vilaça, G. Arestis, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

- X, by B. Schuver, advocaat,
- the Netherlands Government, by B. Koopman and C. Wissels, acting as Agents,
- the Greek Government, by M. Tassopoulou and G. Papagianni, acting as Agents,
- the European Commission, by C. Barslev and W. Roels, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2013

gives the following

\* Language of the case: Dutch.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 43 EC.
- 2 The request has been made in proceedings between X and the Minister van Financiën (Ministry for Finance), concerning a tax assessment notice issued to the interested party for non-payment of the tax on cars and motorcycles ('the vehicle tax') on first use of an individual motor vehicle on the road network in the Netherlands.

### Legal context

- 3 Article 1(1) of the [Netherlands] Law on tax on cars and motorcycles (Wet op de belasting van personenauto's en motorrijwielen 1992, Stb. 1992, No 709, 'the 1992 Law') provides that individual motor vehicles are subject to that tax.
- 4 Under Article 1(2) and (5) of the 1992 Law, vehicle tax is due on registration of the vehicle in the Netherlands vehicle register. However, when a car or motorcycle which is not registered in the Netherlands is made available to a natural or legal person residing or established in the Netherlands, the tax is due when that motor vehicle is first used on the road network in the Netherlands.
- 5 Article 5(2) of the 1992 Law provides that, in the case of unregistered cars or motorcycles, the person liable for vehicle tax is the person who has the vehicle at his actual disposal.
- 6 Under Article 9(1) of the 1992 Law, the rate of that tax for a car amounts to 45.2% of the net list price of the vehicle, subject to the reductions and surcharges provided for in that article. That price is the sale price recommended to the reseller by the manufacturer or importer to the dealer, less value added tax.
- 7 For new cars, the net list price is determined by reference to the day on which a registration number was issued in respect of the car in the Netherlands. For used cars, the net list price is determined by reference to the day when the car was first used, whether that is inside or outside the Netherlands.
- 8 On first use on the road network in the Netherlands of a car or motorcycle not registered in the Netherlands which is at the disposal of a natural person resident or a legal person established in the Netherlands, the national legislation at issue in the main proceedings provides that the net list price for used cars is the applicable price for the purposes of payment of vehicle tax.
- 9 When charging vehicle tax on used cars, account is taken of the length of time for which the vehicle has been used and the tax amount is reduced by a certain percentage.

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

- 10 X is a Belgian national. Since 1998 she has had an orthodontics practice in the Netherlands and has a house in that Member State which she lives in with her partner during the periods when that practice is open. Outside those periods, they live in an apartment in Belgium rented by her partner.
- 11 X has a car which she bought in Belgium in 2004 and which she uses both in Belgium and in the Netherlands for both private and professional purposes. It is clear from the case-file that, each year, half of the distance covered by X using that vehicle is in Belgium and the other half is in the Netherlands.

- 12 X registered her car in Belgium and paid the sum of EUR 4 957 owed in respect of car registration tax in Belgium.
- 13 On 19 July 2006, the Netherlands tax authorities found that X was using her car on the road network in the Netherlands without having paid the vehicle tax. A tax assessment notice in the amount of EUR 17 315 was accordingly sent to her.
- 14 X brought an action against that tax assessment notice, but the Belastinginspecteur (Inspector of Taxes) upheld that tax assessment notice, on the ground that the interested party was resident in the Netherlands and was using her car on the Netherlands public road network.
- 15 Although the Rechtbank te Leeuwarden (District Court, Leeuwarden) found in favour of X's action against the Belastinginspecteur's decision, the Gerechtshof te Leeuwarden (Regional Court of Appeal, Leeuwarden) allowed the Minister van Financiën's appeal and set aside the Rechtbank te Leeuwarden's judgment.
- 16 The Gerechtshof te Leeuwarden held in that regard that X could not rely on the principle of proportionality, because the car was used primarily and on a long-term basis in the Netherlands and there was no question that the vehicle tax interfered with any of the freedoms guaranteed under European Union law. In that regard, the fact that X paid the car registration tax in Belgium would not preclude her from being liable to pay the vehicle tax for that vehicle, since she is resident in the Netherlands for the purposes of Netherlands legislation.
- 17 X brought an appeal on a point of law against the Gerechtshof te Leeuwarden's decision before the referring court. According to the referring court, it is common ground that X is resident in the Netherlands for the purposes of Netherlands legislation, even though it is possible that she may also be considered as being resident in Belgium for the purposes of Belgian legislation. In that regard, since that latter point is not in dispute, the referring court proceeds on the basis that X is also resident in Belgium and that her car is also intended to be used on a long-term basis in Belgium.
- 18 It is on that basis that the Hoge Raad der Nederlanden (Netherlands Council of State) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Is the exercise of powers of taxation by two Member States, in particular the imposition of a registration tax on a motor vehicle, unlimited in circumstances in which a citizen of the European Union lives in two Member States, according to the national laws [of both those Member States], and in which that citizen actually uses – in both Member States and on a long-term basis – a motor vehicle that belongs to her?
- (2) If the first question is answered in the negative, can the principle of proportionality have a remedial effect on the imposition of a registration tax in a case such as this, and, if so, does that principle then have the effect that one or both of the Member States is or are required to restrict the exercise of their powers of taxation, and how should any such restriction apply?'

### **The questions referred for a preliminary ruling**

- 19 It must be observed at the outset that, in its questions, the referring court does not indicate the provision or provisions of European Union law in relation to which the Court is to carry out its assessment.

- 20 In that regard, the Court has, in similar circumstances, held that it must extract from all the factors provided by the national court or tribunal, and in particular from the statement of grounds contained in the reference, the elements of European Union law requiring an interpretation, having regard to the subject-matter of the dispute in the main proceedings (Case C-537/09 *Bartlett and Others* [2011] ECR I-3417, paragraph 36).
- 21 In the present case, given that X is a Belgian national who is self-employed as an orthodontist in the Netherlands and that the tax assessment notice at issue in the main proceedings was issued to her in July 2006, the Court must assess the questions asked by the referring court in the light of the freedom of establishment enshrined in Article 43 EC.
- 22 Accordingly, the questions asked by the referring court, which should be examined together, should be understood as asking whether, in essence, Article 43 EC must be interpreted as precluding legislation of a Member State under which a motor vehicle, which is registered and is already the subject of taxation as a result of its registration in another Member State, is the subject of a tax when it is first used on the national road network, where that vehicle is intended, essentially, to be actually used on a long-term basis in both those Member States or is, in fact, used in that manner.
- 23 In that regard, it should be noted that, apart from certain exceptions not relevant to the main proceedings, taxation of motor vehicles has not been harmonised at European Union level. The Member States are thus free to exercise their powers of taxation in that area provided that they do so in compliance with European Union law (see Joined Cases C-578/10 to C-580/10 *van Putten and Others* [2012] ECR, paragraph 37 and the case-law cited, and the order of 27 April 2012 in Case C-114/11 *Notermans-Boddenberg*, paragraph 21).
- 24 As regards vehicle registration taxes, it is settled case-law that a Member State may impose a registration tax on a motor vehicle registered in another Member State where that vehicle is intended to be used essentially in the first Member State on a permanent basis or where it is, in fact, used in that manner (see *van Putten and Others*, paragraph 46, and the order in *Notermans-Boddenberg*, paragraph 26).
- 25 In relation to the vehicle tax specifically, the Court has previously held that if vehicles, which are not registered in the Netherlands, are intended to be used essentially in the Netherlands on a permanent basis or if they are, in fact, used in that way, there is no difference in the treatment of a person who resides in the Netherlands and uses such a vehicle and a person who uses a vehicle registered in that Member State on the same conditions, since the latter vehicle, which is also intended to be used essentially in the Netherlands on a permanent basis, was already subject to vehicle tax on its first registration in the Netherlands. (see *van Putten and Others*, paragraph 50, and the order in *Notermans-Boddenberg*, paragraph 27).
- 26 Similarly, the Court has held that, in those circumstances, requiring the payment of the vehicle tax on first use of a vehicle on the road network in the Netherlands which is not registered in the Netherlands, is justified in the same way as the payment of the tax due on the registration of the vehicle in the Netherlands is, provided that the tax takes account, as appears to be required by the 1992 Law, of the depreciation of the vehicle at the time of that first use (see *van Putten and Others*, paragraph 51, and the order in *Notermans-Boddenberg*, paragraph 28).
- 27 The referring court asks whether the mere fact that a vehicle is intended, essentially, to be actually used on a long-term basis or is, in fact, used in that manner, not only in the territory of the Netherlands but also on the territory of the Member State of its registration should give rise to restrictions in the exercise of the powers of taxation of both those Member States.

- 28 In that regard, it must be recalled that, in the absence of harmonisation at European Union level, the disadvantages which could arise from the parallel exercise of tax competences by different Member States, to the extent that such an exercise is not discriminatory, do not constitute restrictions on the freedom of movement (see Case C-157/10 *Banco Bilbao Vizcaya Argentaria* [2011] ECR I-13023, paragraph 38).
- 29 Moreover, as the Advocate General has pointed out in paragraph 48 of her Opinion, referring to *Banco Bilbao Vizcaya Argentaria* (paragraph 39), assuming that the chargeable event for the vehicle tax and the car registration tax in Belgium is the same, it must be recalled that the Member States are not obliged to adapt their own tax systems to the different systems of tax of the other Member States in order, inter alia, to eliminate double taxation.
- 30 In the present case, even though the car at issue in the main proceedings is used by X for both private use and for going to her place of work, situated in another Member State, the legislation at issue in the main proceedings does not put the interested party at a disadvantage compared to self-employed persons who are already subject to the vehicle tax, since each Netherlands resident, whether self-employed or not, is subject to that tax either when a motor vehicle is registered in the Netherlands vehicle register or when such a vehicle, registered in another Member State, is first used on the road network in the Netherlands (see, to that effect, concerning Article 39 EC, the order in *Notermans-Boddenberg*, paragraph 30).
- 31 Accordingly the tax disadvantage suffered by X, in relation to the situation in which she carried out her activities prior to exercising her freedom of establishment in the Netherlands, which results only from the non-discriminatory exercise of the tax systems of both Member States concerned, does not contravene Article 43 EC.
- 32 In the light of all the foregoing considerations, the answer to the questions referred is that Article 43 EC must be interpreted as not precluding legislation of a Member State under which a motor vehicle, which is registered and is already the subject of taxation as a result of its registration in another Member State, is the subject of a tax when it is first used on the national road network, where that vehicle is intended, essentially, to be actually used on a long-term basis in both those Member States or is, in fact, used in that manner, as long as that tax is not discriminatory.

### Costs

- 33 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 (Second Chamber) hereby rules:

**Article 43 EC must be interpreted as not precluding legislation of a Member State under which a motor vehicle, which is registered and is already the subject of taxation as a result of its registration in another Member State, is the subject of a tax when it is first used on the national road network, where that vehicle is intended, essentially, to be actually used on a long-term basis in both those Member States or is, in fact, used in that manner, as long as that tax is not discriminatory.**

[Signatures]