



9.12.2010

NOTICE TO MEMBERS

Subject: Petition 0562/2010 by Agnieszka Sieczkowska (Polish), on the Danish authorities' impounding of her Polish-registered company car and consequent obstacles to the free movement of labour¹. **Summary of petition**

The petitioner complains at the Danish authorities' impounding of her Polish-registered car which she uses for work, and their demand for an exorbitant registration charge and a fine. The petitioner believes that she has acted in complete compliance with the applicable EU provisions on the registration and taxation of motor vehicles and she refers, in that connection, to the judgment by the Court of Justice in Case C-464/02, *Commission of the European Communities v the Kingdom of Denmark*, and the Court's judgment in joint Cases C-151/04 and C-152/04, criminal proceedings against Claude Nadin, Nadin-Lux SA and Jean-Pascal Durré (references for a preliminary ruling from the Tribunal de police de Neufchâteau), which all concerned the use of a company car registered in another Member State. The petitioner also refers to the Court's judgment in Case C-156/04, *Commission of the European Communities v the Hellenic Republic*, which states that 'the Commission considers that those penalties (impounding), in conjunction with the Greek administrative authorities' practice as regards the determination of the place of normal residence and the failure to take into account the possible good faith of the person concerned, are disproportionate'. The petitioner therefore calls on the European Parliament to intervene.

2. Admissibility

Declared admissible on 1 October 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 9 December 2010.

The Commission's observations

The petitioner has submitted a similar complaint to the Commission regarding impounding and car registration taxes in Denmark.

Exemption from registration tax on passenger cars

There is no harmonization at EU level in the field of passenger car taxes. Very few pieces of EU legislation restrict the rights of Member States to apply such taxes, and Member States therefore have wide discretion in these matters. However, when exercising this competence, Member States must respect the basic principles laid down in the Treaty on the Functioning of the European Union. In this respect the case law of the Court of Justice of the European Union has defined – and limited – the powers of the Member States with regard to taxing company cars made available to an employee resident in one Member State by an employer established in another Member State. It is this case law that the petitioner refers to.

In case C-464/02, *Commission v Denmark*, the European Court of Justice ruled that a person who is employed in one Member State but resides in another may use a car registered in his employer's name in another Member State both for private and professional purposes within his country of residence, as long as the car is used primarily outside his country of residence. In joint cases C-151/04, *Claude Nadin*, and C-152/04, *Jean-Pascal Durré*, the Court confirmed its ruling concerning employees, extending it to a firm's shareholders, directors and managers.

However, in circumstances such as those in the petitioner's case, the EU case law on tax exemption for company cars registered in another Member State would not apply, primarily because the petitioner does not use a company car, that is to say a car registered in her employer's name.

Since the petitioner uses a private car registered in her own name, the only directive that may be relevant to her situation is Council Directive 83/182/EC on tax exemptions within the Community for certain means of transport temporarily imported into one Member State from another¹.

Council Directive 83/182/EC provides for a resident in one Member State to use temporarily his car in a Member State other than the Member State in which he is resident. Such temporary use in one Member State should not have any tax consequences, provided that the person using the car has 'his normal residence' in another Member State.

For the purposes of determining the place of normal residence, Article 7 of Council Directive 83/182/EC states that both the person's occupational and personal ties to a given place, as well as the duration of those ties, must be taken into consideration. Where those ties are not concentrated in a single Member State, the Directive gives primacy to personal ties over occupational ties, provided that the person returns to the place of his personal ties regularly. In assessing the personal and occupational ties of the person, all relevant facts must be taken into consideration, such as, in particular, his actual presence and that of the members of his family, availability of accommodation, the place where business is conducted and the place where his property interests are situated. (See the Court's judgment in case C-262/99, *Paraskevas Louloudakis*, points 51 to 56).

Further, Article 9(3) authorises Denmark to regard any person from another Member State as having his place of normal residence in Denmark if he lives there for a year or 365 days in any 24 month period. However, where a person is considered to have two residences, the

¹ OJ L 105, 23.4.1983, p. 59

place of normal residence of that person is situated where his spouse and children live. In similar cases Denmark is obliged to consult with the other Member State concerned to decide which of the two residences should be used for the purposes of taxation.

When considering whether the conditions for using a car under the temporary importation arrangements are met, it is for the competent authorities of the Member States to assess and weigh all the relevant facts which characterise each case, in the light of the criteria devolving from EU case law. Further, the national courts must undertake an overall assessment of the data relating to ties having regard to all the evidence submitted to them see the Court's judgment in case C-262/99, *Paraskevas Louloudakis*, point 57).

If a Member State determines that the normal residence of the individual concerned is within its territory it is in accordance with EU law that the Member State levy a car registration tax, irrespective of whether a similar registration tax has already been paid in another Member State (see, to that effect, the Court's judgment in case C-138/04, *Commission v Denmark*, point 13).

On the issue of the high rates charged under the Danish legislation on registration tax on motor vehicles, the Commission refers to the Court's judgment in case C-383/01, *De Danske Bilimportører*, where the Court stated that these rates do not infringe EU law.

Finally, it follows from the Court's case law (judgments in cases C-387/01, *Weigel*, point 55, and C-365/02, *Lindfors*, point 34) that while a registration tax might have a negative influence on the decision to exercise the right to free movement, the Treaty does not guarantee that a transfer of residence within the Union will be neutral with regard to taxation. Any disadvantage experienced by an individual as a result of such a transfer would only be contrary to the Treaty provisions if he would be at a disadvantage compared with those already subject to such a tax; e.g. the amount of the tax is higher for the migrant worker than for somebody who is already established in the Member State.

After having analysed the circumstances in the petitioner's case in the light of EU case law, the Commission considers that her case seems to demonstrate no general administrative practice or domestic legislation with regard to the levy of car registration tax under the temporary importation arrangements that would not conform to EU law.

The Danish legislation on the seizure of cars registered in another Member State

The Commission is aware that the Danish authorities do impound cars registered in other Member States in circumstances where the authorities have reason to believe that the conditions for using the car under the temporary importation arrangements are not met. The Commission takes such impounding seriously, as the right to use a car is important for the actual exercise of the rights relating to the free movement of persons. Moreover, it follows from EU case law that such measure may be disproportionate in relation to the objective pursued, which is the collection of fines and charges. (See the Court's judgment in case C-156/04, *Commission of the European Communities v Hellenic Republic*). Such an objective could, according to the Court, be attained by means more consistent with EU law, for example by the provision of a security.

The Danish authorities have informed the Commission that at present the Danish legislation does not provide for any less radical measure than impounding in such cases. However, Denmark is committed to making the changes necessary to ensure that its legislation addresses the matter, and a bill is to be introduced during the present Parliamentary session.

Conclusion

As regards the petitioner's liability to pay Danish registration tax on her private car, it is for the national courts to assess and weigh all the relevant facts which characterise her case in the light of the criteria devolving from EU case law, and thus decide whether her Polish-registered car may be exempted from registration tax in Denmark under the temporary importation arrangements. The Commission notes that the question on her tax liability is still pending before the national courts, and the Commission trusts that they will apply EU law correctly. The Commission will therefore not take further action in this specific area.

As regards the Danish legislation on impounding of cars registered in other Member States, the Commission is confident that Denmark will change its legislation in order to comply with EU law. The Commission will follow the Danish law-making process on this matter closely, and it will inform the petitioner when the legislation has been adopted.