

## 61983J0134

Judgment of the Court (Fifth Chamber) of 11 December 1984. - Criminal proceedings against J. G. Abbink. - Reference for a preliminary ruling: Arrondissementsrechtbank Arnhem - Netherlands. - Temporary importation of motor vehicles - Exemption from import duty. - Case 134/83.

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### Keywords

*FREE MOVEMENT OF GOODS - NATIONAL LEGISLATION PROHIBITING RESIDENTS FROM USING VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION RULES - NO EXCEPTION FOR USE WITHOUT INTENTION OF EVADING TAX - COMPATIBILITY WITH THE TREATY - PERIOD CONCERNED*

*( COUNCIL DIRECTIVE NO 83/182/EEC )*

### Summary

*THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE NATIONAL LEGISLATION FROM IMPOSING ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE- ADDED TAX , EVEN IF THAT LEGISLATION MAKES NO EXCEPTION FOR CASES IN WHICH SUCH VEHICLES ARE USED WITHOUT ANY INTENTION OF EVADING TAX .*

*THAT STATEMENT APPLIES ONLY TO THE PERIOD BEFORE THE ENTRY INTO FORCE OF COUNCIL DIRECTIVE NO 83/182/EEC , WHICH GOVERNS THE MATTER AS FROM THAT DATE .*

# Parties

IN CASE 134/83

REFERENCE TO THE COURT UNDER ARTICLE 177 OF THE EEC TREATY BY THE  
ARRONDISSEMENTSRECHTBANK ( DISTRICT COURT ), ARNHEM , FOR A PRELIMINARY  
RULING IN THE CRIMINAL PROCEEDINGS PENDING BEFORE THAT COURT AGAINST

JAN GERRIT ABBINK , RIJNSBURG , NETHERLANDS ,

## Subject of the case

ON THE INTERPRETATION OF PROVISIONS OF THE EEC TREATY RELATING TO THE FREE  
MOVEMENT OF GOODS WITH REGARD TO NATIONAL LEGISLATION MAKING IT AN  
OFFENCE FOR PERSONS RESIDENT IN THE TERRITORY OF A MEMBER STATE TO USE  
MOTOR VEHICLES COVERED BY TEMPORARY IMPORT RULES AND CONSEQUENTLY  
IMPORTED FREE OF IMPORT DUTY , EVEN IF SUCH TEMPORARY USE IS MADE WITHOUT  
ANY INTENTION OF EVADING TAX ,

## Grounds

1 BY ORDER OF 30 MAY 1983 , RECEIVED AT THE COURT ON 11 JULY 1983 , THE  
ARRONDISSEMENTSRECHTBANK ( DISTRICT COURT ), ARNHEM , REFERRED TO THE  
COURT FOR A PRELIMINARY RULING UNDER ARTICLE 177 OF THE EEC TREATY A  
QUESTION ON THE INTERPRETATION OF THE PROVISIONS OF THE EEC TREATY ON THE  
FREE MOVEMENT OF GOODS .

2 THAT QUESTION WAS RAISED IN THE COURSE OF CRIMINAL PROCEEDINGS BROUGHT  
AGAINST THE DEFENDANT IN THE MAIN PROCEEDINGS FOR OFFENDING AGAINST THE  
PROVISIONS OF NETHERLANDS LAW REGARDING THE TEMPORARY IMPORTATION OF  
CERTAIN MEANS OF TRANSPORT WITHIN THE COMMUNITY .

3 ACCORDING TO THE ORDER OF THE NATIONAL COURT AND THE DOCUMENTS IN THE  
CASE , THE OFFENCE WITH WHICH THE DEFENDANT IN THE MAIN PROCEEDINGS WAS  
CHARGED WAS THAT , CONTRARY TO THE PROVISIONS OF ARTICLE 25 OF THE  
BESCHIKKING VRIJSTELLINGEN-TARIEFBESLUIT ( TARIFF ( EXEMPTION ) ORDER ) 1960 ,  
HE DROVE IN THE NETHERLANDS A PASSENGER CAR REGISTERED IN THE FEDERAL  
REPUBLIC OF GERMANY BELONGING TO HIS EMPLOYER - A FLOWER WHOLESALER  
ESTABLISHED IN SAARBRUCKEN - WITHOUT HAVING PAID IMPORT DUTIES ON THE CAR ,  
ALTHOUGH HE WAS NORMALLY RESIDENT IN THE NETHERLANDS . THE CAR WAS USED  
FOR PURCHASING FLOWERS IN THE NETHERLANDS FOR DELIVERY IN THE FEDERAL  
REPUBLIC OF GERMANY .

4 BEFORE THE ARRONDISSEMENTSRECHTBANK , ARNHEM , THE DEFENDANT IN THE  
MAIN PROCEEDINGS RELIED ON THE PROVISIONS OF THE EEC TREATY , ARGUING THAT  
THE RELEVANT NATIONAL LEGISLATION MAKING IT AN OFFENCE FOR NETHERLANDS  
RESIDENTS TO USE A VEHICLE REGISTERED IN ANOTHER MEMBER STATE WITHOUT  
PROVIDING FOR ANY EXCEPTION IN CASES IN WHICH SUCH A VEHICLE IS USED FOR  
THE PURPOSES OF THE DRIVER ' S EMPLOYMENT WITHOUT ANY INTENTION OF

EVADING TAX IS CONTRARY TO COMMUNITY LAW .

5 THE NATIONAL COURT FIRST REFERRED TO 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 ( OFFICIAL JOURNAL 1983 , L 105 , P . 59 ). IT DECIDED THAT THAT DIRECTIVE WAS ADOPTED AFTER THE ALLEGED OFFENCE WAS COMMITTED AND ALSO THAT IT COULD NOT BE SUCCESSFULLY RELIED UPON BY THE DEFENDANT IN ORDER TO CLAIM EXEMPTION FROM IMPORT DUTIES .

6 THE NATIONAL COURT THEN REFERRED TO THE JUDGMENT OF 9 OCTOBER 1980 IN CASE 823/79 , CARCIATI , ( 1980 ) ECR 2773 , IN WHICH THE COURT HELD THAT THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE THE IMPOSITION BY NATIONAL RULES ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE OF A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE-ADDED TAX .

7 FINALLY , THE NATIONAL COURT REFERRED TO THE ANSWER GIVEN TO WRITTEN QUESTION NO 22/82 SUBMITTED ON 17 MARCH 1982 BY A MEMBER OF THE EUROPEAN PARLIAMENT ( OFFICIAL JOURNAL 1982 , C 262 , P . 1 ). IN ITS ANSWER THE COMMISSION , REFERRING TO THE COURT ' S JUDGMENT IN THE CARCIATI CASE , STATED THAT THE TEMPORARY USE OF A FOREIGN VEHICLE BY A RESIDENT OF A GIVEN COUNTRY COULD NOT BE PROHIBITED PROVIDED THAT THERE WAS NO INTENTION OF EVADING TAX .

8 TAKING THE VIEW THAT IN THIS CASE THE DEFENDANT HAD NO INTENTION OF EVADING TAX , THE ARRONDISSEMENTSRECHTBANK STAYED THE PROCEEDINGS AND REFERRED THE FOLLOWING QUESTION TO THE COURT :

'' IN VIEW OF THE COMMISSION ' S ANSWER IS NATIONAL LEGISLATION MAKING IT A CRIMINAL OFFENCE FOR PERSONS RESIDENT IN THE TERRITORY OF A MEMBER STATE TO USE MOTOR VEHICLES COVERED BY TEMPORARY IMPORTATION RULES AND CONSEQUENTLY EXEMPT FROM IMPORT DUTY COMPATIBLE WITH THE PROVISIONS OF THE EEC TREATY ON THE FREE MOVEMENT OF GOODS IF SUCH TEMPORARY USE IS MADE WITHOUT ANY INTENTION OF EVADING TAX?

''

9 THE NETHERLANDS GOVERNMENT SUGGESTS THAT THE COURT SHOULD FOLLOW ITS DECISION IN THE CARCIATI CASE CITED ABOVE AND GIVE AN ANSWER IN THIS CASE CONSISTENT WITH THAT DECISION WITHOUT TAKING INTO ACCOUNT SUBJECTIVE FACTORS SUCH AS WHETHER OR NOT THERE IS AN INTENTION OF EVADING TAX . NOT ONLY DID THAT DECISION CONTAIN NO PROVISIO TO THAT EFFECT BUT , SINCE IT IS VIRTUALLY IMPOSSIBLE FOR THE NATIONAL AUTHORITIES OF THE IMPORTING STATE TO DETECT AN INTENTION OF EVADING TAX , SUCH AN EXCEPTION WOULD LEAD TO WIDESPREAD TAX EVASION . THEREFORE , ACCORDING TO THE NETHERLANDS GOVERNMENT , A GENERAL PROHIBITION IMPOSED ON PERSONS RESIDENT IN THE IMPORTING STATE AGAINST USING VEHICLES IMPORTED FREE OF TAX IS NECESSARY , BECAUSE IT IS IN ITSELF AN EFFECTIVE MEANS OF PREVENTING TAX EVASION .

10 AT THE HEARING THE DANISH GOVERNMENT ALSO EXPRESSED THE VIEW THAT IN PRACTICE IT WOULD BE VERY DIFFICULT TO DETERMINE WHETHER OR NOT A FOREIGN VEHICLE WAS BEING USED IN THE IMPORTING STATE WITH THE INTENTION OF EVADING TAX AND THAT IT WOULD ALSO BE DIFFICULT TO ARRIVE AT A PRECISE DEFINITION OF

SUCH AN INTENTION . IT THEREFORE SUGGESTED THAT THE COURT SHOULD CONFIRM ITS DECISION IN CARCIATI BY STATING , AS IT DID IN THAT JUDGMENT , THAT NATIONAL LEGISLATION WHICH PROHIBITS RESIDENTS WITHOUT EXCEPTION FROM USING A VEHICLE REGISTERED IN ANOTHER MEMBER STATE ACCORDS WITH THE PRINCIPLE OF PROPORTIONALITY AND THAT IT IS THEREFORE COMPATIBLE WITH COMMUNITY LAW . ACCORDING TO THE DANISH GOVERNMENT , SUPPORT FOR SUCH AN INTERPRETATION IS TO BE FOUND IN THE SUBSEQUENT COUNCIL DIRECTIVE 83/182/EEC OF 28 MARCH 1983 , WHICH MAKES TAX EXEMPTIONS ON TEMPORARY IMPORTS CONDITIONAL ON THE EXEMPTED VEHICLE NOT BEING DISPOSED OF , HIRED OUT OR LENT IN THE MEMBER STATE INTO WHICH IT IS TEMPORARILY IMPORTED .

11 THE COMMISSION TAKES THE VIEW THAT NATIONAL LEGISLATION SUCH AS THAT REFERRED TO BY THE NATIONAL COURT IN THIS CASE MAY CONSTITUTE AN OBSTACLE TO THE FREE MOVEMENT OF GOODS AND WORKERS AND TO THE EXERCISE OF THE RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES . IN ITS VIEW , THAT OBSTACLE MUST BE ACCEPTED SO FAR AS IT IS NECESSARY IN ORDER TO SATISFY ESSENTIAL REQUIREMENTS OF , IN PARTICULAR , EFFECTIVE FISCAL CONTROL OF VEHICLES IMPORTED FREE OF TAX . HOWEVER , AN ABSOLUTE PROHIBITION IMPOSED ON EVERY PERSON RESIDENT IN A MEMBER STATE AGAINST DRIVING IN THAT STATE A VEHICLE REGISTERED IN ANOTHER MEMBER STATE IS EXCESSIVE BECAUSE IT GOES FURTHER THAN IS NECESSARY FOR THAT PURPOSE AND CANNOT THEREFORE OVERRIDE THE FUNDAMENTAL FREEDOMS CONFERRED BY THE TREATY .

12 IT SHOULD FIRST BE POINTED OUT THAT THE QUESTION RAISED BY THE NATIONAL COURT ONLY CONCERNS THE PERIOD BEFORE THE ENTRY INTO FORCE OF COUNCIL DIRECTIVE 83/182/EEC OF 28 MARCH 1983 , WHICH GOVERNS THE MATTER AS FROM THAT DATE .

13 AS THE COURT STATED IN ITS JUDGMENT IN CARCIATI UNTIL THE ENTRY INTO FORCE OF THE NEW DIRECTIVE THE MEMBER STATES RETAINED BROAD POWERS TO TAKE ACTION IN RESPECT OF TEMPORARY IMPORTATION , SPECIFICALLY FOR THE PURPOSE OF PREVENTING TAX EVASION , AND , PROVIDED THAT THE MEASURES ADOPTED TO THAT END WERE NOT EXCESSIVE , THEY WERE COMPATIBLE WITH THE PRINCIPLE OF THE FREE MOVEMENT OF GOODS . IN THE SAME JUDGMENT THE COURT RECOGNIZED THAT THE PROHIBITION IMPOSED BY A MEMBER STATE ON PERSONS RESIDENT IN ITS TERRITORY ON THE USE OF VEHICLES IMPORTED TEMPORARILY TAX-FREE WAS AN EFFECTIVE WAY OF PREVENTING TAX EVASION AND OF ENSURING THAT TAXES WERE PAID IN THE GOODS ' COUNTRY OF DESTINATION . FINALLY , THE COURT STATED THAT , PROVIDED THAT THE PROVISIONS SUCH AS THOSE CONTAINED IN THE LEGISLATION IN QUESTION IN THAT CASE WERE FOUND TO BE COMPATIBLE WITH THE RULES OF THE COMMUNITY LEGAL ORDER , THERE WERE NO GROUNDS FOR CALLING IN QUESTION THE POWER OF A MEMBER STATE TO IMPOSE CRIMINAL PENALTIES FOR CONTRAVENTIONS OF THE NATIONAL LEGISLATION .

14 THOSE STATEMENTS ARE NOT INVALIDATED BY THE FACT THAT THE NATIONAL LEGISLATION DOES NOT PROVIDE FOR ANY EXCEPTION IN CASES IN WHICH VEHICLES ARE USED WITHOUT THE INTENTION OF EVADING TAX . INDEED , LEGISLATION DESIGNED TO PREVENT TAX EVASION MUST INEVITABLY BE BASED ON OBJECTIVE , VERIFIABLE CRITERIA . THAT IS NOT THE CASE WITH A CRITERION BASED ON THE INTENTION OF THE PERSON CONCERNED .

15 SUCH LEGISLATION MUST NOT HOWEVER LEAD TO DOUBLE TAXATION . AS THE COURT HELD IN ITS JUDGMENT OF 5 MAY 1982 IN CASE 15/81 , SCHUL V INSPECTEUR

DER INVOERRECHTEN EN ACCIJNZEN , ( 1982 ) ECR 1409 , ' ' VALUE-ADDED TAX WHICH A MEMBER STATE LEVIES ON THE IMPORTATION OF PRODUCTS FROM ANOTHER MEMBER STATE SUPPLIED BY A PRIVATE PERSON WHERE NO SUCH TAX IS LEVIED ON THE SUPPLY OF SIMILAR PRODUCTS BY A PRIVATE PERSON WITHIN THE TERRITORY OF THE MEMBER STATE OF IMPORTATION CONSTITUTES INTERNAL TAXATION IN EXCESS OF THAT IMPOSED ON SIMILAR DOMESTIC PRODUCTS WITHIN THE MEANING OF ARTICLE 95 OF THE TREATY , TO THE EXTENT TO WHICH THE RESIDUAL PART OF THE VALUE-ADDED TAX PAID IN THE MEMBER STATE OF EXPORTATION WHICH IS STILL CONTAINED IN THE VALUE OF THE PRODUCT ON IMPORTATION IS NOT TAKEN INTO ACCOUNT . ' '

16 THE REPLY TO THE QUESTION PUT BY THE ARRONDISSEMENTSRECHTBANK , ARNHEM , MUST THEREFORE BE THAT THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE NATIONAL LEGISLATION FROM IMPOSING ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE-ADDED TAX , EVEN IF THAT LEGISLATION MAKES NO EXCEPTION FOR CASES IN WHICH SUCH VEHICLES ARE USED WITHOUT ANY INTENTION OF EVADING TAX .

## **Decision on costs**

### **COSTS**

17 THE COSTS INCURRED BY THE NETHERLANDS GOVERNMENT , THE DANISH GOVERNMENT AND THE COMMISSION OF THE EUROPEAN COMMUNITIES , WHICH HAVE SUBMITTED OBSERVATIONS TO THE COURT , ARE NOT RECOVERABLE . AS THESE PROCEEDINGS ARE , IN SO FAR AS THE PARTIES TO THE MAIN PROCEEDINGS ARE CONCERNED , A STEP IN THE PROCEEDINGS BEFORE THE NATIONAL COURT , COSTS ARE A MATTER FOR THAT COURT .

## **Operative part**

### **ON THOSE GROUNDS**

#### **THE COURT ( FIFTH CHAMBER )**

IN ANSWER TO THE QUESTION SUBMITTED TO IT BY THE ARRONDISSEMENTSRECHTBANK , ARNHEM , BY AN ORDER DATED 30 MAY 1983 , HEREBY RULES :

THE RULES OF THE EEC TREATY RELATING TO THE FREE MOVEMENT OF GOODS DO NOT PRECLUDE NATIONAL LEGISLATION FROM IMPOSING ON PERSONS RESIDING IN THE TERRITORY OF A MEMBER STATE A PROHIBITION , SUBJECT TO CRIMINAL PENALTIES , ON THE USE OF MOTOR VEHICLES ADMITTED UNDER TEMPORARY IMPORTATION ARRANGEMENTS AND THUS EXEMPT FROM PAYMENT OF VALUE ADDED TAX , EVEN IF THAT LEGISLATION MAKES NO EXCEPTION FOR CASES IN WHICH SUCH VEHICLES ARE USED WITHOUT ANY INTENTION OF EVADING TAX .